

MINUTES
COUNCIL WORK SESSION
September 16, 2003
5:00 PM

PRESENT: Mayor Rietz, Council Member-at-Large Goodnature, Council Members Nordin, Jorgenson, Pacholl, Chamberlain, Christopherson, and Koch

ABSENT: None

STAFF PRESENT: Jon Erichson, Jim Hurm, and Tom Dankert

ALSO PRESENT: Scott Scofield (Allco), Jay Lindgren (Dorsey and Whitney law firm), Trixie Goldberg (S.M.I.F.), Austin Daily Herald and Austin Post Bulletin

Mayor Rietz called the meeting to order at 5:00 p.m.

Item #1 – Trixie Goldberg, President of the Southern Minnesota Initiative Foundation (SMIF), gave a brief presentation of their group's work in economic development. Ms. Goldberg noted that over \$26 million of funds had been donated, which had leveraged hundreds of millions more for local businesses. The McKnight Foundation matches every dollar raised by the SMIF. Ms. Goldberg noted they provide many resources to the community, such as grants and loans, and working with businesses on action plans, etc. Ms. Goldberg also discussed their role in helping businesses grow. Helping these businesses get funding, develop action plans, and help with training are some of their objectives.

Council Member-at-Large Goodnature questioned if personal assets were required as collateral on these loans from the SMIF. Ms. Goldberg stated yes, personal assets are required for their loans, but repayment schedules on the loans can be flexible.

Ms. Goldberg requested that funding for their program be included in the city's future budgets. Mayor Rietz requested Ms. Goldberg work with City Administrator Jim Hurm to discuss the funding.

Item #2 – Scott Scofield from Allco Ventures and Jay Lindgren from Dorsey and Whitney discussed the Long-term Lease/Leaseback proposal that has been brought to the city. Mr. Scofield gave some history of the program, from its start with mass transit systems to the current asset class of wastewater treatment plants. Mr. Scofield noted the many examples of rolling stock (transit systems) that have been financed this way. The problem is, there are no more rolling stock that can be leased – they are all being leased this way. What the proposal is would allow Allco Ventures to enter into an agreement with the City of Austin to appraise the value of the wastewater treatment plant, combine this value with other municipalities, and then bid the package out to equity investors. The equity investors (usually businesses such as Wells Fargo Bank, Bank of America, Capital One Bank) would then bid against each other to lease the assets from the different cities. The cities would then enter into a leaseback from the equity investors to lease the wastewater treatment plants back. Under the Internal Revenue Service code this

transaction would then allow the equity investor to use the depreciation on the wastewater treatment plant to reduce their federal taxes. The city only loses the tax title, the city will still maintain ownership, can still sell bonds on the facility, still have all the employees as their own – nothing changes operationally. The benefit to the city would be a 3 to 4% return on the fair market value of the wastewater treatment plant and collector system that could be used for any purpose deemed appropriate by the council.

Mr. Scofield noted there would be no out of pocket expenses for the city to continue the process if they so choose; however, Allco would like the council's interest to be sincere, since Allco would be spending significant funds on the appraisals and legal costs. If the city decides later to not do the deal, there is no cost to the city. Allco noted they are so confident of this transaction that they are willing to take the risk on the fees. Mr. Scofield noted fourteen cities in South Dakota are working on this same transaction. There are several cities in Minnesota that are being looked at for pooling also. These sorts of transactions have been around for twenty years, and are fully allowable by the IRS.

Council Member Nordin questioned possible future tax law changes and how it might affect this transaction. Mr. Scofield noted the equity investors assume all the risk in that case.

Mayor Rietz questioned if the State of Minnesota could mess up this transaction. Mr. Lindgren, an attorney with Dorsey and Whitney, noted transaction-wise, the State cannot touch it as it is a federal law; however, they could still do something to other funding cities receive. Mayor Rietz noted the League staff is meeting with representatives of the State of Minnesota on this transaction.

