

KIRTLAND CITY COUNCIL MINUTES

December 7, 2020 – Work Session

The work session meeting of Kirtland City Council commenced at 5:31 p.m. Due to the current state of emergency regarding COVID-19, the meeting was held virtually via Zoom. Council members present were: Scott Haymer, John Lesnick, Richard Lowery, Jeffrey Ruple, Matthew Schulz, Joseph Smolic and Kelly Wolfe.

Mayor Kevin Potter, Law Director Matthew Lallo, Assistant Finance Director Louis Slapnicker, City Engineer Douglas Courtney, Service Director Joseph Fornaro, Economic Development Manager Monica Drake, Police Chief Lance Nosse and Fire Chief Anthony Hutton were also in attendance.

Mayor Potter stated that Irene McDougall from the firm of Walter Haverfield will be presenting to Council with regard to the process and set-up of a TIF. The Mayor noted that after the first hour, Wendy Zele of First Energy will discuss electric service and reliability in Kirtland.

Mr. Lallo stated that Irene McDougall is a partner with Walter Haverfield; they are specialists in municipal government law and they have done a number of TIF's. Mr. Lallo stated he has engaged with Todd Hunt and Ms. McDougall to provide a presentation and address Council's questions.

Ms. McDougall stated she prepared a power-point presentation, which was shared using the Zoom platform for screen sharing. Ms. McDougall said that a TIF is not a tax exemption; it is a reallocation and redistribution of real property taxes. She stated that the property owner pays the taxes, but those taxes are labeled and distributed differently. She noted there are different statutory sections related to municipalities, townships and counties, all of which have the ability to create a TIF.

Ms. McDougall stated when a TIF is described as exempting improvements, in the context of a TIF it refers to the increase in taxable value that occurs. The taxes for base value are paid as if there is no TIF. Payments in lieu of taxes (PILOTS) is the amount of tax that is generated from the improvements that increase in value; those are the payments that get distributed.

Referring to the non-school TIF, Ms. McDougall stated it is a TIF in which the school is made whole. Once the TIF is enacted, there is no impact from the school district's perspective; they retain the revenue they would have had.

Regarding the general purpose of a TIF, Ms. McDougall stated it is to promote economic development; they are traditionally used in industry and commerce for commercial developments. They can be used to eliminate blight, and they are used to provide additional needed upgrades to public infrastructure that directly benefit the exempted property.

Ms. McDougall stated commercial development is considered anything other than residential development; she noted that residential does not mean multi-family. Multi-family is taxed by the county as commercial property.

With regard to public infrastructure, Ms. McDougall stated it includes public roads and highways and maintenance of those public roads and highways; water and sewer lines and maintenance of those water and sewer lines; stormwater and flood remediation; gas, electric and communications services (publicly owned); environmental remediation; land acquisition, when that land is being

used in aid of industry, commerce, distribution or research; demolition costs. Ancillary costs related to these items, such as legal fees, accounting fees, permitting fees, debt service, are also considered part of the cost of public infrastructure.

Ms. McDougall stated that the Ordinance that is enacted to create the TIF has to identify the specific public infrastructure made, to be made or in the process of being made that directly benefits or once made will directly benefit the parcels that are exempted. She stated once a TIF is enacted, a separate account must be established by the City to hold the PILOT, and then the City can use those funds for a permitted use. She noted they have to be used to either finance or pay for those public infrastructures identified in the TIF ordinance. She noted there is a provision that states after the costs of the public infrastructure are paid, if there is an "incidental surplus", it is permitted to go into the General Fund.

Ms. McDougall stated that annual reporting is required by the municipality to the Ohio Director of Development Services by March 31 of each year, and she explained what needs to be included in that reporting.

Because the City is redirecting tax and much of that tax goes to the school district, Ms. McDougall said there are provisions in the statute that call for consent of the Board of Education. If the Board of Education agrees to have the TIF created, a term can be up to 30 years, and the amount of tax generated from those improvements (increase in value) can be up to 100 percent. The Board of Education can negotiate whatever terms they can negotiate when giving that consent. Oftentimes a Board of Education will give consent to a 30-year 100 percent TIF in exchange for other agreements from the developer or from the City. A Board of Education can adopt a resolution that waives their right to approve exemptions.

Ms. McDougall stated if there is no consent from the Board of Education, two kinds of TIF's can be created. One is a TIF that exempts improvements up to 75 percent for only 10 years. However, if it is agreed that it is a non-school TIF (school will get all the tax they would otherwise receive) the term can be 30 years and up to 100 percent. The only reallocation is for payments made to taxing authorities other than the school.

