

Minutes

Audio Tape No. 684

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 5:45 P.M., on Tuesday, September 4, 2007. Councilmember Gary Bussing led the Work Session as Presiding Officer.

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

Mayor/Councilmembers absent: Mayor Dunn and Scott Gullledge.

Staff present: Patty Bennett, City Attorney
Kathy Rogers, Finance Director
Joe Johnson, Public Works Director
Deb Harper, City Clerk
Christy Wise, Deputy City Clerk

Others present: Melanie Mann, Park Place Developers
Jeff Alpert, Park Place Developers
Charles Miller, Lewis, Rice & Fingersh
Jim Lahay, Stifel, Nicolaus & Co., Inc.
Roger Edgar, George K. Baum & Co.
Sheri Baker-Rickman, reporter for *The Johnson County Sun*
Mike Ekey, reporter for *The Kansas City Star*

1. Opening Remarks

Mr. Bussing called the Work Session to order at 6:00 P.M. He reminded that Mayor Dunn is recusing from discussions related to the topic of tonight's Work Session due to the appearance of a conflict of interest. Introductions were made by those present.

Mr. Bussing stated the objective of the meeting is to reach a consensus regarding the different funding sources for the Transportation Development Districts [TDDs] in order to provide direction to the City Staff and those involved with Park Place Developers in proceeding with a Development Agreement. He thanked Jeff Alpert and Melanie Mann of Park Place Developers for providing the Sources and Uses document that was distributed as packet information, which clarifies previous confusion associated with the project. Finance Director Kathy Rogers, City Attorney Patty Bennett, and Roger Edgar, Financial Advisor to the City, will answer pertinent questions as City Administrator Scott Lambers is away on family business.

Discussion this evening should be focused upon the relevant issues of reaching consensus on the two funding sources. The specific details of the Development Agreement can be decided upon at a future date. Referring to the Sources and Uses document, Mr. Bussing relayed that the developers have agreed to exclude the presented net figures from discussion and focus only upon the gross amounts. The two items that need to be agreed upon this evening include: 1) Application of proceeds from the bed tax. 2) How to deal with the increased costs that Park Place has identified.

2. Discuss Transportation Development District [TDD] for Park Place Improvement District

Ms. Mann thanked the Governing Body for once again allowing opportunity to review the TDD proposals. She then provided a PowerPoint presentation demonstrating the location of garages A, B, and the Element parking structure on the overall development site plan. Currently under construction is Garage A, which has been increased from five to six levels in order to accommodate parking for the Aloft Hotel. The developer for this hotel would like to begin construction this month with an opening planned for November 2008. Erection of the Element Hotel and garage is planned to begin 3-4 months following that of the Aloft Hotel with a grand opening slated for the first quarter of 2009. The parking structure for the Element Hotel is integrated into the building.

Ms. Mann reviewed that the existing Development Agreement for garages A and B is for \$12.5 million and is to be funded by TDD sales tax and assessments. Due to cost adjustments for actual construction costs, the new proposal is to increase this amount by \$2.376 million with the addition of partial funding from the bed tax to support the sixth level of garage A. The requested amendment will bring the total amount of funding by the City to \$14.8 million.

The bed tax will be utilized to fund one level of garage A at \$2.1 million and the Element garage at \$4.2 million. Ms. Mann noted that Park Place Developers are contributing \$12.9 million towards the parking structures in addition to the initial investment of \$165 million for phases 1 and 2 of the overall development.

Councilmember Filla recalled Staff recommendations to maintain the same financing mechanism for the totality of garage A versus incorporating the bed tax to fund the added level. Ms. Bennett stated although this was the original recommendation from Mr. Lambers, he is not against combining the two funding sources for garage A.

Councilmember Gill inquired about the expected timeline to pay off the debt. Jim Lahay with Stifel, Nicolaus & Co., Inc., financial advisor to Park Place Developers, reviewed that the bond structure will carry a 22-year state of maturity; however, based upon projections, the debt will be retired in 14-15 years. Mr. Bussing noted that the indentures for all of the bonds will be written as "costs not to exceed." The City will be paying for actual construction costs and/or financing to issue the bonds, which will be certified through a third party.

