



City of Las Cruces[®]

Economic Development Policy Review Committee

The following is the agenda for the City of Las Cruces Economic Development Policy Review Committee for May 10, 2023 at 9:00 a.m. at City Hall, 700 N. Main St., Las Cruces, New Mexico in the Las Cruces Conference Room 2007-B

- I. Call To Order
- II. Conflict Of Interest
- III. Minutes For Approval
 - a. March 15, 2023

Documents:

[03-15-23 ED PRC MINUTES DRAFT.PDF](#)

- IV. Discussion
 - a. LEDA Plan Update - Catastrophic Business Assistance Fund (Junior Money)

 - b. MRA State Statue Changes

- V. Future Discussion
 - a. June 21, 2023

- VI. Adjournment

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Posted: May 4, 2023



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

7
8 **Members Present:**

9 Kasandra Gandara, Mayor Pro-Tem
10 Yvonne Flores, City Council
11 Mary Ulrich, DACC
12 Ana Berrun, Las Cruces Lodgers Association
13 Kathryn Hansen, NMSU
14 Davin Lopez, MVEDA
15

16 **Members Absent:**

17 Tessa Abeyta-Stuve, City Councilor
18 Connie Campos, Commercial Real Estate
19 Peter Martinez, Workforce Development
20 Debbi Moore, Chamber of Commerce
21

22 **Others Present:**

23 Elizabeth Teeters, Economic Development Director
24 Natalie Green, Housing and Neighborhood Services Administrator
25 Sergio Ruiz, Policy Analyst
26 Ikani Taumoepeau, Assistant City Manager
27 Cilicia Villegas, Economic Development Coordinator
28 Christine Rivera, City Clerk
29 Monica Torres, Economist
30 Julie Brown, NMEDD
31 Celina Morales, Economic Development Coordinator
32 Peter Franklin, Modrall
33 Katherine McKinney, Modrall
34 David Weir, Deputy Director Community Development
35

- 36 **I. Call to Order:** Councilor Flores called the meeting to order at approximately 9:11
37 a.m.
38
39 **II. Conflict of Interest:** There was no conflict of interest.
40
41 **III. Minutes for Approval:**
42 **a. Economic Development PRC Meeting of February 15, 2023:** Councilor
43 Gandara motioned to approve the minutes; seconded by Councilor Flores.
44 Minutes were accepted.
45
46

1 **IV. Discussion:**

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

14
15 The ownership by the municipality entitles the project to a property tax
16 abatement and gross receipts tax (GRT) benefits that are provided under
17 the IRB statutes and tax code. This is for the term for which the bonds are
18 outstanding. Obtaining property tax abatement and avoidance of gross
19 receipts taxes or compensating taxes for purchases of equipment for the
20 project is really the motivation for a private enterprise requesting IRB
21 financing. IRB is a conduit transaction, meaning that the bonds are issued
22 by the City but the City's revenues are not implicated in repaying the bonds.
23 The income and revenue of the private enterprise that pays debit services
24 on the bonds. IRB do not affect the City's credit rating, net position, only in
25 form but not in substance, debit of the City. If the project revenues are
26 insufficient to repay the bonds, none of the City resources are obligated for
27 the repayment. IRB prohibit the City from using its own revenues or
28 resources to pay the bonds or to operate the project being financed.

29
30 IRB statutes make certain projects eligible, and generally used to finance
31 commercial and industrial projects, not for projects that are retail in nature.
32 Hotels are eligible for IRB financing. Equipment, fixture, and furnishings for
33 the project can be made with nontaxable transaction certificates (NTTC),
34 which are provided by Taxation and Revenue Department avoid gross
35 receipts or compensating taxes on those purchases. NTTC cannot be used
36 for "ingredients of construction", cost of materials for constructing a project
37 such as rebar, steel, wood, concrete, roofing, are not eligible for NTTC.
38 Construction services which are subject to GRT are not eligible for NTTC.
39 Renewal energy projects such as wind farms and solar farms are a bit part
40 of the IRB financing space in New Mexico in the last 20 years, and these
41 projects are eligible for NTTC. IRB transactions typically require payments
42 in lieu of taxes, in order to protect certain types of taxing jurisdictions, such
43 as school districts and hospital districts from loss of tax revenues as a result
44 of a project. IRB require annual reporting by the project to the City. IRB
45 have statutes up to 30 years. Albuquerque allows only 20 years.

