Response to Comments on the Proposed New TIF Policy

(Staff’s responses shown in red italics.)

4/24/18 Open House Comments:

1. The review and approval process could be improved if there was an upfront fee to pay for a 3rd party professional (CPA) to analyze the pro-forma. Added to Section VII, 2, Financial Feasibility and Fiscal Impact.

2. Rapid City is long overdue to have a disciplined process in place for TIF. The default response to TIF should be no, unless there is a compelling public purpose.

3. The City should use TIF wherever possible to pay for improvements that would otherwise use CIP funds.

4. The criteria for one job per $10,000 in projects is unrealistic – review the ratio and increase as necessary. Upon recommendation of Ben Snow, this has been revised to be “one new fulltime job from at least one of these industries for each $10,000 $75,000 in principal value of the Tax Increment Financing.”

5. Primary focus on TIF proposals should be cost/benefit analysis, and required in the Policy. Added to the revised Section VII, 2, Financial Feasibility and Fiscal Impact.

6. Existing zoning regulations do not support small housing lots.

7. The TIF Review Team evaluation criteria are currently too subjective – it needs to be black and white. The new proposed criteria are more specific than in the current policy.

8. Need on-line policy language that is consistent with the Evaluation Chart. A summary of the new policy will be uploaded to the City website.

9. Allowing no more than two overlapping districts might be too restrictive. It may be better to add bonus points if there are no more than two overlapping. The revised proposed language now reads, “The overlapping of more than two (2) active TID boundaries should be limited, unless necessity is demonstrated.”

10. Look at adding bonus points if the project brings public benefits occurring outside of the district boundaries. An evaluation criteria point has been added which reads, “The project includes regional infrastructure improvements located in or near the TID that are determined beneficial to the community.”

From Ben Snow, Rapid City Economic Development:

1. The primary concern we would like to raise surrounds the application of TIFs to new developments, referred to as “greenfield” development. The current draft of
the policy states that applications for developments in such areas are “discouraged.” While we understand your goal of placing priority on redevelopment of the city core and other aging corridors, there are situations where a business expansion, start up or relocation would not be viable in developed areas. In such cases, Rapid City should not cede any competitive positioning to other communities or create a cap on growth for existing businesses looking to expand. **Verbiage relative to discouraging Greenfield developments has been removed.**

2. There are other specific provisions in the draft that similarly raise questions about the accessibility of TIFs for new developments.

   a. **Economic Development TIFs:** The policy correctly notes that South Dakota statute expanded the eligibility of TIFs beyond redeveloping blighted areas to allow economic development purposes. The policy indicates “the City will substantiate the need for, and amount of grant award…”, but does not specify further how or what criteria will be used. Unless more information is available, such a vague provision may cause an economic development prospect from further considering investment. *Clarifying verbiage has been added pointing to “the criteria listed in this policy and the findings of an analysis of the project’s financial feasibility and fiscal impact (see Section VI. Evaluation Process)”*

   b. **Eligible Costs (p. 9):** The current list seems to focus on infrastructure build-out costs. While infrastructure is often an important factor and cost driver in new projects, there often are other costs that would be more impactful to enabling economic development TIFs to be successful. These may include injecting capital to increase the overall investment, output capacity, job creation, finishing out work-spaces and/or land acquisition. *This has been added as an eligible cost: “An economic development TIF project may include costs specific to investments that increase project output capacity, job creation, the finishing of work-spaces, and/or land acquisition.”*

   b. **Ineligible Costs (p. 10):** This provision appears to prohibit infrastructure and costs from inclusion in Economic Development TIF costs. It specifically excludes public infrastructure for greenfield development. What costs would be eligible for Economic Development TIFs as a result? *This has been removed from the list of ineligible costs: “Public infrastructure, clearing or grading for green field development.”*

   b. **Evaluation Process (p. 11):** Consider evaluation ad criteria for substantiating “but for”. Ability to substantiate higher costs in RC. *The first evaluation base requirement states, “The project application shall*
d. Determine Necessary Use (p. 11 & 12): This provision appears to allow some ability to discern whether a project would meet the “but for” test, but it does leave some question open by suggesting that applicants be able to demonstrate the cost of recruitment or expansion would be higher in Rapid City. While hard costs are factors for businesses to consider, there are other very significant factors that come into play: available labor force, access to air transportation, education system and quality of life for labor as well as spouses/family members. The proposed standard may be difficult to judge. The following verbiage has been added: “For Economic development projects, additional factors in determining necessary use may include an independent analysis of available labor force, access to air transportation, education system and quality of life for labor as well as spouses/family members.”

e. The 3.5% city reimbursement interest rate may be too low. We are unable to reimburse more than the rate paid by the City.

f. The Core Downtown Area may be too geographically small, especially if there is a limit of no more than two (2) districts that can be overlapping. This could create a dynamic where the first two districts ‘in’ would prevent others from developing in that area. It’s a bit of a catch-22. For a district to make financial sense, the district boundaries would have to increase, but if the district boundaries increase, there is more susceptibility to overlapping districts. If this provision remains, the city would have to create additional economic incentive tools in addition to TIF to compensate for this weakness. The principle regarding overlapping districts has been changed to read, “The overlapping of more than two (2) active TID boundaries shall be limited, unless evidence of necessity is demonstrated.”

