

**MINUTES
OF THE SOUTH OGDEN CITY
COMMUNITY DEVELOPMENT AND RENEWAL AGENCY BOARD MEETING**

Held Tuesday, September 1, 2015 in the Council Chambers of City Hall

BOARD MEMBERS PRESENT

Chair James F. Minster, Board Members Wayne Smith, Sallee Orr, Brent Strate and Russell Porter

STAFF MEMBERS PRESENT

City Manager Matt Dixon, City Attorney Ken Bradshaw, Police Chief Darin Parke, Fire Chief Cameron West, Finance Director Steve Liebersbach, Information & Communication Systems Administrator Brian Minster and Recorder Leesa Kapetanov

CITIZENS PRESENT

Jim Pearce, Jerry Cottrell, Walt Bausman

(Motion from city council meeting to enter CDRA Board Meeting):

Council Member Orr moved to recess Council Meeting and convene as the CDRA Board, followed by a second from Council Member Smith. The voice vote was unanimous in favor of the motion.

I. CALL TO ORDER

Chairman James Minster called the Board Meeting to order at 6:43 pm and moved to the first item on the agenda.

II. CONSENT AGENDA

A. Approval of August 18, 2015 CDRA Board Minutes

The chairman asked if there were any corrections on the minutes. There were no comments. The chairman called for a motion.

Board Member Porter moved to approve the consent agenda. The motion was followed by a second from Board Member Smith. The vote was unanimous for approval of the consent agenda.

III. DISCUSSION/ACTION ITEMS

A. Consideration of Previously Tabled CDRA Resolution 15-02 – Approving Partial Repayment of Advances Received and Indebtedness Incurred in Connection with the 36th Street Redevelopment Project Area

City Manager Dixon reminded the Board this item had been tabled at their last meeting to enable them to take more time and better understand what took place back in 2005. Staff

had found a reference in the December 2005 Council Meeting to the write-off of the loan. The minutes had been included in the packet. Staff had also asked Craig Smith, CDRA Attorney, to write a letter concerning re-instating the loan; they had received the letter late that afternoon (see Attachment A). The Board had Mr. Dixon read through parts of the letter so they would know what it contained. In the letter, Attorney Smith gave documentation supporting repayment of the loan. It was his opinion that the loan was an obligation of the Agency and the City should accept the Agency's partial repayment of the loan. Chairman Minster asked if there were any questions from the Board. Board Member Orr asked why the interest on the loan was 1.9%. Mr. Liebersbach explained he had averaged the interest rates from the last 138 months. Board Member Strate informed the Board the City had its Audit Report, years 2006 through 2014, on the website; the rest were upstairs. He had looked at the ones upstairs, and said when he was looking at the one from 2005, he noticed a \$100,000 transfer from the RDA. It continued for six years, ending in 2010. He asked what it was for. Mr. Liebersbach explained the RDA had issued some bonds, but when the City had issued bonds for building City Hall, they wrapped the RDA bonds into them because they were at a better interest rate. Therefore, the RDA paid the City its portion of the bond payment. Board Member Strate said it appeared the RDA could legally pay off the loan, but he still questioned whether they should or if there were other things it should be used for, like adding a housing component to the 36th Street Project Area. City Attorney Bradshaw said that was a good idea, however, RDA Attorney Craig Smith had stated in his letter that the RDA was legally obligated to repay the loan. Board Member Porter pointed out they were convened as the CDRA Board and they were talking too much as if they were the City Council. He felt the CDRA Board was obligated to pay back the City now that money was available to do so. There was then some discussion on what would happen with any money left over when the term of the project area ended. Board Member Porter said they should look at this as if the City now would receive money they didn't know they had, and could use it for things it really needed. Board Member Smith said the CDRA borrowed money from the City and he felt it was their obligation to pay it back. Board Member Strate said the loan was forgiven because the City was doing so well in 2005; they had more revenues than they had calculated. Chairman Minster said that was true, and because of the recommendation of the auditor at the time, it was the right decision to write the loans off. However, he felt the right decision now was to repay the loan; it was legal and what should happen. City Manager Dixon pointed out that if the CDRA Board chose not to repay the loan, the money could still be used within the project area. There was no more discussion amongst the board. The Chair called for a motion.

