

Minutes

Audio Tape No. 683

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, August 20, 2007. Mayor Peggy Dunn presided.

Councilmembers present: Lou Rasmussen, Debra Filla, Jim Rawlings, Gary Bussing, Gregory Peppes, James Azeltine, and Mike Gill.

Mayor/Councilmembers absent: Scott Gullledge.

Staff present: Scott Lambers, City Administrator
Patty Bennett, City Attorney
Franki Shearer, Assistant City Attorney
Kathy Rogers, Finance Director
Joe Johnson, Public Works Director
Deb Harper, City Clerk
Christy Wise, Deputy City Clerk

Others present: Dennis Mitchell, Piper Jaffray & Company
Larry Winn, Polsinelli, Shalton, et. al.
Catherine Logan, Lathrop & Gage
Joe Dougan, Kansas City Power & Light
Melanie Mann, Park Place Developers
Jeff Alpert, Park Place Developers
Charles Miller, Lewis, Rice & Fingersh
Stu Sharp, trustee of the Sharp Trust
Bart Lowen, citizen

1. Opening Remarks

Mayor Dunn called the Work Session to order at 6:10 P.M. Introductions were made by those present.

City Administrator Scott Lambers stated the intent of the Work Session is to review the results of a past session regarding the possibility of creating a series of Transportation Development Districts [TDDs] for the purpose of installing underground power lines along 135th Street, which is a requirement for projects developed in this area. The addition of a third traffic lane will also be necessary but cannot take place until the undergrounding occurs. The street improvements will be performed through Special Benefit District [SBD] financing.

At the last Work Session, the Governing Body expressed desire to have 100% of the power lines buried with possible support for inclusion of the street project within the TDD. Agreement among the various property owners will be needed in order to proceed. Petitions for the TDDs have been filed with the City but have not gone forward to the Governing Body at this point in time.

2. Discuss Transportation Development District [TDD] for 135th Street; undergrounding of electrical utilities and widening of the south side of 135th Street

Larry Winn with Polsinelli, Shalton, et. al., provided an update on the pending TDDs, the inception of which began exactly two years ago today. Issues that have arisen over this course of time have included the tax status of the bonds and the nature of the easements in which the lines will be buried. The current petition on file is the third that has been submitted due to the occurrence of land sales, which will continue to become more frequent as transactions occur within the developments. Mr. Winn stated appreciation for the attendance of Joe Dougan with Kansas City Power & Light [KCPL] as it is his understanding that the company has a need to expedite the project in order to provide additional electrical power in the area. Another wire will be strung across the existing pole if undergrounding does not take place at this time and will cause increased relocation costs in the future.

Councilmember Azeltine arrived at 6:15 P.M.

Mr. Winn informed that although the statute for TDDs has been in effect for three years, there have been very few bond issuances sold. There is a misperceived concern by municipalities in terms of putting their reputations at risk as cities will have no credit responsibility for the notes, which are acknowledged as junk bonds. The City Manager of Lenexa recently expressed concern about the negative implications that publicly placed bonds could have upon the individual buyer.

Dennis Mitchell, Managing Director of Piper Jaffray, explained the general market for TDD bonds. His company does a lot of TDD, Tax Incremental Financing [TIF] and Community Improvement District [CID] bond issues in Kansas. These types of unrated, high yield, high risk bonds are entirely sold to financial institutions as bond funds. All of the major brokerage houses have numerous types of funds for investment opportunity, which are classified as either taxable or tax-exempt. In the tax-exempt spectrum, money can be invested from AAA rated funds to the unrated, high yield funds. These bonds have never been sold to individuals. Piper Jaffray performed a \$7 million TDD bond placement for Olathe last December for the Bass Pro Shop project at slightly over a 5% interest rate. A more recent TIF bond issue was placed for Lenexa at an interest rate of 6%.

Mr. Winn pointed out that if interest rates continue to creep upward, it will be a disincentive for the landowner to use the TDD as a financing tool as it may be more advantageous to add these costs into their construction loan.