Depending on whether consent is required or not required, Ms. McDougall stated there are different notice provisions. If consent is not required, the statute states that the municipality has to send the Board of Education a notice at least 14 days before they are going to consider adopting a TIF ordinance, with a copy of the proposed ordinance. To the extent that the school district wants to make comments and provide input, the municipality is by statute "to consider those comments." If consent is required, there is a 45 business day advance notice required; it is designed to give sufficient time to negotiate a consent. In all situations, there must be a copy of the proposed ordinance, and the proposed public infrastructure must be identified.

Answering Councilman Lesnick, Ms. McDougall stated that a non-school TIF does not provide as much revenue sharing; however, if there is a significant dollar value amount of improvement, the City can see some significant benefit. The City would be waiving the property tax benefit in exchange for job creation, which is anticipated will create income tax.

Council President Lowery inquired if TIF's are generally prepared and instituted prior to a development beginning, or can they be done when a project is well underway. Ms. McDougall stated she usually sees them done at the beginning, worked into the capital stack by the developer. She stated, however, there have been situations where a developer is halfway through

a project and something unexpected occurs. It creates the maximum benefit if it is done as part of the initial capital stack. She noted that many developers will have it in effect before they acquire the land.

Ms. McDougall stated that if a municipality has an income tax, and payroll from new employees from the project exceeds one million dollars in any tax year when the TIF exemption is in place, then the statute requires that the income tax revenue be shared with the schools; it is waived for a non-school TIF.

At the request of Mayor Potter, Ms. McDougall outlined the process that is followed in the creation of a TIF. Discussion ensued regarding tax valuations and exemptions, along with the scenario of a TIF approval for a current project that is already underway. Ms. McDougall stated that the value would be as of January 1 of each year. There was discussion regarding costs to the City.

Responding to Ms. Drake regarding use of TIF funds, Ms. McDougall stated that traffic signaling is generally permissible when it is supported by a traffic study showing increased traffic. For roads not in front of a project, TIF funds may be permissible based on a traffic study, such as a need for a turning lane.

Chad VanArnhem, Superintendent of Kirtland Schools, requested an explanation of why a school board would agree to a TIF. Ms. McDougall stated there are a lot of circumstances where it is beneficial for the school district because the property that is being improved will generate a lot more in property tax, therefore the schools are not losing that value. Usually there are some negotiations with the developer, and there are also situations where there is an up-front payment made to a school district in exchange for that consent, or there is some other concession made.

Answering Mr. Lesnick, Ms. McDougall stated that vocational schools would be under the same agreement negotiated with the school district, and public libraries are protected by statute.

Mayor Potter thanked Ms. McDougall for presenting to Council, noting that Council and Administration will need to have some discussion in this regard.

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Mayor Potter introduced Wendy Zele from First Energy; he noted she is the liaison between First Energy and the City of Kirtland, as well as many other localities in the area. The Mayor stated that Ms. Zele has been very responsive every time he has reached out to her. Noting that there were some questions from Council, Mayor Potter stated he had forwarded those questions to Ms. Zele.

Ms. Zele thanked Chief Hutton for support this past week, noting that over 160,000 customers in the CEI footprint were without power because of the large snowstorm that started last Tuesday. Unfortunately many residents did not have their power restored until Friday. She stated that during that time frame, one of their line trucks outside of Kirtland rolled over, and the Willoughby Fire Chief and Chief Hutton were able to offer support by closing the road so the truck could be safely removed.

Ms. Zele stated she has had conversations with Mayor Potter, Councilman Lesnick and Service Director Joe Fornaro. She noted that if one street is without power, and another is not, there can

be many different reasons. Some of the areas she investigated were Parkwood, Crestwood, Chillicothe, Rockwood and Ledgewood, which are all served out of the Newport substation, feeder 4. It came to her attention that there have been some chronic reliability issues on West Alpine, which is out of the Newport substation feeder 1.

Ms. Zele stated they are aware of the power reliabilities of both circuits, and it is a substation issue as well that they are addressing. Responding to questions she received from the Mayor, she stated that Kirtland is fed from a sub-transmission Mayfield feeder, that feeds some of the power to the distribution substation. She stated that approximately 95 percent of the customers are served off of the Newport substation, feeders 1 and 4. The Newport substation is located on Chillicothe Road in Kirtland, south of Eagle Road.

With regard to age and maintenance of the feeds, Ms. Zele stated they are constantly reviewing and upgrading equipment either as it fails or as mandated by the Public Utility Commission of Ohio.

Ms. Zele stated electricity is distributed from the transmission level to a sub-transmission circuit, then to a distribution substation, which is how most of the customers in the area are served.

Ms. Zele stated they are aware of some of the power reliability concerns that Kirtland is experiencing. When a resident experiences a power outage, she encouraged that they call it in to the 800 line, and do not assume that a neighbor has called.

Ms. Zele stated that Newport substation is on schedule to have a new transformer installed in 2021, although she does not have a date when that will be done. She stated there is also a mobile transformer sub in the Newport substation.

