Special Call Meeting

THE LEAWOOD CITY COUNCIL

May 10, 2004

Minutes

Audio Tape Nos. 629-30

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 6:00 P.M., on Monday, May 10, 2004. Mayor Peggy Dunn presided.

Councilmembers present: Scott E. Gulledge, Jim Rawlings, Mike Gill, Greg Peppes, Louis Rasmussen, Debra Filla, James E. Taylor, Sr.

Councilmembers absent: Gary L. Bussing.

Staff present: Scott Lambers, City Administrator
Deb Harper, City Clerk

Others present: Roger Edgar, George K. Baum & Company, Financial Advisor
Jeff Alpert, Park Place Development
Melanie Mann, Park Place Development

1. Discuss Transportation Development District [TDD] Policy

49 Scott Lambers gave a brief presentation, stating it was the desire of the Governing Body to discuss with the developers how they envisioned the structure of the TDD Policy, before finalizing the City's draft policy regarding the issuance of TDD bonds.

157 Jeff Alpert, developer, stated the TDD was a critical component to the financing of Park Place. He gave a brief overview of the project for the benefit of the new Councilmembers.

Councilmember Rasmussen asked why the TDD was critical to the project. Mr. Alpert replied it was critical to the parking structures. Each parking structure would hold 700 vehicles, and represented $18 million of the total project. By assessing the additional 1% tax on the retail, the project would have a revenue source unique to this project.

433 Gary Anderson, Gilmore and Bell, PC, 2405 Grand, underwriter's counsel, stated that since the TDD's have been made available in Kansas, only the City of Manhattan has issued a series of bonds for a TDD program. Currently, a number of cities are looking at the TDD, but no other bonds have been issued thus far. In Missouri, the TDD has been in existence for several years. The revenue derived from the TDD tax would be used to pay off the bonds; once the bonds are paid, the tax would cease to exist by statute.

600 Mr. Anderson stated the main concern most cities had was whether they had any liability on their General Fund to pay off the bonds. By statute in Kansas, the bonds were special limited obligations that were payable solely from the revenue stream that was pledged, which in Leawood's case would be the sales tax and the special assessment that was proposed. The investors would be interested in whether the construction financing was in place, in limiting and quantifying the construction risks to prevent any delays in construction, and in having a substantial amount of retail leases signed from credit-quality tenants, since the retail would be the only stream of revenue that would repay the bonds.

748 Jim Lahay, Stifel, Nicolaus & Co., Inc., St. Louis, investment banker, stated his firm viewed non-rated financing such as the TDD as needing a 100% track record by the developer. Financing through his firm would be designed to include protection against default. The bond financing proposed would begin when the retail portion of the development was completed, approximately in the fall of 2006. Mr. Lahay stated the financing would support about $11.1 million of the $18 million needed for the parking garage improvements. The balance of the cost would be borne by the developer. The bond financing would have a debt service reserve fund to protect the investors. The TDD law allowed a 22-year payback period on the bonds, but it was preferable to pay it back in a shorter time frame. For this project there would be two term bonds, one paying off in 15 years, the other in 22 years. Using the projections supplied by Mr. Anderson, the 15-year bonds should be paid off in 9 years, and the 22-year bonds in 15 years. Mr. Lahay spoke briefly on the types of clients they had that buy these bonds.

1275 Mr. Lahay stated he had spoken with Moody's, and that a TDD would have no adverse impact on Leawood's good credit rating. He spoke briefly on interest rates for the bonds, and projected revenues.

1440 Roger Edgar discussed with Mr. Lahay the bond policy as it related to how the bonds would be placed. Mr. Lahay noted the bonds would not be rated initially. Additionally, the bonds would be sold to appropriate investors, whether they were individuals, funds or institutions.

1730 Charlie Miller, Esq., Lewis, Rice and Fingersh, representing the developers, questioned whether a municipality had ever restricted to whom bonds for neighborhood improvements could be sold to, where there was no credit risk to the municipality. Mr. Lahay stated there had only been one TDD completed in Kansas, so there wasn't a good representation to draw examples from. Mr. Anderson stated many such projects were being done in Missouri, and while there was concern about whom bonds are sold to, the municipalities did not dictate it.

1845 Councilmember Gill questioned Mr. Miller about the possibility of a misstatement or omission in the offering document. Mr. Miller indicated that if there were to be a lawsuit, the defendants would be the developers, not the City. Councilmember Gill stated he had concerns with the projections, and the possibility of securities fraud. He was not comfortable selling the bonds to public investors.

1988 Councilmember Rasmussen confirmed with Mr. Alpert that the assessment would be imposed on the condominium buyers within their property tax, while office users would be assessed a fee based on square footage. Mr. Alpert stated the assessment would be used as a backup funding mechanism should the sales tax projection be wrong, and there would not be enough to amortize the debt. Councilmember Rasmussen stated should the bonds be sold with the backup assessment, every contract issued would need to give the express right to use the assessment for a revenue stream necessary for interest and debt, should the taxes not produce enough.

