City of Las Cruces®

The following are summary minutes for the meeting of the **City of Las Cruces – Economic Development Policy Review Committee** on March 15, 2023. The meeting was held at City Hall, 700 N. Main, Las Cruces, New Mexico in the Las Cruces Conference Room 2007-B.

Members Present:

Kasandra Gandara, Mayor Pro-Tem
Yvonne Flores, City Council
Mary Ulrich, DACC
Ana Berrun, Las Cruces Lodgers Association
Kathryn Hansen, NMSU
Davin Lopez, MVEDA

Members Absent:

Tessa Abeyta-Stuve, City Councilor
Connie Campos, Commercial Real Estate
Peter Martinez, Workforce Development
Debbi Moore, Chamber of Commerce

Others Present:

Elizabeth Teeters, Economic Development Director
Natalie Green, Housing and Neighborhood Services Administrator
Sergio Ruiz, Policy Analyst
Ikani Taumoepeau, Assistant City Manager
Cilicia Villegas, Economic Development Coordinator
Christine Rivera, City Clerk
Monica Torres, Economist
Julie Brown, NMEDD
Celina Morales, Economic Development Coordinator
Peter Franklin, Modrall
Katherine McKinney, Modrall
David Weir, Deputy Director Community Development

I. **Call to Order:** Councilor Flores called the meeting to order at approximately 9:11 a.m.

II. **Conflict of Interest:** There was no conflict of interest.

III. **Minutes for Approval:**

a. **Economic Development PRC Meeting of February 15, 2023:** Councilor Gandara motioned to approve the minutes; seconded by Councilor Flores. Minutes were accepted.

IV. Discussion:

a. **Industrial Revenue Bond (IRB) Overview:** Peter Franklin and Katherine McKinney stated Industrial Revenue Bonds are an economic development financing tool for municipalities and counties. The state statutes provide that municipalities are authorized to acquire, own, lease, or sell projects for promoting industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the state. The caveat to that is municipalities are not allowed to use their own income, revenues, or resources to acquire or operate such projects. This leads to an elaborate transaction structure in which private enterprise will acquire the project for the municipality, the municipality will own the project and lease it back to the private enterprise which then operates it for its commercial or industrial purposes.

   The ownership by the municipality entitles the project to a property tax abatement and gross receipts tax (GRT)benefits that are provided under the IRB statutes and tax code. This is for the term for which the bonds are outstanding. Obtaining property tax abatement and avoidance of gross receipts taxes or compensating taxes for purchases of equipment for the project is really the motivation for a private enterprise requesting IRB financing. IRB is a conduit transaction, meaning that the bonds are issued by the City but the City's revenues are not implicated in repaying the bonds. The income and revenue of the private enterprise that pays debit services on the bonds. IRB do not affect the City's credit rating, net position, only in form but not in substance, debit of the City. If the project revenues are insufficient to repay the bonds, none of the City resources are obligated for the repayment. IRB prohibit the City from using its own revenues or resources to pay the bonds or to operate the project being financed.

   IRB statutes make certain projects eligible, and generally used to finance commercial and industrial projects, not for projects that are retail in nature. Hotels are eligible for IRB financing. Equipment, fixture, and furnishings for the project can be made with nontaxable transaction certificates (NTTC), which are provided by Taxation and Revenue Department avoid gross receipts or compensating taxes on those purchases. NTTC cannot be used for "ingredients of construction", cost of materials for constructing a project such as rebar, steel, wood, concrete, roofing, are not eligible for NTTC. Construction services which are subject to GRT are not eligible for NTTC. Renewal energy projects such as wind farms and solar farms are a bit part of the IRB financing space in New Mexico in the last 20 years, and these projects are eligible for NTTC. IRB transactions typically require payments in lieu of taxes, in order to protect certain types of taxing jurisdictions, such as school districts and hospital districts from loss of tax revenues as a result of a project. IRB require annual reporting by the project to the City. IRB have statutes up to 30 years. Albuquerque allows only 20 years.

Examples were shown and explained, Hotel Parq Central, which included clawbacks; one would repay abated property taxes on a percentage basis if failure to maintain operations up to six years. Second clawback was jobs and compensation performance, they would employe at least 28 full time employees for 20 years of the IRB, and again repay abated property taxes on a percent basis if this failed. And another clawback for wage underperformance, again to for 20 years.

