

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, May 5, 2008. Mayor Peggy Dunn presided.

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

Councilmembers absent: - None

Staff present: Scott Lambers, City Administrator Kathy Rogers, Finance Director
Deb Harper, 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 some opening statements regarding the applicant's request for Transportation Development District [TDD] financing. Their TDD request is for sales tax only. The meeting tonight is for a presentation only. There will be a subsequent Work Session scheduled in June or July regarding this request.

Ms. Jurden gave the presentation for the applicant. One Nineteen is under construction and soon to be opened located on the southeast corner of 119th and Roe which has 13.5 acres of underdeveloped on corner. The leveling of the site and the demolition of the Conoco station has made the development of this site quite challenging. Crate and Barrel, has set the tone for One Nineteen and has been opened since the fall of 2006. Ms. Jurden briefly named some possible tenants, including, West Elm, Soho119, Mitzy London's, Natural Body Spa and Shoppe, Z Gallerie, North, Solstice, Sullivan's Steakhouse, and Dean and Deluca. Dean & Deluca new area will be 15,000 square foot.

Councilmember Peppes arrived at 6:12 P.M.

Mr. Lowen discussed the anticipated scheduling process, including the construction and leasing schedule.

Building A will be complete in June 2008. Over 50% of the shopping center will be open and operating in August, 2008.

August through January – this is the 3-month sales history time frame of over 50%

February, 2009 will be the time frame for the sales history review

The bonds should be issued in March, 2009 at which time 80% of shopping center will be open and operating.

The overall project cost is \$66.5 Million. \$6.5 Million of that cost meets the Kansas statute requirements for TDD eligibility. \$ 1.3 Million is off-site construction costs; \$5.4 Million is on-site construction costs. Off-site construction costs include: grading, paving, traffic signals, improvements to right-of-way (including turn lanes), utilities, storm sewer work and relocation of utility lines. On-site construction costs include: grading, retaining walls, the building up of retaining walls, parking lot, with landscaping, importing of equipment, utilities under parking lots, parking lot poles, burying of some power lines, curb & gutters, irrigation, and dirt work.

Councilmember Bussing arrived at 6:23 P.M.

Councilmember Peppes asked Scott what project costs would be eligible for TDD. Scott stated the statutes dictate what costs are eligible. The City Council stated earlier that for TDD projects, it had to be an extraordinary project with extraordinary costs. They have defined the extraordinary costs of burying of power lines, structured parking, and off-site public improvements. The applicant is asking for TDD due to the extensive grading and retaining wall costs.

Ms. Jurden stated some of these costs could increase.

Councilmember Azeltine asked if there are TDD costs included in this request that have not been considered in previous approved TDD requests. Mr. Lambers confirmed that onsite utilities and paving of the parking lot are costs that have not been previously considered. Landscaping has been included in some SBDs.

Councilmember Rasmussen asked if TDD had any landscaping. Mr. Miller stated Park Place was all structured parking, which probably included some landscaping, but not sure if it was in the SBD or the TDD. Landscaping is a normal cost associated with streets, medians, etc.

Councilmember Azeltine asked if the landscaping was directly incidental to transportation and utility work. Mr. Lowen stated the actual landscaping costs could be 3 times the current number.

Mr. Miller has forwarded very detailed numbers and descriptions of the work to Mr. Hess that was transportation related.

The total bond amount would be approximately \$8.5 Million; net proceeds available for TDD costs would be \$7.3 Million. The projected closing date for the sale of bonds is March, 2009. The bonds will be privately placed and sold to institutional investors including, without limitation, insurance companies, funds and state or federally chartered financial institutions, and/or the developer and/or entities related to or affiliated with the developer.

Councilmember Gill confirmed with the applicant that this will be totally funded by sales tax only; the rate would be 1%; and the Crate & Barrel store would be included. The applicant advised they would consider an alternate plan such as special assessments, if another funding source was needed. The applicant stated their primary goal would be to work with the TDD through sales tax. Passing on higher real estate taxes to tenants would not be inviting in this challenging market.

Councilmember Rasmussen expressed his concern about the competitiveness on this project as compared to Park Place; and believes there should be some uniformity as it relates to the sales tax rate. Mr. Miller states this does not seem to be an issue. The clients and the retailers they deal with currently are not concerned with the higher sales tax rate for this type of shopping.