g. There should be a totally independent 3rd party financial cost-benefit analysis conducted on every TIF. Currently, our process includes primarily a benefit analysis only. This third-party oversight could also be extended to audit existing TIFs to target any inefficiencies or abuses of the TIF tool in practice. Any move toward adding a step in the approval process should also keep in mind the overall predictability of the tool and of the city’s process in approving each TIF. For example, a third-party review could happen concurrent with other processes to save time and prevent the process from dragging out too long, adding time and cost to each project. The following verbiage has been added: “The City shall submit the TIF proposal for review by a licensed finance professional (Certified Public Accountant or other certified and licensed finance professional) who shall
prepare a financial analysis of the TIF proposal including an evaluation of projected costs versus benefits, financial feasibility and fiscal impact, the stability of the TIF revenue projections, and the necessity of utilizing TIF.”

h. Do these new proposed rules give proper consideration to ‘regional infrastructure improvements’? If a project helps to create regional infrastructure, does that project should receive additional ‘points’ or credit in favor of approval since the benefits extend far beyond the TIF district boundaries. A new evaluation criteria for possible points has been added: “The project includes regional infrastructure improvements located in or near the TID that are determined beneficial to the community.”

From Tony Marshall:
1. The residential blight criteria is determined by "at least 20% 8 year taxable valuation decrease". I may be reading that wrong, but I'm not aware of any neighborhood in Rapid City that has decreased in value over that time. There are several neighborhood areas and many properties in the core areas that meet this criteria.

2. The targeted area primarily consists of, with the naked eye, floodway, School of Mines or County owned property. I don't disagree with this proposal but it may be limited in reach. There are many commercially-zoned properties and residential neighborhoods within the proposed core areas.

3. Entry points into Rapid City, specifically, northbound on Hwy 79, lack any visual interest and is frankly unappealing in many ways. I suggest that Hwy 79 becomes a revitalization node from East North south to Catron Blvd with an emphasis on landscaping that corridor under a comprehensive beautification plan. The TIF Priority Areas Map will be changed to include Cambell Street (Highway 79), from Omaha Street to Catron Blvd as a Revitalization Corridor.

4. I recommend an overall inclusion of landscaping with specific requirements to include a plan by a landscape architect, with a minimum total cost relative to the project and a focus on maintenance at least through the life of the TIF. If this is acceptable, I'll spend time and dollars on creating the proposed language for staff and council review. The following has been added as an eligible cost: “Landscaping, including irrigation and design by a professional landscape architect with review and approval by the Parks and Recreation Department, for locations adjacent to a revitalization corridor and/or node. The developer shall be responsible for the live vegetative landscaping maintenance for the life of the TIF; thereafter, the Parks and Recreation Department shall be responsible.”

From Rex Hagg:
First, a couple of legal reminders are appropriate. Cities have a legal obligation to provide basic infrastructure and services to any barren land it annexes, including roads, water and sewer. Cities are often not in a financial position to extend these services
when other budget demands are pressing. TIFs fund these projects. They are not “tax breaks,” but a financing means, thus the term “tax increment financing.” It is a tool which should be responsibly and effectively used.

Second, TIF procedures are set forth in detail in state statute. Cities are not given authority to change statutes at will. Nowhere in state statute is there authority given to cities to add additional requirements or change terms. It violates basic legal principles and most likely would not survive a legal challenge. Many cities have established their own TIF policies and requirements, above the state-mandated requirements. This is within the City’s legal purview.

Setting additional criteria binds the hands of city council members to independently and fairly evaluate a TIF proposal. Limiting “discretion in decision making” of elected officials by staff is contrary to democracy and voter oversight. If projects are sifted by a committee based on a point system or what they think complies with their created rules, council members may be misled about what they are able to consider. New development areas such as those around Cabela’s and Rushmore Crossing will cease. There is plenty of opportunity built into the policy’s economic development criteria that will allow and promote such new developments.

Those types of TIF projects started as pasture land with little infrastructure and now generate millions of dollars of new tax revenues. Private developers have fronted the cost on almost the entirety of those public improvements.

Assuming a proposed TIF meets current state law requirements, there are really only two basic questions to be answered. First, is the developer putting in true infrastructure (public improvements), and second, does the TIF plan accurately describe how the infrastructure will be paid for from increased taxes generated by the development? The City Council has got it right 79 of 80 times. Simply let them do their jobs.

The current system is not broke, but needs to be streamlined. The new policy has many elements that will streamline the whole process of approving and administering TIFs. It is one of the few programs where a public/private business partnership has actually worked. The proposed new policy creates artificial roadblocks, will add costs and staff time, increase fees, and require more studies. It will place significant restrictions on where TIFs may be located, what project costs are reimbursed and the types of projects allowed. New development will be stifled or have to wait for the city to place infrastructure. The fact that only four of the existing 24 TIFs would qualify under the proposed change is proof of its limiting nature. This is not a verifiable fact, yet it is true that certain types of TIF projects that were previously approved may no longer qualify if they are unable to meet the criteria.

The current procedure in Rapid City already takes two to three times longer than most other cities. City staff is already over a year behind in certifying completed work and are jeopardizing important funding sources by delay. Adding to their workload with complicated rules will further bog down the process. The new policy will establish a
better framework for the review and certification of TIFs. Not having such principles, costs eligibility and criteria in place are the cause of much of the extra staff time. It is projected that the new policy will solve this problem to a great extent.

My experience with government is that the more things are regulated the more time is spent in the future figuring out how to get around it. TIFs work. When properly applied, cities get infrastructure without bonding, public entities get increased tax revenues, developers get increased values in land and taxpayers get new tax revenue to help pay for schools and other vital services.