Roger Edgar of George K. Baum & Co., financial advisor for the City, informed Councilmember Gill that the TDDs are contemplated to be two separate securities that are not cross-collateralized. Once the total amount of \$6.328 million to be funded by the bed tax is raised, 100% of the proceeds will then revert solely to the City. Charles Miller, legal advisor to Park Place Developers, pointed out that Mr. Lambers previously suggested the possibility of allocating excess bed tax revenue to the TDD funded by sales tax and assessments. Mr. Edgar stated this could be developed if so desired by the Governing Body.

Jeff Alpert of Park Place Developers clarified that the proposal to add \$2.376 million to the original Development Agreement does not represent cost overruns for the garage currently under construction but is the anticipated additional costs for garage B based upon actuals for garage A. Councilmember Azeltine noted that a footnote on the provided documentation states the figure is a result of “extraordinary material increases in steel and concrete between 2005 and 2007 due to demands in China and the rebuilding from Katrina.” Mr. Alpert agreed that these factors have increased the costs of garage A with inflation also anticipated for garage B. He noted that Park Place Developers have invested \$10 million in the structures as well.

To Councilmember Peppes’ question, Ms. Mann explained the cost discrepancies between the added level of garage A, to serve the Aloft Hotel, and the garage for the Element Hotel. There are 100 parking spaces per level in garage A with 158 rooms planned for the hotel. Although the extra level is necessary, the total infrastructure costs were able to be reduced as shared office/hotel parking will be allowed.

The exact number of rooms for the Element Hotel is in flux with estimates between 150 and 170. The submitted cost proposal was based upon a 175-room facility. Ms. Mann stated costs for the garage will decrease if fewer rooms are built.

Councilmember Rasmussen voiced agreement for amending the original Development Agreement as requested by the developer and for the proposed usage of the bed tax revenue.

Councilmember Azeltine stated he is comfortable with the application of the bed tax; however, he does not want to amend the Development Agreement as the City should not be responsible for incremental construction costs. Agreeing to fund the increased costs would set a bad precedent for other developers.

Councilmember Filla remarked that she is appreciative that the funding mechanism is available to aid developers with parking structures as surface parking is not an efficient use when trying to create an urban space.

Councilmember Bussing noted that it is important to consider the significant changes in the scope of the project subsequent to the original 2005 Development Agreement. The first agreement was for a different project than what is being proposed today as the former design contained no hotels at all.

Mr. Alpert added that the original TDD proposal for sales tax and assessments was the first ever submitted to the City of Leawood. The request was made at an earlier stage in the project than it otherwise might have been if precedent had already been set. At the time of the proposal, Park Place Developers had no assurance that the Governing Body would be supportive of the TDD concept or if they would be able to take advantage of the opportunity. Under a different set of circumstances, the design process would have been further along with better cost structures available.

Councilmember Azeltine thanked Mr. Alpert for leading the way for other developers by being the first to request a TDD. However, the bottom line is that the additional \$2.376 is needed due to an increase in costs that have occurred over the last 2½ years. Ms. Mann stated this comment is an oversimplification as the original figures were submitted upon completion of the schematic designs and were based upon quotes from contractors for good quality structured parking. Thus, it is not possible to pinpoint exactly how much the increase is attributable to higher material costs at today's prices.

In terms of leveling the playing field and to Councilmember Filla's comment, Ms. Mann informed that even with TDD funding, structured parking costs \$9,000 per space as compared to surface parking at \$1,500 per space.

Councilmember Peppes stated support for the requested cost increase and for the application of the bed tax.

Councilmember Gill also expressed favor with amending the Development Agreement as the project presented today merits more consideration than it did in year's past. From a realistic point of view, he does not want the project to be under funded.

Councilmember Azeltine said it is not the City's job to fund a private development project. The metric of structured parking being more expensive than surface parking was known two years ago. He restated that the City should not be in the practice of taking on a developer's market risk.

Ms. Mann offered that the two hotels will also generate more sales tax revenue than was calculated with the original proposal, which will aid in offsetting the increased costs.

Councilmember Rawlings stated that a very unique development has evolved for this property, one of which the City of Leawood will probably never see again. He voiced support for increasing the availability of funds and for the bed tax proposal.

Councilmember Filla also agreed with the cost increase as well as the allocation of the bed tax proceeds.

Councilmember Rasmussen restated his support for the two issues.

