Minutes

The City Council of the City of Leawood, Kansas, met for a Special Call at City Hall, 4800 Town Center Drive, at 6:35 P.M., on Monday, October 10, 2003. Mayor Peggy J. Dunn presided.

Councilmembers present: Scott Gulledge, Louis Rasmussen, Mike Gill, Shelby Story, Patrick L. Dunn, James E. Taylor, Sr., Jim Rawlings and Gary L. Bussing.

Councilmembers absent: None

Staff present:
Scott Lambers, City Administrator
Deb Harper, City Clerk
Kathy Rogers, Finance Director
Emily Gleasure, Deputy City Clerk
Diane Binckley, Dir., Planning & Development
Patty Bennett, City Attorney
Shannon Marcano, Asst. City Attorney

Others Present:
Bill Hess, Esq., Bryan Cave, Bond Counsel
Roger Edgar, George K. Baum, Financial Advisor
David Arteberry, George K. Baum, Financial Advisor

1. Discussion on establishing a Transportation Development District [TDD] policy for the City of Leawood

Mayor Dunn turned the meeting over to City Administrator Scott Lambers. Mr. Lambers stated that the purpose of the meeting was to start discussions to consider the establishment of a Transportation Development District [TDD] policy. He explained it was a relatively new financial mechanism available for development purposes of public improvements. Mr. Lambers indicated he had received a request for a TDD from a developer. He felt that if the Governing Body approved such a District, there would need to be policy issues in place prior to considering an application. Mr. Lambers stated Bill Hess, Bond Counsel, and financial advisors Roger Edgar and David Arteberry, with George K. Baum, were in attendance to provide a brief overview of the statute, and to answer any questions.

Mr. Lambers stated that should the Governing Body decide to proceed further on this proposal, he would develop a draft policy and set up a work session before the October 20, 2003 Governing Body Meeting to review it. The formal adoption of the policy would take place at the first or second Governing Body meeting in November.

Bill Hess gave the background of the TDD Act. The Act was created to provide a mechanism to permit municipalities to assist in the financing of infrastructure improvements. The State Legislature approved the Act in May 2002. The Attorney General has opined that the Act is constitutional regarding the creation of a District and permitting the District's excise tax provisions.

Mr. Hess said the Governing Body could create a Development District upon receipt of a petition requesting the same signed by the owners of all the properties in the District. Upon the receipt of the petition, the Governing Body would be required to hold a public hearing on the advisability of creating the District and the financing of any projects. Street projects could include bridges, roads, signalization, signage, parking lots, garages, etc. The total costs of the project would be paid from special assessments levied against property within the District that was benefited by the improvements. Alternatively, they could be paid by a pledge of Development District excise tax revenues or other funds that might be appropriated by the Governing Body. Municipalities could issue bonds that would be special obligations of the municipality payable solely and secured by a pledge of those sources of revenues as described. Bonds would not constitute general obligations of the city or be charged against its credit, and would be in addition to, and not subject to the debt limitation provisions of the Constitution. The City could impose a TDD excise tax on sales of tangible property within the District to an amount of 1%, in increments of $.10. The tax money would be used to pay off the bonds. The bonds must mature within 22 years. To impose the tax, the Governing Body would be required to approve a resolution stating its intention to do so and publish notice. Owners of 5% or more of the property within the District could petition to have an election. If there was no challenge, then the Governing Body would levy the tax.

226 Mr. Hess said that the Governing Body would provide for the payment of all or part of the project out of proceeds of special assessments levied and collected from Benefit District property in the same general manner as under K.S.A. § 12-6a01, the statutory provisions used to establish current Benefit Districts today. The same procedures would be followed except that no project costs could be apportioned to the City. No full faith and credit debt would be issued to finance projects under the TDD Act. The major difference in this Act was that if a property owner defaulted, the City would not pay that debt and then take a lien against the property.

Mr. Hess stated that within the state of Kansas, a TDD was set up in Manhattan for road and signalization improvements for a Wal-Mart store. He advised the best example of a TDD was the Country Club Plaza in Kansas City, Missouri, where a quarter-cent sales tax was imposed on retail sales on the Plaza. The bulk of the revenues had been used to construct or improve the parking lots in that area.

313 Councilmember Dunn asked what would happen if the revenue source was curtailed. Mr. Hess stated that if there were nothing else there, the bondholder would get nothing. Councilmember Dunn asked if the City was not behind the bonds, how would the bonds be rated and how would an interest rate be determined. Roger Edgar stated the interest rate would be higher. The City's credit was not leant to the issuance in any way, so the bonds would have to stand on the merits of the project itself or on the credit of the borrower [developer]. Councilmember Dunn confirmed with Mr. Hess that a TDD was defined in a similar way to a Special Benefit District.

355 Councilmember Taylor asked Mr. Hess how many Kansas cities had adopted this type of taxation [Benefit District]. Mr. Hess stated to his knowledge Manhattan was the only one. Kathy Rogers added that no city in Kansas had a written policy regarding TDD's at this time. Mr. Edgar stated this was new legislation in Kansas, and there had not been enough projects started for cities to develop policies.