1 Examples were shown and explained, Hotel Parq Central, which included
2 clawbacks; one would repay abated property taxes on a percentage basis
3 if failure to maintain operations up to six years. Second clawback was jobs
4 and compensation performance, they would employ at least 28 full time
5 employees for 20 years of the IRB, and again repay abated property taxes
6 on a percent basis if this failed. And another clawback for wage
7 underperformance, again to for 20 years.
8

9 Another example is renewable energy in Otero County for the Buena Vista
10 Energy Center Project. This required PILOT (payment in lieu of taxes)
11 which is a statutory requirement in the previous regular sessions and
12 requires payments to all school districts in county to be shared equally. This
13 project had an operating clawback if the project shut down within the first
14 five years after the IRB issued, all abated property taxes would have to be
15 repaid, and then a percentage up to 10 years. Renewable IRB often do not
16 include employment targets and associate clawbacks because they do not
17 result in long-term employment.
18

19 Legal structure of IRB. Typically a developer will convey interest in project
20 property, by quick claim deed if the developer owns the property in fee
21 simple, if the developer has a lease hold interest it will sublease that interest
22 to the local government. The reason the local government has title to the
23 property as it takes the property off the tax rolls. Project not subject to
24 property taxes while title/lease hold interest held by local government entity.
25 The local government then takes interest it has received from the developer
26 and leases it back to the developer for the purpose of the developer
27 instructing and operating the project. In an IRB lease the tenant/developer
28 has substantially all the benefits and all the liability and economic use of the
29 leased property. IRB statutes prohibit the government from operating or
30 economically supporting the financed project, other than property tax
31 abatement and gross receipts tax benefits. At the end of the term of lease,
32 the title to the property is reconveyed for no or nominal additional
33 consideration to the developer.
34

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

1
2 The transaction structure, at the time the lease agreement is entered into
3 and becomes effective, the City issues the IRB, payments under the lease
4 are structured to be sufficient to pay debt service on the bond. Sometimes
5 the bonds are sold to the third party lender. Bonds are usually issued in a
6 maximum principle amount. IRB bonds are set up to be a maximum
7 principle amount which is advanced over time at the request from the project
8 company to the bond purchaser. Hope to see the project company request
9 an advance of the entire amount of the IRB so they have economic
10 substance.

11
12 Notice requirements. Before a City schedules a hearing to consider an IRB
13 ordinance for adoption it has to give at least 30 days notices to the county
14 assessor and county commission. Most developers of projects open up the
15 discussion about payments in lieu of taxes much earlier than the time the
16 city has to send out notice. When the county is the issuer, the statute
17 requires notice to all the tax jurisdictions in the county. There is no statutory
18 guidance on what payments in lieu of taxes are appropriate or should be
19 paid. City or county can issue IRB regardless of objections from taxing
20 jurisdiction that received notice.

21
22 Suggestions for areas for the City to issue IRB. There should be some due
23 diligence in figuring whether a developer requesting IRB financing has the
24 development experience and record of success to give the City confidence
25 the project will be completed. Another issue is impact of proposed project
26 on City infrastructure and services.

27
28 The City of Albuquerque overlapping tax rate is \$40 per \$1,000 of taxable
29 value. Hotel Parq Central, \$14 million principle amount of IRB, taxable
30 value is one-third, \$4,666,667, multiple by \$40 per \$1,000, \$186,666 as the
31 tax liability, had to make a 4% payment in lieu of tax, the abated taxes were
32 \$179,200 per year. For the Buena Vista Energy Center, larger project with
33 \$190 million principle amount, abated property taxes are \$1.6 million per
34 year, offset by \$420,000 per year payment in lieu of tax, for a net abatement
35 of \$1.163 million.

36
37 Question on 4% abated on the one project and is that statutory or
38 negotiated. Other than electric generation or transmission segment of the
39 IRB statutes, the statutes give no guidance as to what the payment in lieu of
40 tax should be, but shall be negotiated. Abated tax rate is driven by the value
41 and the tax rate, but PILOT other than electric transmission is open ended.
42 The statute provides for a maximum term of 30 years, and the City of
43 Albuquerque has a 20 year term. Clawback are policy considerations and
44 not statutory.

45
46 Question on the statutory changes as the legislature only has one more day.
47 The proposed changes only apply to electric generation and transmission
48 and storage projects. They only apply to how the PILOT is allocated

1 between the issuer and the school district. They really apply to how the
2 school district portion is shared among the various school districts within the
3 jurisdiction.
4

5 Question on if there are other items similar to IRB. There are some versions
6 of IRB in numerous other states. IRB originally came through federal tax
7 law but no longer really tied closely to that. There are a lot of IRBs
8 outstanding in New Mexico. More in renewable energy. Las Cruces had a
9 long standing IRB with F&A Dairy which was purchased by Saputo. The
10 existing IRB was unwound at that point. It was mentioned that Doña Ana
11 County has had a number of IRBs, more recently industrial companies.
12 They are a necessary tool for business attraction, for the business they are
13 bringing. Doña Ana County has policy of 20 years maximum and 80%
14 abatement.
15

16 Elizabeth Teeters stated that it is very discretionary, up to MVEDA and for
17 them to make sure the City is getting the benefit from and not just want the
18 developer wants. MVEDA does incentive analysis. Impact analysis is done
19 for the company, and for the County Commission do percent debit to the
20 County, investment being made, jobs being created, what the new tax
21 benefit to the County or City would be and that result.
22

