

Minutes

Audio Tape No. 651

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 6:30 P.M., on Monday, October 3, 2005. Mayor Peggy Dunn presided.

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

Councilmembers absent: None.

Staff present: Scott Lambers, City Administrator
Patty Bennett, City Attorney
Joe Johnson, Public Works Director
Jeff Cantrell, Neighborhood Serv. Admin.
Deb Harper, City Clerk
Christy Wise, Deputy City Clerk

Others present: Bill Hess, Bond Counsel, Bryan Cave
Roger Edgar, Financial Advisor, George K. Baum & Company
Larry Winn, representative of the applicant

1. Opening Remarks

Mayor Dunn welcomed Councilmembers and Staff to the Special Work Session. Introductions were made by those present.

Councilmember Taylor requested to make the following statement due to his involvement in the development and ownership of Villagio:

“The Villagio development will apply for separate Transportation Development District [TDD] financing and will not be involved in the 135th Street area common solicitation.”

Councilmember Taylor clarified for Councilmember Rasmussen that Villagio is willing to participate in undergrounding of power lines, however will petition for separate TDD financing through the City. Coordinated engineering efforts will be made.

Mayor Dunn confirmed with Councilmember Taylor that he does not intend to recuse from the present general discussion of the entire 135th Street Corridor. City Attorney Patty Bennett affirmed no direct statutory conflict of interest as Councilmember Taylor will not be involved with this district.

Councilmember Rawlings asked Councilmember Taylor to explain the reason behind removing Villagio from the 135th Street TDD concept. Councilmember Taylor responded that a separate application had been planned prior to the coalition formation. He stated support for the joint project, however time constraints have prompted individual filing for Villagio as the requirement of 100% property owner participation may cause a delay in the Governing Body's decision to approve the TDD.

2. Discuss request for establishment of Transportation Development District [TDD] along the south side of 135th Street from Roe Avenue to State Line Road for the construction of a 3rd land on 135th Street and the relocation and undergrounding of KCPL power lines

City Administrator Scott Lambers reviewed that the request was brought forward by Larry Winn, representative of the property owners. The objective of the Work Session is to allow a presentation by Mr. Winn as the subject of providing improvement financing for land that does not have preliminary or final plan approval pending represents a significant step in an unknown direction. If there is a Governing Body consensus to consider the request, a formal petition will be submitted.

Mr. Lambers verified for Councilmember Peppes that if 100% property owner participation is not obtained for the joint application, there will ultimately be TDD financing requests from each project. This will create a series of TDD bonds assessed against each project as opposed to only one bond issue. The improvements are not eligible for Special Benefit District [SBD] financing as utility lines will be placed underground on private easements.

Councilmember Peppes posed the scenario of undeveloped property owners who may not be interested in participation at this point. Mr. Lambers discussed the fact that TDDs are unlike SBDs in that the application does not have to be tied to a current project, allowing the inclusion of undeveloped property. Mr. Lambers stated there are both private and public advantages to the request. If the request goes forward, it will probably be a one-time experience for the City. However, if the request is denied, TDD financing applications will proceed on an individual basis as projects come forward.

Regarding Councilmember Taylor's statement, Councilmember Peppes verified with Mr. Lambers that the Villagio development will apply for TDD financing independently and is eliminated from the current discussion.

Mr. Winn began his presentation. He stated that developers along this area of 135th Street have two common requirements, to bury the power lines and install a third lane on the south side of 135th Street. With agreement of the competitive developers, it was conceived that a possible scale of economy could be associated with the requirement costs if done as a whole. He reported that Public Works Director Joe Johnson has obtained cost estimates from Kansas City Power & Light Company [KCPL] for the scope of the project.

Mr. Winn stated the proposal is to compile property from Roe Avenue to State Line into one district. As timing issues cannot be sequenced to include Villagio, the district will begin immediately east of this development. He advised that all property owners have been consulted and are supportive of the concept.

The estimated cost is \$4.5-million dollars with contingency fees. Mr. Winn reported that contacts have been made regarding privately placing the bonds and there is a high likelihood that a source has been found to absorb the risks. Interest rates will be negotiated with the buyer. The bonds will not be federally exempt from taxation but will be state exempt.

Councilmember Gullede arrived at 6:50 P.M.

Councilmember Bussing confirmed with Mr. Winn that the financing mechanism for payoff of the bonds is assessments against the property. Mr. Winn explained that the assessments will act as a first lien on all of the property. He elaborated that each owners' pro rata share will be determined by the front footage along 135th Street, however the property will be assessed on a per square footage basis. The assessments are estimated to be 48-cents per square foot. He stated that bond holders would be very secure as this is some of the most valuable property in Johnson County.

Councilmember Gill voiced his support of the proposal subject to ensuring protection for the City. He confirmed with Mr. Winn that if a property defaults, tax foreclosure can occur on that particular parcel. Councilmember Gill asked what costs the City would incur and what would provide protection against a bond holder claim. Mr. Winn stated that the City would finance the construction with temporary notes. The purchaser will buy the temporary notes and then take out his own notes by issuance of long-term bonds. Councilmember Gill confirmed with Mr. Winn that neither City funds nor credit will be used for financing and the two year temporary notes will be sold privately.

Bill Hess, Bond Counsel for the City, added that costs will be handled as in other benefit districts. They are assessed against the districts and spread amongst the property owners.

