Minutes

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, July 7, 2008. Mayor Peggy Dunn presided.

Councilmembers present: Gary Bussing, Jim Rawlings, James Azeltine, Julie Cain, and Dr. Gregory Peppes.

Councilmembers absent: Councilmembers Mike Gill, Lou Rasmussen and Debra Filla

Staff present:

Scott Lambers, City Administrator	Kathy Rogers, Finance Director
Deb Mansfield, City Clerk	Joe Johnson, Public Works Director
Pam Gregory, Deputy City Clerk	Patty Bennett, City Attorney

Others present:
Julie Jurden, Vice Pres. Development, RED DEVELOPMENT, LLC
Bart Lowen, Development Mgr., RED DEVELOPMENT, LLC
James Lahay, Stifel Nicolaus & Company
Charles Miller, Esq., Lewis Rice Fingersh, [representing One Nineteen Development]

1. Opening Remarks

Scott Lambers made an opening statement regarding the applicant's request for Transportation Development District [TDD] financing. RED has responded to the previous memo that outlined the City's position on some outstanding issues. The remaining issues that need to be finalized are the backstop of the special property assessments. After reviewing the minutes from the previous meeting, it was determined that it was indeed at the 25% level instead of 50%. The second item is clarifying what exact costs were going to be included in the TDD. The applicant has included $375,000 of additional costs for utilities. The breakdown is as follows:

1. $1,300,000 off-site construction costs
2. $1,375,000 grading
3. $775,000 retaining walls
4. $375,000 utilities

The City has done these types of costs for TDD in previous developments; the underground power lines along Roe for TDD Cornerstone and along the entire 135th Street Corridor. The other is a small $50,000 storm water improvement of taking the storm water to the back of the building and traverse behind the retaining wall to tie into the City's storm water system at Tomahawk Creek Parkway.

The previous total gross proceeds were $4,400,000. The current estimated gross proceeds are $4,950,000. Mr. Lambers distributed information to the Council that reflects this project's impact on the City's bond indebtedness. The document reflects the City would still be within the 20-25 % guideline. The only thing coming forward in the near future is the SBD and TDD's for 135th Street. Those will not start until 2012, at the earliest, and will probably go beyond that. This chart reflects that by approving this project, the City will be able to stay within the guidelines.

Councilmember Azeltine asked Scott to review the 25% backstop. Scott stated, at a minimum, 25% of the bond payments will be made towards paying special assessments. Scott stated he would recommend that in all the TDD projects, there be some type of special assessment component just to balance it out. The assessment will only come into play if the sales tax isn't sufficient; however, he felt the sales tax would be sufficient. There is a reserve fund [10%] that can be tied into it as well.

Mr. Miller wanted to clarify the backstop concept. As he understood it, there is going to be a 25% assessment. The sales tax is going to be enough. The assessments have to be imposed. The assessment would only come into play if the sales tax is not sufficient to pay the bonds. If the sales tax is deficient, the assessment pays the debt.

Councilmember Azeltine asked what happens to the special assessment money if the sales tax money pays off the debt. Mr. Lambers stated that has yet to be determined.

Mr. Miller stated the net effect of the transactions is for the special assessment to cover short falls. He wanted to make sure that the assumption was not that every year the assessments were going to be used towards the bonds in addition to the sales tax, if the sales tax was sufficient. Mr. Lambers stated those details have not been determined.

Councilmember Azeltine stated that was an important detail for him. Mr. Lambers stated that this amounted to excess revenue. It will have to be determined what will be done with the excess revenue; if it will go back or go towards paying the outstanding bonds, or a combination of both. Its original intent is to pay the shortfall with a reserve fund; it would be like an overpayment of tax.

Mr. Lambers confirmed with Councilmember Bussing that the only future TDD requests was approximately $5.7 Million for 135th Street, and didn't anticipate any future TDD along 143rd Street.

Councilmember Rawlings and Councilmember Peppes confirmed with Scott that the off-site construction costs, grading, and retaining wall items would be included in the TDD; however, the land costs and lighting would not be included.

Mayor Dunn asked about the bond pay-off schedule. Mr. Lahay stated the excess TDD sales tax would be applied to the outstanding bond. Based upon the projections provided by RED, the bonds would be paid off by 2014 or 2015 by using the excess TDD revenue, and paying off the bonds. The issuance of the bonds would occur in March 2009 and the bonds would be paid off in 2014 or 2015. The assessment would not be used to pay off the bonds, because the sales tax revenue would be sufficient. The assessment would be there for a backstop in case of insufficient revenue being collected.