Board Member Porter moved to adopt CDRA Resolution 15-02. The motion was seconded by Board Member Smith. The chair then made a roll call vote:

Board Member Porter-	Yes
Board Member Smith-	Yes
Board Member Strate-	No
Board Member Orr-	Yes

CDRA Resolution 15-02 was adopted.


Chairman Minster then called for a motion to adjourn the CDRA Board Meeting.

IV. ADJOURN

Board Member Porter moved to adjourn the CDRA meeting and reconvene as the South Ogden City Council, followed by a second from Board Member Smith. Board Members Orr, Strate, Smith and Porter all voted aye in favor of the motion.

The meeting adjourned at 7:13 pm.

I hereby certify that the forgoing is a true, accurate and complete record of the South Ogden City Community Development and Renewal Agency Board Meeting held Tuesday, September 1, 2015.


Leesa Kapetanov, Board Secretary

Date approved by the CDRA Board _____ November 17, 2015

Attachment A

Letter from RDA Attorney Craig Smith



J. CRAIG SMITH
jcsmith@smithlawonline.com

ADAM S. LONG
along@smithlawonline.com

September 1, 2015

Mayor James F. Minster
Members of the City Council
South Ogden City
c/o Matt Dixon, City Manager
3950 S Adams Ave
South Ogden, UT 84403

Re: Agency loan for 36th Street Project

Dear Mayor Minster and Members of the City Council:

I have been asked, as legal counsel to the South Ogden Community Development and Renewal Agency (fka Redevelopment Agency) (“**Agency**”) to address the repayment of certain loans made by South Ogden City (“**City**”) to the Agency. Specifically, in years past, the City loaned money to the Agency for the 36th Street Project Redevelopment Project Area (“**Project Area**”). The loans were needed to fund both the creation of the Project Area and to supplement shortfalls of the tax increment paid to the Agency under the 36th Street Project Area Budget (“**Budget**”) to make the required annual payment for the tax increment bonds (“**Bonds**”) that were issued to finance the Project Area. Collectively, the loans from the City to the Agency are referred to in this letter as the “**Loans**”.

For many years the Agency lacked funds to repay the above-mentioned Loans. However, with the retirement of the Bonds the Agency now has funding to partially repay the Loans. Due to the long period of time that the Loans have been outstanding and the belief that the Agency would likely never have the funds to repay the Loans, the Loans were apparently written off in 2005 (according to a note in the 2005 audit).

When City Manager Matt Dixon and Director of Finance Steve Liebersbach realized that the Agency now has funds from the Project Area to, at least partially, repay the Loans, they contacted me for direction and advice. This letter will recap that direction and advice in written form.

The 36th Street Project Area Plan was adopted in 1992 and the Agency began receiving tax increment for tax year 1997. According to Utah law, the Agency will continue to receive tax increment from the Project Area through tax year 2021, for a total of 25 years of tax increment collection. Note that the tax increment collected from the Project Area is subject to the “haircut” provisions of Utah Code Ann. § 17C-403(2)(a); namely that the Agency is entitled to be paid 100

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L A N D W A T E R L I F E

percent of the tax increment for years 1-5, 80 percent for years 6-10, 75 percent for years 11-15, 70 percent for years 16-20, and 60 percent for years 21-25. For 2015, the nineteenth year of tax increment collection, the Agency will receive 70 percent of the tax increment generated in the Project Area; beginning with tax year 2017, the Agency will receive 60 percent of the tax increment generated in the Project Area.

The Agency is a legal entity, separate and distinct from the City. The Agency has the authority and power to borrow funds from other public agencies such as the City. See Utah Code Ann. §§ 17C-1-202(j) and 17C-1-207(1)(a)(viii). It is also specifically empowered to repay funds advanced to it. See Utah Code Ann. §§ 17C-1-202 and 17C-1-409. Thus the Loans and their repayment are both authorized under Utah law. The Loans from the City are specifically contemplated in the Project Area Plan in paragraph 601 (General Description of the Proposed Financing Methods), which states in relevant part:

Advances and loans for the processes in creating the Agency and adopting this plan for survey and planning, and for the operating capital for administration of this Project have been and are to be provided by the City until adequate tax increments or other funds are available or sufficiently assured to repay the loans and/or to permit borrowing adequate working capital from sources other than the City. The City as it is able is authorized to supply additional assistance through city loans and grants for various public facilities. All advances and loans from the City shall bear a reasonable rate of interest.