Another example is renewable energy in Otero County for the Buena Vista Energy Center Project. This required PILOT (payment in lieu of taxes) which is a statutory requirement in the previous regular sessions and requires payments to all school districts in county to be shared equally. This project had an operating clawback if the project shut down within the first five years after the IRB issued, all abated property taxes would have to be repaid, and then a percentage up to 10 years. Renewable IRB often do not include employment targets and associate clawbacks because they do not result in long-term employment.

Legal structure of IRB. Typically a developer will convey interest in project property, by quick claim deed if the developer owns the property in fee simple, if the developer has a lease hold interest it will sublease that interest to the local government. The reason the local government has title to the property as it takes the property off the tax rolls. Project not subject to property taxes while title/lease hold interest held by local government entity. The local government then takes interest it has received from the developer and leases it back to the developer for the purpose of the developer instructing and operating the project. In an IRB lease the tenant/developer has substantially all the benefits and all the liability and economic use of the leased property. IRB statutes prohibit the government from operating or economically supporting the financed project, other than property tax abatement and gross receipts tax benefits. At the end of the term of lease, the title to the property is reconveyed for no or nominal additional consideration to the developer.

Most IRB in New Mexico are self-financed transaction. This means once the bonds are issued by the City, they are purchased by an affiliate of the project company. The project company is borrowing money from the bond purchaser and is repaying the bond purchaser for the money borrowed. Usually the project company as borrower, and the bond purchaser as lender are affiliated, there is seldom an outside investor in the IRB. The IRB transaction has to be subordinated to the project companies true source of financing, outside investors, or lenders or some combination of both. The local government has no right to retake possession if there is default by the developer under the lease agreement. The bond purchaser has rights if the lease agreement goes away. If the IRB lease goes into default, the remedy of the local government is to terminate the lease which results in title to the project going back to the developer and putting the project back on the property tax rolls.

The transaction structure, at the time the lease agreement is entered into and becomes effective, the City issues the IRB, payments under the lease are structured to be sufficient to pay debt service on the bond. Sometimes the bonds are sold to the third party lender. Bonds are usually issued in a maximum principle amount. IRB bonds are set up to be a maximum principle amount which is advanced over time at the request from the project company to the bond purchaser. Hope to see the project company request an advance of the entire amount of the IRB so they have economic substance.

Notice requirements. Before a City schedules a hearing to consider an IRB ordinance for adoption it has to give at least 30 days notices to the county assessor and county commission. Most developers of projects open up the discussion about payments in lieu of taxes much earlier than the time the city has to send out notice. When the county is the issuer, the statute requires notice to all the tax jurisdictions in the county. There is no statutory guidance on what payments in lieu of taxes are appropriate or should be paid. City or county can issue IRB regardless of objections from taxing jurisdiction that received notice.

Suggestions for areas for the City to issue IRB. There should be some due diligence in figuring whether a developer requesting IRB financing has the development experience and record of success to give the City confidence the project will be completed. Another issue is impact of proposed project on City infrastructure and services.

The City of Albuquerque overlapping tax rate is $40 per $1,000 of taxable value. Hotel Parq Central, $14 million principle amount of IRB, taxable value is one-third, $4,666,667, multiple by $40 per $1,000, $186,666 as the tax liability, had to make a 4% payment in lieu of tax, the abated taxes were $179,200 per year. For the Buena Visa Energy Center, larger project with $190 million principle amount, abated property taxes are $1.6 million per year, offset by $420,000 per year payment in lieu of tax, for a net abatement of $1.163 million.

Question on 4% abated on the one project and is that statutory or negotiated. Other than electric generation or transmission segment of the IRB statutes, the statues give no guidance as to what the payment in lieu of tax should be, but shall be negotiated. Abated tax rate is driven by the value and the tax rate, but PILOT other than electric transmission is open ended. The statute provides for a maximum term of 30 years, and the City of Albuquerque has a 20 year term. Clawback are policy considerations and not statutory.

Question on the statutory changes as the legislature only has one more day. The proposed changes only apply to electric generation and transmission and storage projects. They only apply to how the PILOT is allocated between the issuer and the school district. They really apply to how the school district portion is shared among the various school districts within the jurisdiction.

Question on if there are other items similar to IRB. There are some versions of IRB in numerous other states. IRB originally came through federal tax law but no longer really tied closely to that. There are a lot of IRBs outstanding in New Mexico. More in renewable energy. Las Cruces had a long standing IRB with F&A Dairy which was purchased by Saputo. The existing IRB was unwound at that point. It was mentioned that Doña Ana County has had a number of IRBs, more recently industrial companies. They are a necessary tool for business attraction, for the business they are bringing. Doña Ana County has policy of 20 years maximum and 80% abatement.