Ms. Jurden stated the projections are conservative and hopefully the debt will be retired quickly. It was never their intention to use the assessment other than a backstop. Mayor Dunn asked if the assessment monies could be refunded back to the tenants. Mr. Miller stated originally they would just have an assessment in place if they needed it. Unfortunately, under Kansas law, the assessment can't be structured in that manner, to where it's just sitting there; it has to be levied each year. The structuring process still has to be worked out and needs to be discussed with the bond lawyers.

Mr. Lambers stated it was his understanding that anything beyond the 25% would be returned. If they had 35%; use 25% to pay off the bonds, but the additional 10% could be given back to the people.

Mr. Lahey stated even if RED is 60% off their projection, the bonds will still be paid off in 22 years, without using the assessments.

Scott Lambers suggested a Development Agreement be executed between the parties with specific terms for the first seven [7] years; and then the terms can be renegotiated based upon the outstanding issues at that time. If the debt has been paid off in that 7 year time frame, there would be no need to go any further. He wanted to ensure that the reserve fund is not used.

Mr. Miller stated they were never proposing to tap into the reserve fund.

Councilmember Peppes confirmed with the applicant, there will be an additional 1 % sales tax to customers, but also an assessment to the tenants on an annual basis. The assessment will be assessed against the land owner. The sales tax would be paid by the customer.

The retail customer only pays the additional 1% sales tax. The special assessment will be paid by the land owner, which could be passed onto the tenant as part of their overhead; however, it could also passed onto the customer by price increases.

Councilmember Bussing voiced his concerns of not wanting to make occupancy on 119th Street so burdensome or expensive that it would not be possible to get tenants lined up. Ms. Jurden stated they do not place any caps in the leases as far as taxes, except for Crate & Barrel. She doesn't believe this information would come as a shock to the tenants. Mr. Miller stated the assessment will always be the responsibility of the landowner. It will be the landowner's decision as to whether that cost is passed onto the tenant. Ms. Jurden stated with the sales tax, it may become an issue in that respect. Mr. Miller stated their first inclination was not to have the assessments, but understood why it is necessary from a bonding standpoint. Councilmember Bussing confirmed with RED that it is their intention to keep managing the property.

Councilmember Azeltine confirmed that 75% of principal and interest will be paid from sales tax and 25% will be paid from special assessment. The special assessment backstop is to reduce the volatility and is in favor of the diversified funding sources. The sales tax rate at the shopping center will be 8.925 %

Councilmember Rawlings asked if the applicant could profile the prospective customer. Ms. Jurden identified a shopper as a 'cross shopper.' One whom would maybe shop at Target but also at Nordstrom's would shop at SoHo. For a small shopping center it offers a broad appeal, including a broad age group perspective as well. Shoppers will be able to shop at SoHo for a fashion item, and then go to Crate & Barrel to select some Christmas items. The restaurant selections will add another dimension also. It will be appealing to a lot of different groups. The Apple Store will probably not pull customers from the Plaza store, unless they live here or shop here. The sales per square foot are remarkable at that store, and they don't see any reason for it to be less here.

Mayor Dunn stated it was important to her to see what they have done in the past and expressed her appreciation for their attention to the Council's request and concerns for this project.

Mr. Lambers stated he did talk with Councilmember Mike Gill today since he was unable to attend tonight's meeting, and he did agree to the request for additional funding and supported the project.

Mr. Lambers stated if the Councilmembers were in favor of this project, it needed to be formally approved at a future Governing Body meeting.

The Mayor asked the members that were present for their position on this proposal. All members stated they were in favor of the request and the project. Councilmember Bussing stated he still had concerns regarding the special assessment impact upon the retailers. Additionally, his threshold target for sales tax is 10%; the City still has just fewer than 2% to play with, and that continues to concern him; however, he felt this is a great project.

Ms. Jurden stated one store is currently open right now. Another is set to open July 18th. The grand opening is scheduled for September 5 and 6th.

Scott Lambers confirmed with Mayor Dunn that the 1% additional sales tax would be eliminated once the bonds were paid off.

Mayor Dunn stated the sales tax percentage and special assessment amounts would be equal to that of Park Place; however, the sales tax percentage would be higher than Town Center. Mr. Miller stated research had indicated this is not an issue with retailers at this point.

Councilmember Rawlings asked what the assessment cost factor break down would be per square foot; for instance on a $200.00 IPod purchase with the 1% sales tax. Ms. Jurden stated the average square footage is between 5,000 and 12,000 for a store. Mr. Lahay stated the assessment would be approximately $95,000 among all the property owners, and the assessment cost would equate to approximately $1.00 per square foot per year.

There being no further business, the meeting was adjourned at 7:12 P.M.

Pam Gregory, Recording Deputy City Clerk