The Agency is authorized to issue bonds if appropriate and feasible in an amount sufficient to finance all or any part of the Project.

The Agency is authorized to obtain advances, to borrow funds and to create indebtedness in carrying out this Plan. The principal and interest on such advances, funds, and indebtedness may be paid from tax increments or any other funds available to the Agency.

In 1995, the City did indeed agree to advance the Agency up to \$1.5 million so that the Agency could fund the establishment of the Project Area. The Agency approved the advance with Agency resolution 95-21 and the City Council approved the advance with City resolution 95-22 (the resolutions are enclosed with this letter). The Project Area Plan and the resolutions authorizing advances from the City to the Agency make clear that the advances are a loan, not a grant, and that the City expects and is entitled to be repaid.

The City eventually wrote off the amounts owed by the Agency concerning the Project Area; however, the fact that the City deemed the money uncollectable and decided the amount should be written off does not affect the Agency's legal obligation to repay the City. At the December 6, 2005 City Council Meeting, the Council discussed the issue, including a recommendation from the auditor that the City write off the amounts it was owed by the Agency. In addition to helping the City comply with the 18 percent maximum fund balance (as noted in the minutes), writing off the amount owed was likely the proper action under governmental accounting

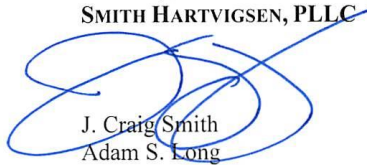
standards based on the City's reasonable belief that it would not collect those amounts. The mere fact that the amounts owed by the Agency no longer appeared on the City's accounting records does not relieve the Agency of the obligation to repay the Loan.

As you know, note 10 (Contingencies) to the Agency's financial statements in the 2005 Audit report discusses a development agreement entered into by the Agency. The note is referring to the possibility of amounts owed by the Agency to a developer being forgiven in the event that collected tax increment under the particular agreement is less than the stated amount owed by the Agency to the developer. This is a typical condition for payments by agencies. In any case, amounts owed by the Agency to a developer, even for the 36th Street Project Area, are not tied to the outstanding advances from the City; forgiveness of amounts owed by the Agency to a Developer do not affect amounts owed by the Agency to the City.

I have reviewed the available documentation and discussed the issue with Matt Dixon and Steve Liebersbach. The Agency is legally authorized and legally obligated to repay the Loan to the City. Although some of the documentation for the Loan has not yet been located, it is clear that the Loan is a valid obligation of the Agency. The City should accept the Agency's partial payment of the Loan.

Please contact me with any questions or concerns.

Sincerely,
SMITH HARTVIGSEN, PLLC



J. Craig Smith
Adam S. Long

Encl.:

cc: Leesa Kapetanov, City Recorder and Agency Secretary
Steve Liebersbach, Director of Finance
Ken Bradshaw, City Attorney

4835-7388-7015 / RE159-001

Agency Resolution 95-21

SOUTH OGDEN CITY REDEVELOPMENT AGENCY

RESOLUTION NO. 45-21

RESOLUTION AUTHORIZING THE SOUTH OGDEN REDEVELOPMENT AGENCY TO INCUR INDEBTEDNESS OF UP TO \$1,500,000 TO SOUTH OGDEN CITY IN ORDER TO COVER EXPENDITURES MADE DURING 1994-95 AND TO OBTAIN FUNDS FOR EXPENDITURES BUDGETED BY THE AGENCY FOR FISCAL YEAR 1995-96.

