Special Call Meeting

THE LEAWOOD CITY COUNCIL

May 17, 2004

Minutes

Audio Tape Nos. 631

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 17, 2004. Mayor Peggy Dunn presided.

Councilmembers present: Scott E. Gulledge, Jim Rawlings, Mike Gill, Gregory Peppes, Louis Rasmussen, Gary L. Bussing, Debra Filla and James E. Taylor, Sr.

Councilmembers absent: **None.**

Staff present:	Scott Lambers, City Administrator Deb Harper, City Clerk Emily Gleasure, Deputy City Clerk
Others present:	Roger Edgar, George K. Baum & Company, Financial Advisor David Arteberry, George K. Baum & Company, Financial Advisor Jim Lahay, Stifel, Nicolaus & Co., Inc., Investment Banker Charlie Miller, Esq., Lewis, Rice and Fingersh, Attorney for Developers Jeff Alpert, Park Place Development Melanie Mann, Park Place Development

1. Discuss Transportation Development District [TDD] Policy

75 Jeff Alpert, Park Place Development, stated it was becoming more important to move ahead with the Park Place project, as many tenants for Park Place were now being courted by the Carmack project at 135th and Metcalf in Overland Park. He was concerned they might move to Overland Park instead of staying in Leawood. He advised that Jim Lahay, Stifel, Nicolaus & Co., Inc., St. Louis, would go over the new Park Place Development proposal.

308 Mr. Lahay spoke on the revised proposal, stating there were five main points: 1) the developer would initially finance the transportation improvements without City notes or bonds; 2) bond financing would occur after 120,000 sq. feet of the retail portion of the development was complete and open for business, and after the first three months of sales taxes generated from the TDD had been received and deposited into the proper accounts; 3) there would be an independent party who would make projections concerning revenues the development would generate, with actual retailers and sales expectations becoming part of the offering document; 4) bonds would be sold to appropriate customers of Stifel, Nicolaus, with a portion of the bonds being purchased by institutions; and 5) City bonds would only be issued at what the TDD projected revenue could support, with proper debt service coverage.

677 Mr. Lambers questioned imposing a tax on an assessment that was not in place. He stated that in Kansas, improvements needed to be in place first. Assessments could then be placed on the revenue stream that was generated.

885 Councilmember Rasmussen stated he assumed the developer would have construction financing, and in that financing agreement, there would be a time period stated as to when the bank would be reimbursed. Additionally, he understood there to be a back-up plan in place to assess the land should the sales taxes be insufficient. Mr. Lahay affirmed this. He stated the assessment would be on the residential portion of the project. Roger Edgar, George K. Baum & Company, asked if the financial plan was plotted out far enough to be able to describe how the relationship between assessments and sales tax proceeds would be characterized. Mr. Lahay responded a reasonable assessment would be calculated from retail sales that had a proven track record. He added some details were yet to be determined.

Councilmember Taylor and Scott Lambers noted it would be sufficient to use a combination of both actual and projected revenues to calculate the revenues for debt service payments if 50% of the project's generating retail development was utilized.

1140 Councilmember Taylor and Melanie Mann discussed the parking garage structures. Ms. Mann noted that the Park Place project was not viable without the TDD in place.

Mr. Edgar stated some collection activity would be better than placing the financing upfront. Mayor Dunn confirmed with Mr. Edgar that he was comfortable with a minimum of three months collection on 50% of the retail. Mr. Edgar stated the market would determine if three months would be enough to find investors and how much could be borrowed.

1314 Councilmember Peppes suggested putting an assessment clause in the retailers' leases to be able to collect funds per square footage should the sales tax prove not to be sufficient to reach the minimum at the time the bonds need to be issued. Charlie Miller, Esq., Lewis, Rice and Fingersh, responded that it was not currently planned to levy special assessments on the retailers until the bonds were issued. The leases would state that retailers would be subject to assessments. All of this information would be disclosed upfront so that there would be no surprises.

Councilmember Gill stated he liked the overall concept of Park Place and the direction it was going. He stated the TDD policy must make it clear that a TDD was a privilege and not a right, and was to be reserved for spectacular developments. Councilmember Gill advised he remained concerned about the potential civil liability associated with a failed offering. He thought it was important to have a guidepost rule on the tax to be imposed. He felt it was important for clarity in the policy concerning the special assessment on real estate that would be passed on to the tenants. The plan financing should articulate the strategy for using special assessments.

1610 Mr. Miller, in reference to insurance, stated it would be helpful to go over the existing City insurance policy with Staff, as it was possible the necessary liability coverage was already in place. Councilmember Gill asked that the liability extend to individual members as well as the City, advising that civil liability attached to individuals.

Mr. Lahay stated that assessments from a timing standpoint had interest payments due. He said it was important to maintain flexibility to insure that whatever was finalized worked for the project and provided sufficient time to make timely payments on the bonds. Councilmember Gill asked how the assessment would be prorated. Mr. Lahay responded that the assessment would be based on approved square footage. Mr. Miller added the assessment would be on a square footage of improvement basis. Initially, it would be based on a formula that allocated it to the improvements that were there and the rest of the land. He advised the formula would need to be based not from the square footage of land but to the improvements as they were done.

