MINUTES OF THE UTAH CAPITAL INVESTMENT BOARD MEETING
****APPROVED****
July 14, 2016 | 7:30 – 8:30 am
Governor's Office of Economic Development – Capitol Reef Conference Room
60 East South Temple, Third Floor, Salt Lake City, UT 84111

Board Members Present: Sam Straight, Val Hale, Pam McComas, David Damschen, Derek Miller (phone)
Guests Present: Susan Eisenman (phone), Bret Jepsen (phone), Richard Pugmire (phone), Scott Peterson, Andrew Larsen – Zions Bank (phone), Kenneth Logsdon - Holland and Hart (phone), Fran Wheeler – Cooley (phone)
Staff: Kathy Whitehead

AGENDA

I. Welcome & Quorum
II. Review and Approval of Minutes (May 11, 2016)
III. Refinancing discussion and possible vote on any necessary Board issues related to the refinancing
IV. Other Business
V. Motion to Adjourn

I. Welcome
Samuel Straight welcomed the board and confirmed a quorum, with all members in attendance in person or by phone.

II. Review and Approval of Minutes
The board reviewed and approved the pending minutes with a revision on page two to correct the interest rate to 6.8%.

MOTION
Val Hale moved to approve the minutes of May 11, 2016, and Pam McComas seconded the motion. The motion passed unanimously.

III. Refinancing Discussion
Bret Jepsen began by explaining that the Utah Capital Investment Corporation (UCIC) has been in discussions with investors for several months regarding the refinancing. The UCIC Board approved terms of this refinance on Monday, July 11th. The final issue to resolve is that, according to 2012 refinancing terms, the banks want to insure in the unlikely event that the portfolio is permanently impaired, the banks could recover their investment in a matter of $20M per year rather than 20% of an outstanding commitment.

Scott Peterson added that during the UCIC board discussion, there was talk of merging term loan A and term loan B and fixing the interest rate. Zions is working on this. Having approved the refinancing, the final significant issue for the board and bank was the $20M vs. 20%. Scott explained this was a significant issue for the bank due to the time value of money. He added that Zions and Morgan Stanley have been extremely fair in terms of working with UCIC, but they wanted clarity on the rules, which they feel are somewhat vague.

Sam asked Scott whether the UCIC board is united in their readiness to move forward with the refinancing. Scott believed they were.

Sam stated that the issue now before the Utah Capital Investment Board (UCIB) was to decide whether the board in the future will interpret the rules to say that in case of default, the bank would be able to recover $20M of each $100M increment vs. 20% of the outstanding balance.

Susan wants the board to feel comfortable with its interpretation of the statute, because the interpretation will be written in the contingent tax credits as part of the refinance. She noted that a contingent tax credit is a contract between the board and the investor (bank) which explains the contingencies, tax credit use in general, and how tax credits would be used in particular.

The limitation contained in the statute, UCA Section 63N-6-406, is that the UCIB will issue contingent tax credits so that not more than $20M of contingent tax credits for each $100M increment is redeemable in a fiscal year. She presumes that the obvious reason for the limitation is that these tax credits are drawn on the general fund, and they want to limit the amount drawn from this general fund.

Looking down the road, the bank and its investors would clearly want to get the maximum benefit of the statute. If the board chooses to interpret this as $100M tax credits issued, as opposed to 20% in the case of future default, more money goes out of the general fund per year. The banks get the benefit of the maximum amount of repayment in the event of a default.

Andrew from Zions Bank provided additional input, noting that in the context of current credits maturing in 2017 which are being refinanced out to 2021, the banks have always interpreted the act that $20M per $100M of tax credits could be redeemed in any given year. The banks don't want to be in a situation where perhaps the entire principal balance is not repaid by maturity in 2021. In that scenario, based on the way this refinancing is structured, the bank would need to be able to call on the entire balance in one year rather than further delaying the repayment of 20% of the outstanding balance, possibly extending repayment to 2026.

Sam asked if there were any questions or comments from the board. None were mentioned. Sam felt that based on reading the rule adopted in 2015, it's not difficult to reason that for each $100M increment, you can redeem $20M in any fiscal year. Because it's one increment, it is perfectly consistent to the rule to apply the $20M in any fiscal year to the entire amount and not to a decreasing balance.

David Damschen agreed. He also pointed out that our state adheres to a policy of fiscal management that favors "paying up front" rather than amortizing obligations over a longer period of time. He further explained that the reason we're a AAA rated state is that we amortize quickly. With this in mind, it would not be consistent to kick this down the road, but rather to support the interpretation as stated by Sam. We're talking about an obligation we hope to never face, but we must have a degree of clarity now so if we get down the road and tax credits become more of a reality, we are in a strong position to keep the legislature informed that we have already resolved this issue, and we have a plan to move forward.

Pam, Val and Derek had no further concerns and were comfortable with David's explanation.

Sam asked Susan whether we need to have a board vote on the interpretation. Or is this done when the board is ready to write up the tax credits? Susan suggested the second. She asked the bank or the bank's counsel to comment on whether they felt it was necessary for their own assurance to ask for a vote from the UCI Board. Ken suggested the board adhere to Susan's suggestion to not require a vote today, as that would not be normal protocol.

Susan laid out what would happen next. The bank, the corporation and counsel will prepare the refinancing deal. Susan will work with Fran and Holland and Hart on the contingent tax credits to make sure they meet our legal requirements. There would be a closing scheduled. The current contingent tax credits would be retired or canceled. New contingent tax credits (similar to a contract) would be issued at the time of closing. Sam, as chair of the Utah Capital Investment Board, would sign the tax credits. Susan suggested the Utah Capital Investment Board would need to meet again once all the documents are in hand. The bank will seek an opinion letter from the Attorney General, which Susan will prepare and send with authorization from the Utah Capital Investment Board.

Sam added that the credits themselves are very simple and short. UCI Board members should be prepared to make themselves available quickly to take a final vote once the documents are ready.

With no further business to discuss, a motion to adjourn was entertained.

MOTION
David Damschen moved to adjourn. Val Hale seconded the motion. The motion passed unanimously.