Councilmember Taylor questioned whether the City could blend the TDD tax and a standard Benefit District tax if the standard Benefit District enhanced the TDD. He gave the example of a stormwater retention basin benefiting a retail district. David Arteberry stated that the types of projects allowed under a TDD would not allow for a City to use those monies for another type of project. Mr. Hess added the projects allowed would be those that one would see vehicles on, in or around. However, it was not to say a TDD could not be combined with a benefit district possibly under K.S.A. § 12-6a01.

480 Councilmember Gill confirmed with Mr. Hess that the 1% tax levied would be on sales of retail goods and rendering services, but not on such items as medical and legal services. Councilmember Gill questioned the Plaza shoppers' reaction to the tax and how Kansas City went about setting up the Plaza TDD. He stated regardless of the use, it was still a tax levied on the consumers and he wanted to have a good sense as to how Leawood residents would react to the tax increase. He stated that establishing a TDD would need to be put to a public vote before going ahead with it, as the citizens' input would be vitally important.

Councilmember Gill stated he was also interested in the developers' view on TDDs and how they impacted the projects. He said that if the credit-worthiness of the project as opposed to the full faith and credit of the City was an issue, he would be less inclined to spend the City's allowance of sales tax to provide an alternative funding vehicle, whereas with a Benefit District there was a significant interest rate differential. Councilmember Gill also questioned whether the City's credit rating would suffer should a developer default.

592 Mayor Dunn said she understood that a TDD would not affect the City's allowable sales tax cap. Councilmember Gill replied he felt that taxpayers were only going to pay so much, and he wanted to spend the sales tax allowance wisely.

Mayor Dunn complimented Mr. Lambers on his memo outlining the many parameters that would be looked into should the Council wish to establish a TDD policy. She indicated she was interested in the restrictions that would govern a tourism district, as well as the requirements of bonuses in a project that might be privileged to have a TDD benefit.

645 Councilmember Rasmussen clarified with Mr. Hess that the issuing agency of the bonds would be the City of Leawood. He then confirmed with Mr. Edgar that the collecting agency was the State of Kansas. Mr. Edgar stated that as with any outstanding bonds, the monies would be dispersed to the State Treasurer as the paying agency. Mr. Rasmussen questioned the cost to the City for a TDD. Mr. Hess stated he did not feel it would be any different than a Special Benefit District bond issue. Mr. Hess added that he would look into the possibility of placing administrative costs back into the Benefit District cost.

Councilmember Rasmussen asked if the payments to the bondholder were tax-exempt in the state of Kansas. Mr. Hess stated the answer was probably yes, but that there were some issues as to the tax-exempt status for Federal Income Tax purposes depending on how the Special Benefit District was structured. He commented that many of the same issues here were present in the Oklahoma bond issues in the 1960's and '70's when rents on developments were payments for the bonds and the industrial outfits went bankrupt. Mr. Edgar added the paying agent for the bond issue could be the State of Kansas, but would more likely be a private trust department of a commercial bank for private activity bonds.

796 Councilmember Bussing asked where the bonds would lie in priority in the event of default. Mr. Edgar stated if the bonds were secured solely by sales tax, then the bondholder could only look to the sales tax for reimbursement. If the sales taxes were insufficient, then there would be a partial fault on the bond. Councilmember Rasmussen restated Councilmember Bussing's question, asking that should the individual retail businesses somehow survive a developer's bankruptcy, how would that situation affect the payments on the bond notes. Mr. Hess replied that if a City was relying on the sales tax, that tax would continue to be collected by the State of Kansas to the extent that there would be sales.

857 Councilmember Bussing stated he would be interested in learning how the addition of a TDD would change a developer's perspective in a mixed-use zoned area. He also asked for a bottom-line reason as to why a city would want to utilize TDD's.

891 Councilmember Taylor stated he understood that should a developer become bankrupt, the sales tax would still be generated based on the retail sales, the monies would be sent to the State, and the bondholders would still receive their share. He also mentioned that a TDD and the tax it generated would only affect a certain area of a city [wherever the TDD was set up], and not the entire city.

928 Councilmember Gulledge asked what would happen if a developer defaulted before the retail businesses opened, and the City had no revenue to repay the bonds. Mr. Edgar stated there were always many risks, and the City needed to draft a policy to address these

`ypes of circumstances. Different results would happen depending on if the bonds were secured solely by sales tax, or with sales tax and assessments. Most investors would require that the unused portion of the bonds be used to pay off the remaining outstanding bonds.

1002 Councilmember Rawlings asked if there was a potential model of sales tax revenue to give the Council an idea of what would be needed. Mr. Lambers stated that the developer would be required to submit a pro forma. The City should also have an independent evaluation of the pro forma done, paid for by the applicant.

There being no further business, Mayor Dunn adjourned the meeting at 7:20 P.M.

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Emily Gleasure, Deputy City Clerk