Elizabeth Teeters stated that it is very discretionary, up to MVEDA and for them to make sure the City is getting the benefit from and not just want the developer wants. MVEDA does incentive analysis. Impact analysis is done for the company, and for the County Commission do percent debit to the County, investment being made, jobs being created, what the new tax benefit to the County or City would be and that result.

When looking at existing raw land and existing property tax benefit from it, it is pittance per year. Looking at bringing in $580 million that has 20% payment on that cash, the tax benefits can be a lot higher than receiving today, plus job benefits also.

Question of, is it in the purview of policy makers to say, these are the things we want to see here, like no more than 20 year lease, include the clawbacks with wages? There is currently no actual IRB policy for the City. The West High Mesa Road was mentioned and will help with the County and then possibly IRB for that process. Also projects at the Las Cruces Innovation and Industrial Park, and competing against Santa Teresa rather than Albuquerque. Include Doña Ana County in these discussions. Stated we are not competing, winners, win/win on both sides. Santa Teresa is very different than Albuquerque.

b. IRB Speculative Development:

c. New Mexico Economic Development Department (EDD) Update: The mission of the department is to improve the lives of New Mexico families by increasing economic opportunities and provide a place for businesses to thrive. Julia Brown and Louise Marquez cover the southwest part of the state, including Doña Ana, Sierra, Socorro, Luna, Grant, and Hidalgo and Catron. They assist businesses and comities as well as economic development organization with a broad variety of needs to generate wealth in New Mexico. A growing number of programs, initiatives and incentives are under EDD. Provide information, technical assistance, and serve as a link or a bridge between listed programs and others. Incentives and assistance programs include Job Training Incentive Program (JTIP) which is a wage reimbursement program which funds classroom and on the job training for newly created jobs and expanding or relocating businesses. The toolbox includes a plethora of tax credits including manufacturers, high wage jobs credits, rural jobs, research and development credits, and IRB.

Local Economic Development Act (LEDA), nickname of job creation fund. It is an incentive to close a gap in funding. Helps build business infrastructure in support of job creation expansion. Qualified entities are businesses creating economic base jobs; manufacturing, processing, and assembling. An agriculture business LEDA cannot help grow crops but help once they come out of the ground and process, package, distribute. Also applies to nonretail service providers; IT, outsourcing, technology, development. Retail in communities that have populations of 15,000 would be eligible to participate in LEDA. LEDA funds can be used for land, building, and infrastructure. Incentive to close a gap in financing, not intended to fully fund a businesses relocation, expansion, or start up.

A LEDA project is evaluated by financial strength of the business, business plan and its fit for the community where it is proposing to locate or expand. The approval process is staged, the offer letter, formal award of the grant, and the public process. If a project is eligible, then a formal offer is made to the company, a letter is sent to them inviting them to apply formally for a LEDA grant. EDD opens an application portal in their system to gather and store more information about the business and economic impact analysis is performed by their economists. Then the local governing body, City or County, depending on where the business is located or proposing to be located, must approve the project by ordinance. That also includes the development of two contacts, and IGA (Intergovernmental Agreement) which defines how the fiscal agent will handle the funds that the state is providing for the project, and a PPA (Project Participation Agreement) which is between the fiscal agent and company that is applying. This agreement defines the expectation of the performance measures and milestones, related job creation, and total investment as well as clawback provisions in the unlikely event of default.

Once the LEDA grant is approved EDD transfers the funds, amount of award, to the fiscal agent. The agent has the responsibility along with EDD of reviewing the requests for reimbursement by the awardee, being sure they are in compliance with the provisions and the PPA. The company has to provide a security instrument to guarantee that in the even of a default, those funds are secured, either a letter of credit from bank or financial institution, a surety bond, and in a limited number of cases might include actual collateral for equipment or land other than that which is the subject of the LEDA award. The company submits a request for reimbursement that is uploaded into the EDD secure portal and reviewed by both the fiscal agent and EDD. Upon completion of all of those requirements and provisions in the PPA, then the project is closed out and the fiscal agent then has to pass a separate ordinance officially closing the project and taking it off the books, and security is released back to the company.

V. Future Discussion:

a. Municipal Land Sale Ordinance

b. Next Meeting: April 19, 2023

The municipal land sale ordinance is not ready yet. It is listed for future when it is ready. Discuss IRB policy next month.

VI. Adjournment: The meeting adjourned at approximately 10:30 a.m.

Chairperson

Approved: ____________________