There is a gap in the currently filed TDD petitions as Ed Kennamore, owner of the Tuscany Reserve property who also has frontage along 135th Street, has not signed the agreement at this point. Mr. Kennamore has also entered into a private agreement with the Lord of Life Church to pay the TDD costs on their behalf. Mr. Winn stated that although he and Mr. Lambers have encouraged the landowners to participate in the TDD, he has not received confirmation that they are willing to do so. He also disclosed that the issue puts him in an awkward position as Mr. Kennamore is the stepfather of his legal partner, Chase Simmons. Mr. Simmons has also lobbied endlessly for Mr. Kennamore's involvement.

Joe Dougan with KCPL indicated the consequences that a break in the underground power lines will cause. There are two existing overhead lines along 135th Street with more needed due to the growing development. The ideal solution is to underground conduits in a 6-way duct. Historically, each piece of property that has been developed along the corridor has placed their facilities underground with a piecemeal effect of the facilities that has translated into higher costs. The continual disruption of the underground facilities has also created an inability for KCPL to provide the needed power upgrade to the area.

Mr. Winn stated another issue pertains to the unwritten City policy that the TDD bonds must be privately placed. He distinguished the difference between bonds that are underwritten by potential future sales tax revenue and the proposed bonds that will have an ad valorem levy placed against the real property. Privately placing the bonds will increase the interest rate.

Mr. Mitchell stated restrictions placed upon the bonds will create an artificial limitation on liquidity, or the buyers' ability to resale the bonds. The lack of liquidity also impacts the interest rate.

Mr. Winn stated that a decision needs to be made to either move forward with the project or determine that each developer should take individual responsibility for the power lines and third lane at the time of development, which could take anywhere from 2-10 years. As the retail market along 135th Street is not particularly good point at this time, the latter choice may create a hodge-podge of facilities on each property.

Catherine Logan with Lathrop & Gage informed Mayor Dunn that \$2.350 million is the total cost for both TDD petitions.

Mr. Lambers reviewed that the Governing Body directive given at the last Work Session on the topic was that 100% property owner participation should be obtained in accordance with the TDD statute. At this point, one property owner representing two separate tracts of land is resisting agreement with the TDD proposal. The fundamental question is whether or not the Governing Body is willing to consider creating two separate TDDs, one to the east and one to the west of the nonparticipating property, in order to place 90% of the power lines underground. It is his opinion that installing the majority of the lines underground at this time will provide a City-wide benefit. The nonparticipating landowner will be responsible for their individual undergrounding costs at the time of development.

If it is decided to proceed with the TDDs, Mr. Lambers agreed with Mr. Winn's suggestion of asking the property owners to reconsider their decision as the financing vehicle may not be available to them in the future. As the City does not own the power lines, SBD financing cannot be used and a TDD will not be created for this small portion of property given the limited associated costs. Mr. Lambers relayed that he explained the negatives of not participating to Mr. Kennamore. He is still waiting for a response at this time.

Mr. Winn noted that the Lord of Life site is required to comply with undergrounding of facilities by year 2009. The nonparticipating properties are approximately 15% of the entire district.

Mr. Dougan informed Councilmember Rasmussen that the needed undergrounding of the 6-way conduit begins on the east side of State Line Road and extends past the city limits of Leawood. Additional overhead circuits will need to be installed within the nonparticipating areas.

Mr. Winn stated that a final decision is needed from the Kennamore-Lord of Life properties by the end of the month. It was determined from prior discussions that if property owners choose not to sign the petition, the TDD financing mechanism would not be available in the future.

Mr. Winn informed that he has expressed the advantages of participation to the Kennamore's. Mr. Mitchell explained for Councilmember Azeltine that private placement of the bonds does not preclude the offer of saving 25-50 basis points. The buyers will be the same regardless of the restrictions. A Development Agreement has not been created for the TDDs. If the Kennamore's decide to join the project, the \$2.350 million cost will increase to the original petition amount of roughly \$3.5 million. The total cost for both the TDDs and SBD is estimated at \$7 million.

Mr. Winn advised Councilmember Azeltine that the ordinance approving the Lord of Life Church stipulates a 2009 deadline for placing electrical facilities underground. Mr. Dougan stated it will take approximately one year to complete the project from beginning to end. It is anticipated to begin construction in the Spring of 2008. Mr. Lambers informed that the consequence of not meeting the 2009 deadline is revocation of the church's Certificate of Occupancy.