Including his own viewpoint, Councilmember Bussing noted unanimous consensus on the application of the bed tax for the additional floor of garage A and the Element parking structure. He reminded that funding will not exceed the actual construction costs. Regarding the \$2.376 cost enhancement, he is not in favor of increasing the City's percentage share above what was originally agreed upon. Although there is a majority consensus favoring the increase, he is concerned that continued upward creeps will create additional expenses for the City as the project progresses.

Ms. Mann informed Councilmember Azeltine that design development for Phase II of the project is currently in progress. The goal is to begin construction in the Spring of 2008 with an opening in the first or second quarter of 2009. She also stated that she could not answer the hypothetical question of whether an increase in the Development Agreement would again be requested if construction costs were to increase another 20% over the next year. Mr. Alpert noted that the current figures are predicated upon the estimate of revenue generation supported by the project. As there are no other anticipated sources of revenue beyond what is currently in place, there would be no basis to ask for additional funding.

Councilmember Azeltine reiterated his concerns related to subsidizing incremental cost increases for TDD agreements. Mr. Miller stated it is important to consider the fact that the nature of TDD funding is not truly a subsidy from a governmental body as payments will be generated from the property by either assessments or additional sales tax. The assessment districts are separate from a tax levied by the City that would otherwise be available for municipal use.

Councilmember Filla discerned that the City is allowing the funding mechanism with no taxpayer dollars being spent to retire the bonds. Noting that Manhattan, Kansas has decided to cover TDD costs through reserves, Councilmember Azeltine cautioned that allowing the increase is an extremely dangerous precedent that future governing bodies will have to manage.

Unlike the TDD, Councilmember Gill pointed out that Special Benefit District [SBD] financing, which is typically used for street improvements, requires the City's full credit liability while secured by the involved real estate. Public Works Director Joe Johnson verified that if original SBD costs, which are set by resolution, are exceeded, the developer must request approval of an amendment.

Mr. Edgar advised that the next step will be for the City Attorney and representatives of Park Place to draft agreements that accomplish the basic financing plan for official consideration by the Governing Body. Three documents will be required: an amendment to the existing Development Agreement adjusting the maximum not to exceed amount from \$12.5 million to \$14.9 million; a second Development Agreement to address the bed tax; and an ordinance establishing the bed tax. Ms. Bennett added that petitions to amend the existing TDD and to create a new district will also be required. She anticipated that documents will be ready for presentation by the October 1st Governing Body meeting. Ms. Mann voiced agreement with this timeframe.

Councilmember Gill asked if there will be a mechanism established allowing the City to review the actual costs associated with the projects. Ms. Bennett informed that the existing agreement envisions reimbursing Park Place Developers for the amount already spent on construction, which will be processed through a third party trustee. Mr. Edgar suggested that the Public Works Department could also examine the construction costs prior to the trustee.

As it is anticipated that the interest costs of the bonds will be paid off early, Mr. Bussing informed that it has also been indicated that the City will only be obligated to the actual interest costs rather than the submitted projections. These figures will also be certified by the trustee.

In answer to a question posed by Councilmember Azeltine, Ms. Rogers stated that funds to reimburse the developer for costs already incurred will come from the first bond issuance. She also mentioned that from a computational standpoint, the City's overall existing TDD debt from the Church of the Resurrection and the upcoming Villaggio Development is off of the books and in an agency account. As the Park Place TDD will be utilizing the bed tax, however, the debt will be presented in the City's financial statement differently than the aforementioned projects. If a certain TDD project does not perform as expected and the City decides to become involved, as was done in Manhattan, Kansas, all TDD debt will become a part of the books and will readjust various figures within the actual statement. The trustee must follow proper procedures regarding default. She confirmed for Councilmember Gill that intervention by the City would be a purely voluntary act.

Mr. Edgar commented that insisting upon private placement is a very important factor in the overall policy.

Councilmember Azeltine stated he is confident that the current Governing Body would not put the City at risk with such action, yet he is concerned with unpredictable decisions made by future elected officials. Ms. Rogers stated she could not speculate on whether it is logical to conclude that future developers utilizing a TDD will request amendments relative to their incremental cost increases.

Ms. Mann expressed gratitude for the participation and partnership efforts made by the City in working through this difficult process as the Park Place Development would not be possible without the TDD and bed tax funding. Mr. Alpert echoed her comment.

There being no further business, the Work Session adjourned at 7:00 P.M.

Christy Wise, Recording Deputy City Clerk