

Tax Increment Reinvestment Zone Board #2



April 15, 2024
Town Hall
2121 Cross Timbers Road
Flower Mound, TX 75028

5:00 p.m.

AGENDA

A. CALL TO ORDER

B. PLEDGE OF ALLEGIANCE TO THE AMERICAN FLAG AND TO THE TEXAS FLAG

"Honor the Texas flag; I pledge allegiance to thee, Texas, one state under God, one and indivisible."

C. PUBLIC COMMENT

The purpose of this item is to allow the public an opportunity to address the Board/Commission regarding any item on this agenda that is not a "Public Hearing." Issues regarding daily operational or administrative matters should first be dealt with by calling Town Hall at 972- 874-6000 during business hours. To speak to the Board/Commission during public comment, please fill out a comment form, which is located in the lobby of Town Hall.

In accordance with the Texas Open Meetings Act, the Board/Commission is restricted from discussing or acting on items not listed on the agenda.

- Speakers are limited to 3 minutes; a tone will sound at 30 seconds left and when time has expired, and times may be adjusted by the Chair depending on the number of speakers.
- Speakers must address their comments to the Board/Commission.
- Please state your name and address when speaking.

D. REGULAR ITEM(S)

1. TIRZ #2 Capital Improvement Agreement - Consider approval of a Capital Improvement Agreement for the Furst Ranch Development, establishing a process and providing for the reimbursement of impact fees, and TIRZ #2 revenues for qualified capital improvement costs.

E. ADJOURN

I do hereby certify that the Notice of Meeting was posted on the bulletin board at the Town Hall for the Town of Flower Mound, Texas, in a place convenient and readily accessible to the general public at all times and said Notice was also posted on the Town's website in accordance with GC Section 551.056 on the following date and time: April 12, 2024, at 4:31 p.m., at least 72 hours prior to the scheduled time of said meeting.

Theresa Scott, Town Secretary

The Flower Mound Town Hall and Jody Smith Hall are wheelchair accessible. Requests for accommodation or interpretive services must be made 48 hours prior to this meeting by contacting Town Hall at 972.874.6000. Additional time limits will be provided for members of the public that need to address the Town Council through a translator.



TAX INCREMENT REINVESTMENT ZONE BOARD #2 AGENDA D.1. REGULAR ITEM(S)

DATE: April 15, 2024

FROM: Tommy Dalton, Assistant Town Manager

ITEM: Consider approval of a Capital Improvement Agreement for the Furst Ranch Development, establishing a process and providing for the reimbursement of impact fees, and TIRZ #2 revenues for qualified capital improvement costs.

BACKGROUND: This purpose of this item is to consider approval of a Capital Improvement Agreement (CIA) for the Furst Ranch development. The CIA outlines the process for the reimbursement of CIP Projects from Impact Fees and TIRZ Revenues.

This is a three-party agreement between the Developer, the TIRZ #2 Board of Directors, and the Town. The Town Council will consider approval of the same agreement at the April 15, 2024, Town Council meeting.

The process outlined in the attached agreement follows the Town standard capital reimbursement agreement whereby a developer who builds a capital project identified on the TIRZ #2 Final Project Plan is reimbursed for the cost to construct the capital improvement. At no point will the developer be reimbursed more than the actual cost of the improvement. The only projects that qualify for reimbursement are those identified as Tier 1 projects in the [TIRZ #2 Final Project and Financing Plan](#).

In general, the process outlined in the agreement is as follows:

1. The developer will submit plans to the Town for review and approval, including Town confirmation of the scope of the project and its cost.
2. Town staff will compile the project plans, scope, and cost together with the Town's standard Impact Fee Development Agreement (IFDA) to be considered by the Town Council.
3. Upon approval of the IFDA by Council, the developer may begin construction of the project.
4. Upon final inspection of the project by the Town, the Town will reimburse qualified project costs first through available impact fees, then through available TIRZ revenue. The agreement does not require the Town to appropriate funds from any other source.

