



County of Los Alamos

Council Meeting Staff Report

August 31, 2021

Agenda No.: B.
Indexes (Council Goals):
Presenters: Steven Lynne
Legislative File: OR0907-21b

Title

Incorporated County of Los Alamos Ordinance No. 709, An Ordinance Terminating the Economic Development Project of Pebble Labs Inc., A Delaware Corporation.

Recommended Action

I move that Council adopt Incorporated County of Los Alamos Ordinance No. 709, an ordinance terminating the Economic Development Project of Pebble Labs Inc., and ask staff to assure that it is published as provided in the County Charter.

County Manager's Recommendation

The County Manager recommends that Council adopt Incorporated County of Los Alamos Code Ordinance No. 709

Body

The purpose of this Ordinance is to terminate the economic development agreement with Pebble Labs, Inc. ("Pebble") facilitated by LEDA and the associated Industrial Revenue Bond and Lease Agreement. If approved, Ordinance No. 709 terminates the Project Participation Agreement and authorizes the County Manager, or designee, to execute the attached Termination Agreement, Exhibit "A," which outlines the process by which Pebble returns the two parcels of land to the County, and requires Pebble to redeem (pay off) the Industrial Revenue Bond.

Brief History of the Project with Pebble:

Pursuant the State's Local Economic Development Act, Sections 5-10-1 through 5-10-17 NMSA 1978 and County Ordinance No. 693 adopted by the Los Alamos County Council on June 11, 2019, the County and Pebble Labs USA Inc., a New Mexico Corporation ("PLUSA") entered into a Project Participation Agreement dated July 13, 2019 (the "PPA"), pursuant to which the County granted real property within the Entrada Business Park, specifically including Lot 6B-2 and a parking parcel on a portion of the lot known as "Lot 1-B-2 Sunrise Mesa Subdivision, Plat Book 186, Page 141 8/19/2019" (together the "LEDA Parcels"), the value of which was One Million Four Hundred Six Thousand Five Hundred Dollars (\$1,406,500).

Pursuant to the PPA, PLUSA was required to invest \$60,000,000 for a Biotech Campus Project for Qualified Expenditures over the ten-year term of the Agreement; create and maintain 125 Full-Time Equivalent Jobs based in Los Alamos County at an average salary of \$80,000 as identified in the Agreement; and promote Los Alamos County as a good and desirable place to live and work.

Pursuant to County Ordinance No. 694 adopted by the Los Alamos County Council on June 13, 2019 (the "IRB Ordinance"), the County issued its Taxable Industrial Revenue Bond (Pebble Labs USA Inc. Project), Series 2019 in a maximum principal amount of \$60,000,000 (the "IRB" or "Bond") for the financing of an industrial development project consisting of the construction and equipping of scientific laboratories and the acquisition of related land and infrastructure (such land, infrastructure and equipment being the "Project Property").

The Bond was issued in an initial principal amount of \$12,500,000 under the terms of an Indenture dated as of September 24, 2019 entered into by the County, PLUSA, Pebble Labs Acquisitions LLC ("PLA") and BOKF, NA, as Depository (the "Indenture").

As authorized by the IRB Ordinance, the County and PLUSA entered into a Lease Agreement dated as of September 24, 2019 (the "Lease Agreement") pursuant to which the County leased the Project Property to PLUSA for the term of the IRB.

On December 31, 2020, PLUSA and County executed an Assignment and Assumption of Project Participation Agreement, in which County acknowledged assumption of all rights, duties and obligations of the PPA, Indenture, and Lease Agreement by Pebble Labs Inc. ("Pebble") from PLUSA (the "Assignment").

Pebble's Request:

Pebble states that, to date, it has invested over \$17,000,000 in Los Alamos County, maintained some Los Alamos-based jobs at an average salary of \$80,000, promoted Los Alamos County as a good and desirable place to live and work, and is making every effort to stay in Los Alamos. Pebble has further acknowledged that it is behind on the number of jobs maintained and created over the past year, and states that it is unable to spend money on architectural plans, engineering, and permitting to permit construction of the Biotech Campus by September 2021, as required by Sections 3(b) and 4(a) respectively, of the PPA.

Pebble requests that the County agree to terminate the PPA. As part of the request, Pebble agrees to return the two parcels of land, LEDA Parcels, to the County, free and clear of any encumbrance.

Pebble has also notified the County of its intention to exclude the LEDA Parcels from the legal description of the Project Property, as authorized in Section 4.2 of the Lease Agreement, so as to enable Pebble to reconvey the LEDA Parcels to the County under Section 4(a) of the PPA.

Pebble has notified the County of its intention to deliver to the County a certificate from PLA stating that the Project is complete, as provided in Section 4.4 of the Lease Agreement, and that no funds remain on deposit in the Acquisition Account under Section 601 of the Indenture, and that PLA will deliver a certificate to the County Clerk to the effect that all amounts due pursuant to the Bond have been paid in full and that the Bond has been redeemed.

This Ordinance, and attached Termination Agreement provides an orderly path forward for both parties, and if approved, makes the County whole.

Alternatives

Council denies the recommendation and asks staff to return with alternative recommendations.

Fiscal and Staff Impact/Unplanned Item

There should be minimal staff impact and the County would be made whole.

Attachments

A - Incorporated County of Los Alamos Ordinance No. 709

B - Notice of Publication

Title

Incorporated County of Los Alamos Code Ordinance No. 02-317 An Ordinance Amending The Text Of Chapter 16, Article XIII And XIV, To Add A New Section 16-543 To Create A New Downtown Overlay Zone Referred To As The Downtown Pedestrian Retail Overlay Zone (“DT-PRO”)

Recommended Action

I move that Council adopt Incorporated County of Los Alamos Code Ordinance No. 02-317; and ask staff to assure that it is published in summary form.

County Manager's Recommendation

The County Manager recommends that Council adopt Incorporated County of Los Alamos Code Ordinance No.02-317

Board, Commission or Committee Recommendation

At its June 9, 2021 meeting, the Planning and Zoning Commission recommended that County Council approve Ordinance No. 02-317.

Body

The proposed text amendment and associated ordinance would create a new downtown retail overlay zone (retail overlay) within Los Alamos County (the County). The proposed new overlay district has been labeled by the application as the Downtown Pedestrian Retail Overlay Zone (DT-PRO). According to the text amendment application, the proposed code text amendment is intended “to create a new downtown overlay that promotes a walkable, vibrant downtown district that is attractive to new retail and restaurant opportunities which the community is seeking.”

Text Amendment Review Criteria

Sec. 16-158. - Amendment to text. During the course of the review of any request for amendment to the text of this chapter, including determination of uses and addition, deletion or change in the Use Index, the IDRC shall utilize the following criteria in formulating a recommendation to the planning and zoning commission; and the planning and zoning commission shall utilize the following criteria in making its recommendation to the county council. The county council shall utilize the following criteria in making its determination of approval or denial:

- 1.The request substantially conforms to the comprehensive plan and shall not be materially detrimental to the health, safety and general welfare of the county;
2. A request for amendment to the comprehensive plan shall, if necessary, be submitted concurrently with the request for amendment to the text of this chapter.
3. The proposed change will not result in land use inconsistent with the purpose of the district or incompatible with a use allowed in the district.
4. The proposed change will clarify existing language, remove redundant or inconsistent language or will simplify the understanding and implementation of the Code.

Alternatives

The County Council may choose to not approve this Ordinance.

Attachments

- A - Incorporated County of Los Alamos Code Ordinance No. 02-317
- B - Notice of Publication
- C - P & Z Staff Report
- D - P & Z Findings of Fact