

TO: Marty Callahan, Chair, Community Development Committee

FROM: Laura Newman, City Administrator

DATE: February 27, 2020

RE: RES 20-043-R Extending the Washington-Wilson TIF

On the 17th day of January 2017, the City of Batavia created a Tax Increment Allocation Finance District known as the “Washington Wilson TIF” pursuant to and in conformance with the Illinois Municipal Code, specifically 65 ILCS 5/11-74.4-1 et seq. The TIF term is 23 years.

At the time the TIF was created, the City had just entered into a redevelopment agreement (the “RDA”) with Shodeen Development, Inc. to build a \$40,000,000 mixed use development that included 14,645 ft of commercial space, a 350-space public parking facility and 186 luxury residential apartments. The City, under the terms of the RDA, promised to issue \$14 million in bonds at the beginning of the project, and, if sufficient increment existed after the initial bonds were paid off, the developer could be reimbursed for an additional \$2 million in costs deemed reimbursable under the TIF Act. Approximately \$9 million of the bond issuance represented the cost to build the public parking garage that the City would own.

The RDA also contained a number of safeguards to protect the City’s ability to pay the bond payments should the increment generated by the project be insufficient to cover them. A Special Service Area could be activated, and if this were insufficient the remainder would be paid by the developer. The RDA also included several “off ramps”, or reasons that either party may elect to cancel the RDA. The City had an off ramp if environmental contamination was found that was deemed by the City too expensive to remediate. The developer had off ramps such as the inability to secure financing, or failure of the City to perform any of the City’s obligations (such as property acquisitions and extinguishment of easement rights) that were conditions precedent to construction.

While the City proceeded with its obligations to perform utility work, acquire property rights and put the project through the entitlements process, the developer, for its part, engaged its architect to create preliminary drawings and specifications for review by the Plan Commission and Zoning Board of Appeals, the Historic Preservation Commission and ultimately City Council.

Mid-year in 2017, the developer informed the City that it had significantly underestimated the cost of building the parking deck into bedrock, which is very shallow in this area near to the river. That caused a pause of more than six months while the developer again engaged their architect to redesign the project to eliminate cost and add revenue to return the project to being financially feasible. The changes to the project that the developer proposed resulted in a project that now included 194 apartments, a 335-space public parking garage and 6,000 square feet of commercial space. In addition, the developer requested that \$16 million in bonds be issued at the beginning of the project. Eventually, City Council

approved the additional funding and redesign and a restated redevelopment agreement (the “Restated RDA”) was entered into in January of 2018.

In the Restated RDA, the developer released the obligation of the City to reimburse the developer’s costs that had been incurred from the onset of the project until the effective date of the Restated RDA, should it give notice to the developer of its intent to terminate the RDA. This “reset the clock” on these reimbursable expenses in the event of termination by the City, which was beneficial to the City.

Unfortunately, this was not the last delay, nor the shortest delay affecting the project. The second delay occurred in mid-2018 when, after having completed demolition of some existing structures on the redevelopment site, the City found environmental contamination. At this point the parties began to be concerned about the time left on the TIF and the ability of that increment to satisfy the bonds needed to finance the project. Over the course of several meetings, the City and the Developer were able to come to the agreement that the responsibility for performing the work necessary for the environmental remediation would shift from the City to the Developer so that time could be saved by mobilizing only one contractor to perform all remaining demolition and excavation. This required an additional amendment to the redevelopment agreement in March of 2019 the second restated redevelopment agreement (the “Second Restated RDA”). Further delay occurred as a result of the City having to wait for IEPA approval of its remediation plan, which approval was not received until December 2019.

The parties met on February 6, 2020 where the developer produced calculations that showed, with three years having passed since the establishment of the TIF, thus delaying buildout and occupancy, using conservative predictions as to future increases in incremental EAV, we now predict that there would be insufficient increment to pay off the bonds during the term of the TIF. In fact, there appears to be a significant shortfall of \$4-5 million.

There are three alternatives the City could consider:

1. Seek an extension of the current TIF. The law allows the extension of the term of the TIF for an additional 12 years. This option is done through state legislative action and requires the approval of each of the taxing bodies, including the school district. This would provide sufficient time to pay all of the bond payments and recoup the City’s costs associated with land acquisition, site utility improvements and environmental remediation. We could enter into an IGA with taxing bodies that the TIF could be dissolved early after all of these costs are covered. Or,
2. The City could de-TIF and Re-TIF the area which would reset the 23-year shot clock. This might cover the bond payments for the project but leaves little possibility that there would be anything more to cover the City’s costs of the project. Or,
3. The project could be redesigned to be smaller so that the numbers work. In this case, City Council might decide to re-market the property and seek other developers as well.