The agreement also allows the Town to be reimbursed from TIRZ revenues on projects it elects to complete.

BOARD REVIEW/CITIZEN FEEDBACK: N/A

ALTERNATIVES: N/A

FISCAL IMPACT: N/A

LEGAL REVIEW: Bryn Meredith, of Taylor, Olson, Adkins, Sralla, & Elam L.L.P., has reviewed the agreement as to form and legality.

ATTACHMENTS:

1. Capital Improvement Agreement

DRAFT MOTION: Move to approve as presented in the agenda caption.

FURST RANCH CAPITAL IMPROVEMENT AGREEMENT

This Furst Ranch Capital Improvement Agreement (the "Agreement") is entered into by and between the Board of Directors of Tax Increment Reinvestment Zone Number 2, Town of Flower Mound (the "Board"), the Town of Flower Mound, Texas, (the "Town") and 1171 Commercial LLC (the "Developer").

Definitions:

"CIP Projects" are only projects on the Town's Capital Improvement Plan that are Impact Fee eligible. These projects include an obligation of the Town to provide funding as a reimbursement to the Developer. CIP Projects are not neighborhood specific costs for which the Town does not provide a reimbursement to other developers. CIP Projects include: roads, water, sewer, water re-use (not including water re-use plant) that are Impact Fee eligible and on the Town's Capital Improvement Plan, and will go through the normal Impact Fee qualifying process. CIP Projects are subject to change at the sole discretion of the Town, in accordance with state law.

"Developer" means 1171 Commercial LLC and their successors and assigns.

"Impact Fees" are all impact fees imposed by the Town in accordance with Chapter 395, Texas Local Government Code, as amended.

"TIRZ Revenues" are an amount equal to all of fifty percent (50%) of the ad valorem property taxes levied and collected by the Town for each year on the captured appraised value of real property taxable by the Town and located within the 1,609 acre Furst Ranch Development ("Property").

The Town and the Board agree that the process for the reimbursement of CIP Projects from Impact Fees and TIRZ Revenues is set forth below:

1. The Developer shall submit plans to the Town's Engineering Department on a project-by-project basis utilizing the Town's Impact Fee Development Agreement ("IFDA") form and process when Developer is ready to begin construction of CIP Projects. This process will also include Town staff confirmation of project scope and costs as agreeable/accurate (e.g. "Project A"). The Town will follow its normal impact fee process for Project A and this will be memorialized in an IFDA for Project A.
2. Once Project A or a portion thereof is inspected and accepted (if applicable) by the Town as complete in accordance with the approved construction drawings, Town staff will then remit the Project A IFDA total (which was identified in Step 1) to the Town's finance department, which will be booked as an obligation against the Property's Impact Fees and TIRZ Revenue collected.
3. Impact Fees from the Property, including any portion thereof, will be collected by the Town at issuance of building permits on the Property.
4. On a quarterly basis, and until all IFDA obligations are paid in full, Impact Fees collected from the Property will be accounted for by the Town and offset against the outstanding total reflected in the IFDA, and then remitted to the Developer of Project A.
 - a. Any excess Impact Fees or TIRZ Revenue collected after Project A is paid in full, would then flow to Project B and then to the next IFDA project.