23 When looking at existing raw land and existing property tax benefit from it,
24 it is pittance per year. Looking at bringing in \$580 million that has 20%
25 payment on that cash, the tax benefits can be a lot higher than receiving
26 today, plus job benefits also.
27

28 Question of, is it in the purview of policy makers to say, these are the things
29 we want to see here, like no more than 20 year lease, include the clawbacks
30 with wages? There is currently no actual IRB policy for the City. The West
31 High Mesa Road was mentioned and will help with the County and then
32 possibly IRB for that process. Also projects at the Las Cruces Innovation
33 and Industrial Park, and competing against Santa Teresa rather than
34 Albuquerque. Include Doña Ana County in these discussions. Stated we
35 are not competing, winners, win/win on both sides. Santa Teresa is very
36 different than Albuquerque.
37

38 **b. IRB Speculative Development:**
39

40 **c. New Mexico Economic Development Department (EDD) Update:** The
41 mission of the department is to improve the lives of New Mexico families by
42 increasing economic opportunities and provide a place for businesses to
43 thrive. Julia Brown and Louise Marquez cover the southwest part of the
44 state, including Doña Ana, Sierra, Socorro, Luna, Grant, and Hidalgo and
45 Catron. They assist businesses and comities as well as economic
46 development organization with a broad variety of needs to generate wealth
47 in New Mexico. A growing number of programs, initiatives and incentives
48 are under EDD. Provide information, technical assistance, and serve as a

1 link or a bridge between listed programs and others. Incentives and
2 assistance programs include Job Training Incentive Program (JTIP) which
3 is a wage reimbursement program which funds classroom and on the job
4 training for newly created jobs and expanding or relocating businesses. The
5 toolbox includes a plethora of tax credits including manufacturers, high
6 wage jobs credits, rural jobs, research and development credits, and IRB.
7

8 Local Economic Development Act (LEDA), nickname of job creation fund.
9 It is an incentive to close a gap in funding. Helps build business
10 infrastructure in support of job creation expansion. Qualified entities are
11 businesses creating economic base jobs; manufacturing, processing, and
12 assembling. An agriculture business LEDA cannot help grow crops but help
13 once they come out of the ground and process, package, distribute. Also
14 applies to nonretail service providers; IT, outsourcing, technology,
15 development. Retail in communities that have populations of 15,000 would
16 be eligible to participate in LEDA. LEDA funds can be used for land,
17 building, and infrastructure. Incentive to close a gap in financing, not
18 intended to fully fund a businesses relocation, expansion, or start up.
19

20 A LEDA project is evaluated by financial strength of the business, business
21 plan and its fit for the community where it is proposing to locate or expand.
22 The approval process is staged, the offer letter, formal award of the grant,
23 and the public process. If a project is eligible, then a formal offer is made
24 to the company, a letter is sent to them inviting them to apply formally for a
25 LEDA grant. EDD opens an application portal in their system to gather and
26 store more information about the business and economic impact analysis is
27 performed by their economists. Then the local governing body, City or
28 County, depending on where the business is located or proposing to be
29 located, must approve the project by ordinance. That also includes the
30 development of two contracts, and IGA (Intergovernmental Agreement)
31 which defines how the fiscal agent will handle the funds that the state is
32 providing for the project, and a PPA (Project Participation Agreement) which
33 is between the fiscal agent and company that is applying. This agreement
34 defines the expectation of the performance measures and milestones,
35 related job creation, and total investment as well as clawback provisions in
36 the unlikely event of default.
37

38 Once the LEDA grant is approved EDD transfers the funds, amount of
39 award, to the fiscal agent. The agent has the responsibility along with EDD
40 of reviewing the requests for reimbursement by the awardee, being sure
41 they are in compliance with the provisions and the PPA. The company has
42 to provide a security instrument to guarantee that in the even of a default,
43 those funds are secured, either a letter of credit from bank or financial
44 institution, a surety bond, and in a limited number of cases might include
45 actual collateral for equipment or land other than that which is the subject
46 of the LEDA award. The company submits a request for reimbursement
47 that is uploaded into the EDD secure portal and reviewed by both the fiscal
48 agent and EDD. Upon completion of all of those requirements and

1 provisions in the PPA, then the project is closed out and the fiscal agent
2 then has to pass a separate ordinance officially closing the project and
3 taking it off the books, and security is released back to the company.
4

- 5 **V. Future Discussion:**
- 6 **a. Municipal Land Sale Ordinance**
- 7 **b. Next Meeting: April 19, 2023**
- 8

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

- 11
- 12 **VI. Adjournment: The meeting adjourned at approximately 10:30 a.m.**
- 13
- 14
- 15
- 16

17 _____
18 Chairperson

19

20

21

22 Approved: _____