Councilmember Rasmussen suggested placing language in the resolution specifying that the nonparticipating property not be allowed a TDD by a future City Council. If a decision is made this evening, Mr. Winn stated that continued encouragement efforts will be extended to the Kennamore's prior to the construction process.

Mayor Dunn noted that unlike the SBD, the TDD does not allow forced participation as willing agreement by 100% of the property owners is required. As installation of the third lane will be financed through an SBD, Mr. Lambers informed Councilmember Rawlings that the entire street project will be completed with or without agreement from all landowners.

Mr. Dougan confirmed for Mayor Dunn that the total amount of additional power lines needed cannot be placed overhead. The 15% section of the district will not have the same electrical capacity as those who participate in the TDD. The nonparticipating property will incur increased costs to separately underground the lines, which must be done prior to the street project. Mr. Lambers predicted that there will most likely be two SBD petitions for the third lane installment.

Mr. Winn informed that the power line project cannot be engineered until elevations for the third lane are established.

Mr. Lambers advised Councilmember Gill that the Kennamore's must honor the Lord of Life Church's obligation to underground the facilities in 2009. Mr. Winn explained that a certain portion of land was deeded by the church to the Kennamore's in order to enhance their development opportunities. In return, the Kennamore's agreed to fund the power line obligation. Councilmember Gill requested that Mr. Lambers speak with one of the leaders of the church to ensure that they are aware of the situation.

All Councilmembers in attendance stated support for the bifurcated TDD petitions.

Mr. Lambers clarified the consequences that nonparticipation by the Kennamore's will have upon the road widening project for Councilmember Filla.

Public Works Director Joe Johnson confirmed for Councilmember Rasmussen that the north side of 135th Street will not be involved in the SBD.

Councilmember Gill stated he is not inclined to the suggestion of adding language in order to withhold action of future Governing Body's. As it would be in the best interest of the Lord of Life Church to participate in the improvements, he reiterated that they should be made fully aware of the issue. Mr. Winn reported that the volunteer contact person for the church is David Lots of Continental Engineering.

Mayor Dunn noted that language within the Debt Policy of the Capital Improvement Program [CIP] states that TDDs should be financed "only through direct private placement arranged by developers, whereby the lender will satisfy itself with respect to all credit issues."

Councilmember Azeltine commented that an exception made in this case will set an unwanted precedent. Mayor Dunn confirmed consensus for private placement of the bonds through additional agreements voiced by Councilmembers Gill, Rasmussen, Rawlings, and Peppes.

Mr. Mitchell informed Councilmember Filla that public placement would consist of the same offering document used for private placement. However, private placement would not include public distribution of the information. Mayor Dunn also noted that the Debt Policy further states, "the lender will be required to execute and deliver at closing, an investment letter in form and substance satisfactory to the City and its Bond Counsel."

Councilmember Azeltine stated it is his fear that public placement would create more liability for the City if problems were to arise with the bonds.

Finance Director Kathy Rogers confirmed for Mr. Winn that the City's Debt Policy has been reviewed in light of the state statute amendment regarding TDDs.

As the City would be issuer of the bonds, Councilmember Gill stated the federal securities law of liability would apply. He strongly prefers to mitigate any risks by restricting the class of buyers to those who are not likely to file suit.

Jeff Alpert of Park Place Developers arrived at 7:00 P.M.

Mr. Winn disagreed that the City would be at risk for repayment of a defaulted bond. Mayor Dunn again cited from the Debt Policy, "the City shall not be committed for the repayment of any portion of the debt whatsoever." Councilmember Rasmussen remarked that this statement should be included in the offering documents.

Councilmember Filla stated she is neutral on the private versus public placement issue.

Councilmember Bussing also stated preference with private placement.

Referring to a situation in Manhattan, Kansas, Councilmember Azeltine restated that it is in the best interest of the City to uphold the private placement policy.

Mr. Winn stated he will report the City's decision to the landowners.

Mr. Lambers stated he will communicate with the Kennamore's and the Lord of Life Church and allow them ample opportunity to speak to their investors. The goal will be to place the TDD petitions on the October 1st Governing Body agenda. The outstanding property owners will be given approximately 45 days to make a decision.

Discussion took place regarding the timeline of beginning the TDD process.

There being no further business, the Work Session adjourned at 7:10 P.M.

Christy Wise, Recording Deputy City Clerk