Councilmember Rawlings confirmed that 80% of the center will be open and operating in March, 2009. He stated the 3-month sales tax projections seem rather small and asked how accurate the new tenants were going to be on their projections. Ms. Jurden stated their projected figures were very conservative with their estimates. The 3-month history is based upon sales figures from Crate & Barrel and also the anticipated Apple store. They feel they have a lot of cushion built in. Sales generally spike at the initial opening, however, these types of stores generally stay steady over time.

Councilmember Filla confirmed with Scott Lambers that there was no initial request for SBD, just a TDD. Councilmember Filla asked what the applicant will do if they don't have the TDD above the SBD equivalent of \$1.3 Million. The applicant stated the TDD is a critical aspect of the financing. They would have to reconsider alternate options.

Councilmember Azeltine confirmed with Scott Lambers that either ad valorem tax or sales taxes are eligible to be used for TDD. Originally, staff suggested both for Park Place, because the retail tax was going to be such a small component of the overall project, and was concerned of the negative impact upon the project if there was a serious economic downturn. This project is different, in that this entire project is retail.

Mr. Lahey confirmed with Scott Lambers that the debt payment is not spread equally over the 22 year period. As the sales are increased, the bonds will be retired as quickly as possible. Councilmember Azeltine stated it is amortized, but as you get more sales tax, it is paid off quicker. The only thing that is due is interest. Scott stated he understood that it was structured to have level payments over 22 years, and look at 25% backstop.

Councilmember Azeltine stated he agrees with Councilmember Gill to look at a property tax as a back stop, if the reserves reached a certain level; if 100% sales tax is going to be used.

Mayor Dunn stated she remembers when residential was a component to this development which included sub-surface parking and she feels it will be difficult to look at approving this request that includes the paving, even with great tenants and the uniqueness of this project. This will open the door for future applicants to request TDD financing for a lot of different projects costs that the Governing Body didn't initially intend on including. Another work session will be needed to discuss these items in more detail.

Councilmember Bussing confirmed with the applicant that over 50% of the tenants have committed based upon the TDD. Ms. Jurden stated the lease terms are relatively broad as it relates to the estimated tax numbers. Mr. Bussing is concerned with the 'sticker shock' of the sales tax. He feels it is a significant step. This is a great project with potential great tenants, however does not feel this is a unique enough project to qualify for approval for TDD financing. The City Council previously agreed that projects needs to have a 'wow' factor in order for them to be eligible for TDD financing, and he is not currently seeing the 'wow' factor in this project. There is a threshold of what the consumer will pay for sales tax and is concerned that this increase in the sales tax rate will take up some of the City's sales tax capacity. The City needs to maintain as much flexibility as possibility in terms of its ability to keep its revenue sources.

Ms. Jurden asked if the wow factor was applicable to the nature of the development or the tenants. Councilmember Bussing stated it was difficult to define, but would know it when he saw it. The structured parking component would be considered part of the 'wow' factor. Ms. Jurden stated the wow factor for the applicant was the location for many reasons. A great deal of fill dirt was brought in, the removal of the Conoco station, and the retaining walls are all part of it. Park Place is a great mixed use development and feels One Nineteen is strong and mighty too, and will have the same sales tax rate as Park Place.

Councilmember Filla asked about the timing of the development. The Council was asked early on in the development for Park Place. She asked what the Council would have opined had they been asked about refinancing the development and rebuilding of this corner and the retaining wall and the dirt. At what point was the collective decision made that it was very important to change the contour of this corner. This is a fundamental concern.

Ms. Jurden stated Crate & Barrel always anticipated having a shopping center there and not being a stand alone store. A large amount of dirt was required to be brought in because there was a large hole on the property. She reiterated that the funds will be from sales tax revenue, and the applicant is not asking for the City to underwrite any costs. She feels the City will be happy with the extra sales tax revenue the shopping center will generate.

Mayor Dunn stated the public prefers a sales tax over a property tax. Also, people coming from all over will be coming to shop, not just Leawood residents.

Scott Lambers stated this issue will need to be discussed further at another Work Session and asked for consensus from the Council.

Councilmember Gill stated he would like to see updated information on the tenants and updated information on site improvements and costs.

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

Pam Gregory, Recording Deputy City Clerk