Of these three alternatives, the first one, extending the TIF, is the most beneficial to the City for the following reasons:

1. It maximizes the potential for the bonds to be paid off within the TIF term.

2. It provides the opportunity to recoup costs that the City has and will incur for property acquisition, extinguishment of easements, utility work, site preparation and environmental remediation. Without an extension, there is likely not enough increment for these costs to be recovered.
3. the TIF extension provides the City the greatest period of time within which to find an alternative project should the One Washington Place project be terminated. We hope that such an event would not occur, but there are still events that could occur that might terminate this project, such as the inability to secure financing or higher than expected construction costs that make the project unfeasible.

Staff has had several conversations with staff members of other local taxing bodies that would need to pass similar resolutions of approval for the extension of the TIF term. While all of them have been supportive (in as much as it is really their boards that must confer and make the decision), a significant factor in the decision will be that the City has a \$40,000,000 project in hand that, but for the delays, would have been finishing construction this year. With a current EAV of \$6,992, this project is expected to create more than \$1,000,000 in new tax increment.

As for any reasons not to pursue an extension of the TIF, I can identify none. However, I should point out that, because the other taxing bodies reason for supporting the extension included the fact that there is an existing project, without it, I think some may not be willing to approve the extension, and without unanimous approval of all the taxing bodies, this option is not available.

If City Council approves the extension, staff would coordinate with the other taxing bodies to get resolutions approving the extension before their boards in March. The TIF can only be extended by an act of the state legislature. Senator Don DeWitte has been made aware that Batavia may be seeking this extension and has graciously offered to sponsor the bill that would enact the extension. It is still possible to have this enacted in the spring session which ends May 29, 2020. Doing so would afford the possibility that the project could break ground before the end of this year. If we have to wait until the Fall 2020 legislative session, construction will not occur until Spring 2021.

If City Council does not approve the extension, Shodeen will likely not be able to secure financing for the project and we would expect to receive notice of their intent to terminate the Second Restated RDA for this reason. We would then re-market the redevelopment site, seeking other proposals. Once an alternate proposal is identified, a new RDA would be negotiated. It should be noted that it could take years to get to the point of approval of a new RDA and time remaining on the existing TIF would be further exhausted leaving less that could be invested in a new project. We could re-TIF at that point, but if currently pending legislation is passed before then, the TIF time period could be reduced to 10 years with a maximum extension of 5 years.

In summary, the alternative that has the potential to produce the most benefit for the City of Batavia is extending the Washington-Wilson TIF. Therefore, Staff recommends that the Committee of the Whole recommends City Council approval of RES-043-R Extending the Washington Wilson TIF.

**CITY OF BATAVIA, ILLINOIS
RESOLUTION 20-043-R**

**A RESOLUTION SUPPORTING AN EXTENSION OF THE
CITY OF BATAVIA WASHINGTON WILSON TAX INCREMENT FINANCE
DISTRICT**

WHEREAS, on the 17th day of January, 2017, the City of Batavia created a Tax Increment Allocation Finance District known as the “Washington Wilson TIF” pursuant to and in conformance with the Illinois Municipal Code, specifically 65 ILCS 5/11-74.4-1 et seq. (the “TIF Act”); and

WHEREAS, the TIF Act provides for the completion of redevelopment projects and the termination of a TIF District after twenty-three (23) years; and

WHEREAS, the TIF Act permits the General Assembly to extend such 23-year life to 35 years; and

WHEREAS, it is in the best interest of the taxing districts affected by the Washington Wilson TIF to extend the life of the Washington Wilson TIF to 35 years as permitted by the TIF Act; and

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Batavia as follows:

Section 1. That this Resolution shall demonstrate the support of this body for the extension of the Washington Wilson TIF to 35 years, that this body consents to such extension, that this body encourages the General Assembly to adopt such legislation as is necessary and appropriate to effectuate such extension; and that the Governor is requested to approve such legislation all as provided by law.

CITY OF BATAVIA, ILLINOIS, RESOLUTION 20-043-R

PRESENTED to the City Council of the City of Batavia, Illinois, this 16th day of March 2020.

PASSED by the City Council of the City of Batavia, Illinois, this 16th day of March 2020.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 16th day of March 2020.

Jeffery D. Schielke, Mayor

Ward	Aldermen	Ayes	Nays	Absent	Abstain	Aldermen	Ayes	Nays	Absent	Abstain
1	O'Brien					Baerren				
2	Callahan					Wolff				
3	Meitzler					Chanzit				
4	Malay					Knopp				
5	Uher					Beck				
6	Cerone					Russotto				
7	McFadden					Miller				
Mayor Schielke										
VOTE: 0 Ayes 0 Nays 1 Absent 0 Abstentions Total holding office: Mayor and 14 aldermen										

ATTEST:

Ellen Posledni, City Clerk