She stated that on February 5, their engineering group did a circuit patrol, starting from the substation feed and working out, to look for any type of obvious potential hazards, such as damaged poles, insulators, disconnect switches, blown fuses, or a radial feed. In that circuit patrol they found some cross arms and some minor issues; the cross arms were replaced on February 24. It was inspected again because issues were continuing; in June and July some relay setting adjustments were made, which would help with some of the momentary trippings. With many residents working from their homes, they are more sensitive to the momentary trips.

On August 18, they performed another circuit patrol and inspection, as well as forestry in July and August to complete the annual circuit trimming of all of the feeds out of Newport substation, which includes feeds 1 and 4. She stated their forestry trimming practices means that they clear 10 feet on each side of the wire that is within the right-of-way.

Mayor Potter noted there was a concern about a high-tension line in the valley, noting that he reached out to First Energy questioning the reliability, safety and integrity of that tower. Ms. Zele stated if their infrastructure is not sound and stable, they take those situations extremely seriously. She stated the Mayor contacted them as soon as he received a property owner complaint; they have inspected it multiple times. It has been in their radar for quite a few years from a transmission inspection; they do helicopter inspections on those transmission towers. Understanding there has been erosion there, those are in bedrock and they have had their transmission engineers and legal department involved. She stated that particular tower is safe and stable, and they continue to review it. With regard to the property owner, First Energy's legal staff has communicated to his

legal advisor their position in that regard. She stated that no work needs to be done in that area at this time.

Responding to Councilman Schulz regarding the forestry policy, Ms. Zele stated that the 10-ft. radius is from the highest line, which is the electric line. She stated the 10 ft. relates to the Newport substation, which is a distribution station; she noted the forestry standard is related to the voltage. Answering Councilman Lesnick, she stated the line going through the valley is at least a 20 ft. forestry standard.

Councilman Schulz inquired about situations where a property owner's tree is halved due to the forestry. Ms. Zele responded that they are not trimmed to be aesthetically pleasing; however, from an arborist standpoint, they do not kill those trees. She stated it is up to the resident to remove some of the larger pieces if a tree has to be taken down in its entirety for safety reasons; they do not remove the stump.

With regard to their normal four-year trimming cycle on distribution units, Ms. Zele said the purpose is to cut it back so there is no interference on the electrical lines, but it is cut in a manner that it will grow back in a four-year cycle. Ms. Zele stated she will provide the Mayor with a link that addresses the trimming standards.

With regard to outages, Ms. Zele said there have been seven sustained outages since June on Newport feed 4; three of those were from trees that were off the right-of-way, so there would have been nothing the Illuminating Company could have done from a trimming perspective to prevent that. She noted they still come out and follow their process to de-energize the line, remove the tree and re-energize the line.

Councilman Smolic referred to Ordinance Section 1462.18 related to property owners' responsibilities regarding dead trees and branches near a public sidewalk or right-of-way. He inquired about resident responsibility if the Illuminating Company removes a tree. Ms. Zele stated that during a storm, they have a cut and drop policy; the forestry crews clear the tree from the line, leave it where it lays, and go on to the next call. During a normal four-year trimming cycle, the contractor is supposed to cut the tree down and put any branches small enough through the chipper; any large logs will be piled up and it will be the responsibility of the property owner to dispose of them. Also, they do not remove any stumps.

Councilman Haymer inquired if the four-year trimming cycle is too much of a gap for the Kirtland community because of the outages that are occurring. Ms. Zele stated trimming was done in July and August, and there was probably a lot of vegetation growth earlier in the year, but the PUCO required trimming is every four years. She stated it is important that residents communicate with their ward representatives because certain types of trees may grow faster; she noted they will do a circuit patrol to investigate and address some of the trees if necessary.

In summary, Councilman Lesnick stated there will be some equipment changes in the Newport substation, noting that the cause of these outages is partly due to that equipment, as well as some of the vegetation growth. It appears that First Energy has a plan to improve this; he inquired if there is a time frame. Ms. Zele stated she does not have a time frame for the transformer replacement; however she spoke with the Power Quality Engineer Supervisor, who is working with the System Planning Group, to determine if there is an alternate feed that can be used for these two circuits until the transformer has been replaced. She noted it has not yet been decided or approved; once she has that information, she will get back to the Mayor and Council.

Mr. Lesnick stated appreciation to Ms. Zele for responding to him during a recent outage and for all she has done to address the City's inquiries. He requested that she keep the Mayor and Council informed.

Ms. Zele stated if there are further questions following tonight's meeting, she can be reached by e-mail, or she can attend a future meeting.

There was no further discussion, and the work session meeting adjourned at 7:00 p.m. upon the unanimous consent of Council.

President of Council

Clerk of Council