Mr. Winn reasoned that it would be more practical to disrupt the area with construction of the required improvements on a one-time basis rather than having a series of separate projects.

Councilmember Bussing verified with Mr. Winn that this particular TDD issuance is solely for widening 135th Street and burying the power lines. There will be no carryover into other infrastructures or other projects.

Councilmember Peppes and Mr. Winn discussed the process of creating the TDD. If Council gives the go-ahead, a petition will be submitted and reviewed by Staff. The public hearing process will be waived with 100% petition participation. The district can then be created by resolution and ordinance followed by design work and bidding.

Councilmember Filla asked how burying the power lines as a TDD and financing the street widening as an SBD contrasted to doing both improvements as a TDD. Mr. Lambers stated the benefit of the latter would be to have only one bond issue rather than two with different requirements. As the street widening is eligible for a TDD, it makes sense to consolidate the improvements. In addition, the TDD will not count against the City's direct debt. This TDD will not have a sales tax component.

Mr. Winn stated that the sales tax option was not considered as it will never be generated by some of the projects along the district such as a church and several residential properties. The ad valorem levy is more feasible.

Mayor Dunn requested an explanation of direct versus overlapping debt. Roger Edgar, financial advisor to the City, stated that rating agencies look at both of these metrics when measuring debt burden. Direct debt is the amount of debt issued by the City of which taxpayers at large are responsible for repayment. This includes general obligation debt, public building commission, and any debt generated by other traditional city improvements. Rating agencies focus most on the direct debt. Overlapping debt, or indirect debt, includes taxing jurisdictions also responsible by citizens such as county taxes, school taxes, and community college taxes. This debt is taken into account but does not drive rating decisions as directly as the direct debt. Mr. Edgar stated that rating agencies treat TDDs as indirect debt.

Councilmember Rasmussen voiced favor for the TDD but relayed some concerns. He stated that developers are being burdened by the requirement of private placement which is of no interest to the taxpayers. In addition, the service reliability along 135th Street will be adversely affected if construction is piecemealed. He suggested restricting Villagio, or any recalcitrant developer, from using TDD bonds given that having an increased number of terminal poles will decrease system reliability.

Mr. Winn stated there is a high likelihood of having the TDD as a single project; however, if the lines are put in on an individual basis, coordinated timing will avoid numerous terminal poles.

Doug Patterson, representative of Villagio, informed that having a sales tax component for parcel owners who have retail volume in addition to the property assessment would retire bonds faster. Mayor Dunn advised that the sales tax topic is not part of the current TDD discussion.

Councilmember Rasmussen asked how the bonds will be marketed. Mr. Edgar speculated that bonds will be sold as a single series. If the sales tax factor is added, the property owner will have an option to credit the assessment with the proceeds or use the sales tax as an additional source of revenue to repay the loan.

Mr. Patterson clarified that Villagio did not want the sales tax component as an alternative to an assessment but wished to have both. Mayor Dunn reminded that Villagio is not to be discussed this evening. Mr. Patterson asked if the sales tax component issue for retail development is a policy to be determined by the Governing Body.

Councilmember Gill stated that the TDD proposal is straightforward and makes sense. Doing the improvements as a unit is logical and will benefit everyone involved. He referenced another project with a difficult sales tax component associated with TDD financing which had a special set of circumstances as it was unique property. He would not be in favor of voting for a blank check sales tax for undeveloped and unplanned land.

Mr. Winn proposed giving individual property owners with an established stream of sales tax the option of converting after three years into the TDD. Mayor Dunn stated that future TDDs based on sales tax will be determined on a case-by-case basis. She expressed not wanting to see increases in sales taxes unless there is a very valid reason.

Councilmember Rasmussen, Councilmember Bussing, Mr. Lambers, and Mr. Edgar discussed the recommendation of requiring developers to privately place the utility lines. Mr. Lambers explained that this eliminates the argument from the investor that they were not aware of the risks when purchasing the bonds. It will take a "sophisticated buyer" to secure the bonds. Councilmember Bussing stated it would be very difficult to indemnify the issue. Mr. Edgar added that an official statement regarding the security is not required by the City with private placement. The purchaser is responsible for their own due diligence in knowing all of the facts.

Mayor Dunn noted that precedent for private placement had been set with the Park Place development. Mr. Winn confirmed for Mr. Edgar that the private placement issue is not a burden based on the character of potential buyers.

Councilmember Filla asked why developers would want to convert from the ad valorem assessment against the property to the sales tax method of payment. Mr. Winn informed that the contemplation of converting would probably only appeal to large retail corporations rather than small business owners who do not have an established generation of sales.

Councilmember Filla confirmed with Councilmember Rasmussen that his suggestion of providing incentive for developers to enlist in the joint TDD brings Villagio back into the project discussion. Mr. Winn suggested delaying a decision regarding Villagio as he felt confident that the development would join the effort upon submittal of the 100% signed petition.

Mr. Patterson verified for Councilmember Rawlings that timing of the petition submittal will dictate whether Villagio participates in the TDD application. Mr. Winn stated that Villagio's involvement, if their timing needs can be accommodated, would greatly benefit the economy scale of the project.

Mayor Dunn confirmed that the Governing Body is in favor of proceeding with the TDD request process. The meeting was adjourned at 7:26 P.M.

Christy Wise, Recording Deputy City Clerk