5. Annually and generally in April of each year, the Town's finance department will calculate the total TIRZ Revenue collected for ONLY properties located within the Property boundaries, and will use those funds as an offset to the principal balance for Project A as reflected in the IFDA. TIRZ Funds will be remitted to Developer annually ("TIRZ Credit").
 - a. If a balance remains on the Project A IFDA, then the next quarter, Impact Fees collected will continue to be remitted to the Project A Developer until the Project A obligation is retired. This is repeated until all Project A IFDA principal amounts have been reimbursed to the Developer of Project A.
 - b. TIRZ Credits are obligated to a project based on the date of the Town's acceptance of the project, irrespective of project type, i.e. water, sewer, roads, water reuse.
 - c. The developer of each Town accepted CIP Project will receive reimbursement from the Impact Fees and the TIRZ Credit. Two developers cannot receive reimbursements for the same CIP Project (but if more than one developer builds portions of a single CIP Project each will be reimbursed for the segment they build).
 - d. If the Town elects to complete a CIP Project ("Town Initiated CIP Project"), then the Town will be eligible to receive reimbursement from the TIRZ Revenues in the order prescribed below:
 - i. The Town's completion of the Town Initiated CIP Project, in the same manner as a developer completion, will establish the same obligation in the Town's finance department to direct funding of TIRZ Revenues in the order of priority of first-in/first-out.
 - ii. At no time will another developer/project or Town/project "jump" previously accepted and completed CIP Project or portion thereof.

For Example: If developer "A" completes a CIP Project on Year 1, developer "B" completes a CIP Project on Year 2, and the Town completes a CIP Project on Year 3. developer "A" gets reimbursed first, then developer "B" of year 2, then the Town.

1. Projects that are not included in this Agreement for purposes of TIRZ Credit or Impact Fee reimbursement:
 1. Funding of TIRZ Tier 2 projects – those are non-impact fee eligible projects.
 2. The proposed water reuse plant; no one developer can carry that cost; however, water re-use lines are included in the above proposal.

2. Legislative Functions. Nothing in this Agreement is intended to usurp or otherwise limit future legislative action of the Town Council, including, but not limited to, whether to terminate or extend the life of Tax Increment Reinvestment Zone Number 2. In addition, nothing in this Agreement obligates the Town Council to appropriate funds from any other source to fund the infrastructure costs contemplated herein.
3. Statutory Verifications. The Developer makes the following representations and covenants pursuant to Chapters 2252, 2271, 2274, and 2276, Texas Government Code, as heretofore amended (the "Government Code"), in entering into this Agreement. As used in such verifications, "affiliate" means an entity that controls, is controlled by, or is under common control with the Developer within the meaning of SEC Rule 405, 17 C.F.R. § 230.405, and exists to make a profit. Liability for breach of any such verification during the term of this Agreement shall survive until barred by the applicable statute of limitations, and shall not be liquidated or otherwise limited by any provision of this Agreement, notwithstanding anything in this Agreement to the contrary.
 - a. Not a Sanctioned Company. The Developer represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Government Code. The foregoing representation excludes the Developer and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization.
 - b. No Boycott of Israel. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. As used in the foregoing verification, "boycott Israel" has the meaning provided in Section 2271.001, Government Code.
 - c. No Discrimination Against Firearm Entities. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. As used in the foregoing verification, "discriminate against a firearm entity or firearm trade association" has the meaning provided in Section 2274.001(3), Government Code.
 - d. No Boycott of Energy Companies. The Developer hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. As used in the foregoing verification, "boycott energy companies" has the meaning provided in Section 2276.001(1), Government Code.
4. FORM 1295. Submitted herewith is a completed Form 1295 generated by the Texas Ethics Commission's (the "TEC") electronic filing application in accordance with the provisions of Section

2252.908 of the Texas Government Code and the rules promulgated by the TEC (the "Form 1295"). The City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after receipt of such form. The Parties understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultant are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Developer; and, neither the City nor its consultant are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Developer; and, neither the City nor its consultants have verified such information.

5. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Approved and executed this ____ day of ____, 2024

ATTEST:

TOWN OF FLOWER MOUND, TEXAS

Theresa Scott,
Town Secretary

By: _____

Name: Derek France
Title: Mayor
Date: _____

1171 COMMERCIAL LLC

By: _____
Name: Jack D. Furst
Title: Chief Executive Officer and President
Date: _____

TAX INCREMENT REINVESTMENT ZONE NUMBER 2, TOWN OF FLOWER MOUND

By: _____
Name: Derek France
Title: Chairman of the Board
Date: _____