Mr. Scofield noted they are about to close on a transaction in South Dakota for \$1.3 billion dollars, with each city receiving a lump sum check for 3.62% of the fair value of their wastewater treatment plants.

Mr. Dankert discussed the leaseback period and how assets would be set aside from the original lease to make repayments to the equity investor. Mr. Scofield and Mr. Lindgren both noted that the risk of there not being adequate funds to make the final lease payments can be mitigated so that there is basically no risk.

Council Member-at-Large Goodnature questioned why Congress would allow this sort of transaction to occur. Mr. Scofield noted the tax law changes for 1986 were written to allow for this sort of transaction. Some illegitimate transactions were disallowed, but this sort of specific example was written into the tax code.

City Engineer Jon Erichson questioned what other state/federal approvals would be needed. Mr. Lindgren noted the big ones would be FEMA and maybe the EPA. Mr. Scofield also noted we may be required to inform the users of the system what the intentions of the city are for the funds. The EPA would love to tell the city what the money should be used for, but they don't have that authority according to Mr. Scofield.

Council Member Chamberlain questioned if this was allowed for tax code reasons to allow municipalities to raise much needed capital for facilities. Mr. Scofield noted that that was a correct statement.

Mr. Hurm questioned if this proposal would ever come back to Austin for other classes of assets. Mr. Scofield stated that other leasable assets, such as electrical/transmission/gas facilities could be used in the future.

Mr. Scofield noted that if the city would enter into the letter of understanding, it would allow Allco exclusive rights for up to two years to bring a deal back to the city; however, Mr. Scofield stated he believed a deal would close within six months.

Mayor Rietz noted the League of Minnesota Cities has researched this and is also backing the proposal.

Council Member Koch questioned if the industrial side of the plant would get any of the proceeds for future upgrades? If so, how would we sell that to the public? How do we even explain this to the public. City Engineer Jon Erichson discussed the current wastewater treatment plant. This is a jointly owned asset, and according to Hormel, they would like the proceeds invested all back into this asset. Council Member-at-Large Goodnature noted his disagreement, stating the dollars could go anywhere.

Council Member Pacholl noted he has received roughly ten calls since this was published in the newspaper, all of which stated they were okay with the deal.

Council Member Koch stated that if we do go through with this deal, we need to have a plan for spending the money. Council Member-at-Large Goodnature agreed, noting that the public should be included in this debate. However, if the city somehow is penalized by Governor Pawlenty for doing this, "I will be upset," stated Council Member-at-Large Goodnature. Council Member-at-Large Goodnature noted he did not want to tie the two issues together on this – should we do the deal and how should we spend the proceeds.

Motion by Council Member Nordin, seconded by Council Member Jorgenson to move this item to the City Council meeting for October 6. A work session will occur beginning at 4:00 on October 6 to further discuss the issue. Carried 7-0.

Council Member Chamberlain stated that we need to come out united on this if the council decides to go forward. If even one council member does not want to go through with this, then we all should wait. Council Member Koch stated he had some philosophical differences with allowing companies to reduce their federal taxes by doing this. Somebody has to pay the tax, and if the companies are not doing it, you and I are.

Item #3 – postponed until a future work session date.

Item #4 – Mr. Dankert noted the Austin Port Authority is considering calling some bonds early for redemption. In order to fully call the bonds, the Port Authority may need a loan for up to \$150,000 to pay all of the bonds off. Mr. Dankert noted a fair rate for both entities would be 4% for a five year loan. This would not affect fund balance as the General Fund would be loaning cash and getting a loan receivable – no affect on fund balance.

Motion by Council Member Jorgenson, seconded by Council Member Nordin to recommend to Council the approval of the loan, not to exceed \$150,000 for up to five years from the General Fund. Carried 7-0. Item will be added to the October 6, 2003 city council meeting.

With no further items on the agenda, motion by Council Member Jorgenson, seconded by Council Member Nordin to adjourn the meeting at 7:30 p.m. Carried 7-0.

Respectfully submitted,

Director of Administrative Services