Councilmember Filla confirmed with Melanie Mann that the retailers that had been approached for this project were either new to the market or they had a location on the Plaza but not in Johnson County. Mr. Alpert added that the addition of new retailers to the area would help to increase sales in the area (119^{th} St. and Nall). Customers would have more reason to come to this location, than to driving to Oak Park Mall or the Plaza. Councilmember Filla confirmed with Mr. Lambers that Moody's indicated the City's bond ratings would not directly be impacted, but that Moody's would be taking into consideration the City's bond ratings when issuing these bonds. Councilmember Filla discussed the debt service reserve funding with Mr. Lahay.

2624 Councilmember Taylor expressed concern about the City's $12.5 million in debt that would be shown on Moody's report. He confirmed with Mr. Lambers that this debt would not use up any bonding capacity for Special Benefit Districts that the City may wish to undertake in the future. Mr. Lambers stated it was not a direct debt of the City's; however, the overall debt issuance would come under Moody's scrutiny.

Councilmember Taylor discussed the principle payments of the bonds with Mr. Lahay. Mr. Lahay stated on each bi-yearly payment date, principal would be redeemed. Interest would first be paid on the outstanding principal of the bonds, with whatever was remaining paid upon the principal. Councilmember Taylor confirmed with Mr. Lahay that the backup reserves for the $12.5 million would include $1.25 million in letters of credit, 1% of $80 million, the assessment of $135,000 in the first year, and capitalized interest of $115,000 on the first interest payment date.

2855 Councilmember Taylor questioned whether a marketing analysis had been done on what the impact of the development at 135^{th} and Lamar would have on Park Place. Mr. Alpert stated the 135^{th} Street development did not have the same kind of retail to use as a basis for comparison.

Councilmember Gill asked if there were any constraints binding the ability of the Governing Body to determine zoning or for the developers to fine-tune the development as it unfolded. Mr. Lahay stated there would be no constraints to either. By the wording of the bonds, it was an inherent risk that a purchaser would take, that further into the project it could change directions. Mr. Miller stated the City would have unfettered zoning discretion.

3325 Councilmember Gill asked Mr. Lambers to collect information on the issues of how a bankruptcy would affect Park Place project. Mr. Lahay stated if the development went bankrupt, the district would still stand and function. Additionally, if the land was developed as something other than revenue-producing retail, the special assessment would continue regardless of the entity because the assessment would run with the land. Bankruptcy would not discharge the special assessment. The sales tax would also continue until the bonds were paid off. If there were no sales, the assessment district would be there as a backup.

3510 Councilmember Rasmussen confirmed that in regard to the height of the hotel, the City would have no adverse consequences from the bondholders if it exercised its rights in dictating the height.

3582 Councilmember Gill confirmed with Mr. Lahay that the soft costs of the project would be approximately $500,000.00, with net proceeds of $11.1 million going into project costs. There would be a debt service reserve of $6.91 million. Councilmember Gill asked for confirmation that 4% was a reasonable percentage for soft costs. He also asked that parameters be put into place for sales tax levies, using competitive environments for guidelines.

3960 Mayor Dunn and Mr. Lambers discussed the history and intent of the TDD policy with Councilmember Filla. Mr. Lambers advised that the three major concerns in the policy were 1) the placement of the bonds; 2) the special assessment component; and 3) the revenue forecast and projections of the sales tax. He advised that the Governing Body needed to look past Park Place with the TDD, to requests that would come later from future developers in Leawood.

4387 Mr. Miller advised that each TDD project had its own specific details, and that it was hard to structure a uniform policy to set them up. He suggested to the Governing Body that they first become comfortable with the Park Place proposal, with a TDD policy approved at a later date. Mayor Dunn discussed the proposed Overland Park TDD with Mr. Lahay. Mr. Lambers stated the ideal situation would be that the revenue generation would exist to meet the debt service requirements.

630 Mr. Lambers stated that if the bonds were issued at the time that the revenue stream was in place, the Governing Body would feel more comfortable allowing less sophisticated buyers to purchase the bonds. Should the bonds be issued prior to the revenue stream being in place, the types of bond purchasers would be more restricted.

134 Councilmember Rawlings asked what the risk was of the bonds not being sold. Mr. Lahay responded that as an underwriting firm, that if his firm said they would sell a certain amount of bonds, they put their capital on the risk for the balance should they not be able to sell all the bonds. Councilmember Rawlings discussed the revenue projections of the hotel with Mr. Lahay and Mr. Alpert.

241 Mr. Miller addressed the Overland Park TDD project. He stated that the bonds for the project would not be issued until the project was up and running. Mr. Miller also advised that he hoped the Governing Body would do its own due diligence, and not proceed as Overland Park had just because that was the way it had been done previously. Mr. Lambers pointed out that the Overland Park project was all retail whereas Park Place was only partially retail.

587 Mr. Lambers and Ms. Mann discussed the necessity to determine if by waiting for the project to generate a revenue stream before issuing the bonds, the Governing Body would be more comfortable in placing the bonds with a wider range of investors.

There being no further business, the meeting was adjourned at 8:30 P.M.

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Emily Gleasure, Recording Deputy City Clerk