1860 Mayor Dunn questioned the expectation of the principal redemption. She confirmed with Mr. Edgar that the Governing Body had never allowed balloon payments. Mr. Lahay stated it was confusing because it was a term bond, with the only scheduled principal payment occurring at the end of the bond term. The expectation was that the bonds would be paid off much quicker than their stated terms. Redemptions (principal reductions) would occur within the first year. Ms. Mann stated it was important that the whole project succeed for the TDD to be successful. She added that in reference to the 1% sales tax, research had shown that most people did not know they were paying additional taxes in certain areas. Those that did were happy to be paying it in lieu of having to go a further distance to shop.

2045 Councilmember Rasmussen stated he felt a development should have a clear understanding as to when the Leawood Governing Body would authorize financing under the TDD proposal. He felt 50% was reasonable. Financing should be based on sales tax and acknowledged in the offering. The fundamental source of the funds would be sales tax, with assessments used only as a backup, and applicable only to improvements and the land. Mr. Edgar stated investors would analyze the strongest portion of the security first, which would be the assessments, and consider them to be the first line of repayment. He suggested stating it was the *intent* of the project for the sales tax to be fully sufficient; however, investors would still reason that they could foreclose on the assessment, but not on the sales tax.

2271 Councilmember Bussing stated he was not comfortable with the pledge of the revenue stream or with the proposed projection of the three-month sales revenue. He stated he questioned the appetite for tax by consumers and retailers. He added that he would need to be convinced as to why the City would want to allow a TDD, transferring the risk from the development team to someone else (the City and the bondholders). Ms. Mann advised that structured parking in this project promoted the pedestrian-friendly atmosphere. She stated each structured parking space cost $12,000.00 compared to $1500.00 per surface space. Ms. Mann said the TDD would allow for a generation of revenue that was not available for the project unless sales tax was used as a financing tool. Without a development tool like the TDD, the project would turn into a mass of asphalt. Councilmember Bussing replied that he understood the costs as they related to structured parking and the value placed on a limited commodity of developable land in Leawood. He stated he was unconvinced that there were no other financing alternatives available to superior developers such as the Park Place developers.

2500 Councilmember Rawlings stated he was surprised that the Governing Body voted for this project and then were faced with the $11 million issue. He stated he echoed Councilmember Bussing's views on looking at other financing alternatives. He also questioned as to whom the "independent qualified third party" would be. He asked what would happen if revenue projections did not pan out as expected. Mr. Lahay stated the sizing of the bonding would be dependant upon what the independent party did and what the collections were. Councilmember Rawlings questioned the risks that would be presented to the bondholders. Mr. Lahay replied there would be a section in the offering statement entitled "Risk to Bondholders" that would inform bondholders of risk possibilities. Mr. Miller added there would be no risk to the City, other than the remote possibility that Councilmember Gill had raised about a civil suit over a securities law violation.

2700 Councilmember Rawlings questioned if there would be any control over who would be able to use the parking garages. He pointed out that AMC customers would use the garages, but AMC would not be assessed. Mr. Alpert stated they would encourage interaction. The parking garages would be available for office users during the peak business hours during the day, and during evening and weekend hours they would be available for the peak hours of theater usage. Councilmember Rawlings confirmed with Mr. Lambers that pedestrian crosswalks and access to the garages was to be installed, however it had yet to be determined if this access would be at street level or above the ground.

2830 Councilmember Taylor confirmed with Mr. Lambers that it would be best to have the property tax special assessment in place first. Money that came in from the sales tax revenue would then be available to back the assessment. Should more revenue be generated than was needed, it would be used to pay off the principal. Ms. Mann stated if there were a 100% assessment, they would not be able to sell the hotel or the residential areas.

Mr. Edgar asked that the boundaries of the TDD and the assessments be clarified. He stated State law stated no one but a benefited property owner could be assessed. If there were parking garages constructed for retail and office users, he did not think it was possible to include the residential in the assessment, as they were not sales tax generators. Mr. Miller advised the current plan was to put the entire parcel into the TDD, and look at it as a unified parking plan. Mr. Edgar confirmed, in regard to the developer obtaining interim construction financing and then issuing the bonds upon completion of a certain portion of the development plan, the garage construction would be done during the interim construction plan, and would be in place before the generated revenue would commence.

3060 Councilmember Filla confirmed with Mr. Lambers what could be financed under a TDD. Mr. Miller added there was a limited scope of improvements that could be financed under a TDD, but it was basically any transportation-related improvement.

Councilmember Gill asked if there would be dedicated parking in the parking garages. Mr. Alpert replied the lowest three levels were intended for use by retail customers, with bridges linking the business floors to parking levels specifically for office users.

3250 In closing, Mr. Lambers stated Ms. Mann and Mr. Alpert would be closing on the property next month, and they needed a sense of the Governing Body's willingness to proceed. He advised the developers that the Governing Body could issue a Resolution that would be similar to a Notice of Intent. Mr. Lambers said the Resolution would generate an understanding between both parties dealing with the creation of the district, the size of the district, the sales tax, property tax, special assessment component, and other details. The City would need to have conditions in place before the Governing Body would consider issuing bonds under this plan, and that it would be at the sole discretion of the Governing Body to decided if they wanted to issue bonds. Mr. Lambers stated he felt it was important for the district to be created as soon as possible if they were going to proceed because it was under single ownership. By creating the district it was not implied the Governing Body would issue the debt; that would be a separate decision. He said he could have the Resolution prepared within a week for distribution to the Governing Body and the developers. A decision could be made at that time if another work session was needed before the next Governing Body meeting June 7th. If not, action could be taken at that evening's Governing Body meeting.

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

Emily Gleasure, Recording Deputy City Clerk