WHEREAS, the South Ogden Redevelopment Agency (the "Agency") has adopted the Redevelopment Plan for the 36th Street Redevelopment Project (the "Plan"), and in furtherance of that Plan, has entered into the South Ogden RDA Shopping Center Development Agreement (the "Development Agreement") and various related agreements and amendments thereto;

WHEREAS, the Agency has incurred substantial expenses to fulfill its obligations in carrying out the Plan and the Development Agreement, and these costs have exceeded the amount of the proceeds of tax increment bonds that have been issued in order to assist with the costs of carrying out these expenses;

WHEREAS, the South Ogden Redevelopment Agency (the "Agency") has approved its annual budget for the Fiscal Year 1995-1996; and

WHEREAS, it will be necessary for the Agency to borrow additional funds from and to incur indebtedness to the City in order to obtain the amounts necessary to fund its budgeted expenditures; and

WHEREAS, South Ogden City (the "City") is willing to loan the needed funds to the Agency, and the Agency desires to borrow the needed funds from the City;

BE IT RESOLVED BY THE SOUTH OGDEN CITY REDEVELOPMENT AGENCY:


1. The Agency hereby ratifies indebtedness already incurred as a result of advances made by the City on the Agency's behalf and is hereby authorized to incur indebtedness to South Ogden City in an amount up to \$1,500,000, which amount shall be used to cover expenditures authorized by the budgets of 1994-95 and 1995-96, as these have been or may be amended.
2. The Agency is hereby authorized to execute and deliver to the City a note in the form attached hereto (the "Note"), which Note is incorporated herein by this reference, evidencing indebtedness in an amount up to One Million Five Hundred Thousand Dollars (\$1,500,000), plus interest at 10% per annum.
3. The Chairman or Executive Director of the Agency is hereby authorized to execute the Note and to take any other steps necessary to borrow and obtain the funds

covered by the Note from the City, to the extent they have not already been advanced.

4. This resolution shall be effective on the date of its adoption.

APPROVED AND ADOPTED this 12th day of December, 1995.

ATTEST:


Chairman


Secretary



City Resolution 95-22

SOUTH OGDEN CITY COUNCIL

RESOLUTION NO. 9522

RESOLUTION AUTHORIZING SOUTH OGDEN CITY TO LOAN OR ADVANCE UP TO \$1,500,000 TO OR ON BEHALF OF THE SOUTH OGDEN CITY REDEVELOPMENT AGENCY, THEREBY CREATING AGENCY INDEBTEDNESS IN THAT AMOUNT TO SOUTH OGDEN CITY IN ORDER TO COVER AGENCY EXPENDITURES MADE DURING 1994-95 AND TO OBTAIN FUNDS FOR EXPENDITURES BUDGETED BY THE AGENCY FOR FISCAL YEAR 1995-96.

WHEREAS, the South Ogden City Redevelopment Agency (the "Agency") has adopted the Redevelopment Plan for the 36th Street Redevelopment Project (the "Plan"), and in furtherance of that Plan, has entered into the South Ogden RDA Shopping Center Development Agreement (the "Development Agreement") and various related agreements and amendments thereto;

WHEREAS, the Agency has incurred substantial expenses to fulfill its obligations in carrying out the Plan and the Development Agreement, and these costs have exceeded the amount of the proceeds of tax increment bonds that have been issued in order to assist with the costs of carrying out these expenses;

WHEREAS, the South Ogden Redevelopment Agency (the "Agency") has approved its annual budget for the Fiscal Year 1995-1996; and

WHEREAS, it will be necessary for the Agency to borrow additional funds from and to incur indebtedness to the City in order to obtain the amounts necessary to fund its budgeted expenditures; and

WHEREAS, South Ogden City (the "City") is willing to loan the needed funds to the Agency, and the Agency desires to borrow the needed funds from the City;

BE IT RESOLVED BY THE SOUTH OGDEN CITY COUNCIL:

1. The City hereby ratifies loans and advances already made to or on behalf of the Agency and is hereby authorized to make further loans and advances, thereby creating indebtedness of the Agency to South Ogden City in an amount up to \$1,500,000, which amount shall be used to cover expenditures authorized by the budgets of 1994-95 and 1995-96, as these have been or may be amended.
2. The City is hereby authorized to accept a note in the form attached hereto (the "Note"), which Note is incorporated herein by this reference, evidencing indebtedness in an amount up to One Million Five Hundred Thousand Dollars (\$1,500,000), plus

interest at 10% per annum.

3. The Mayor is hereby authorized to execute the Note and to take any other steps necessary to borrow and obtain the funds covered by the Note from the City, to the extent they have not already been advanced.
4. This resolution shall be effective on the date of its adoption.

APPROVED AND ADOPTED this 12th day of December, 1995.


Mayor

ATTEST:


City Recorder