Special Call Meeting

THE LEAWOOD CITY COUNCIL

August 17, 2009

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, August 17, 2009. Mayor Peggy Dunn presided.

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

Councilmembers absent: Mike Gill

Staff present:
Scott Lambers, City Administrator
Patty Bennett, City Attorney
Richard Coleman, Comm. Dev. Dir.
Deb Harper, City Clerk
Joe Johnson, PW Director
Kathy Rogers, Finance Director
Pam Gregory, Deputy City Clerk

Others Present:
Roger Edgar, George K. Baum & Co.
David Arteberry, George K. Baum & Co.
Charles Renner, Husch Blackwell Sanders, LLP

Transportation Development District for Village of Seville [133rd & State Line]

Mayor Dunn called the work session to order at 6:15 P.M. Introductions were made by those present.

Opening Remarks

City Administrator Scott Lambers stated this meeting is in regard to the City's current policy on Transportation Development District [TDD] financing and a specific request as it relates to that policy. The State Legislature amended the TDD statute to allow PAYG financing for TDD's in order to not have the requirement of issuing bonds. He recommended that this be the preferred method for financing TDD projects. This current request is for the Village of Seville PAYG TDD financing in the amount of $600,000.

Roger Edgar, George K. Baum & Co., stated the City first considered TDD financing for projects that had unique characteristics. The City's policies were constructed to parallel the state statute that existed at that time. It only allowed TDD revenues to be used for the re-payment of bonds; therefore, the Attorney General concluded that PAYG financing wasn't allowed for TDD projects. They had discussed ways to insulate the City from liability for issuance of special obligation bonds.

Even though the City isn't directly responsible for the payment of the bonds, they would still be involved in discussion of the credit standards for which a bond should be done. The credit markets have become increasingly difficult for projects with unrated bonds. There is no difficulty selling the highly rated general obligation bonds. The City should decide under what circumstances they are willing to do PAYG TDD financing. Mr. Edgar liked the change because it still allows a project to occur and a benefit to be extended and it eliminates the City's roll of being a financial institution.

Mayor Dunn asked if the change in state law still required that 100% of the tenants agree to the TDD. Mr. Edgar thought it was only a majority of the property owners that were required to agree (51%).

Mr. Edgar clarified for Councilmember Filla that the developer wanted TDD financing versus PAYG, in order to spread the cost over a period of time.

Councilmember Rasmussen asked if there was a change in the amortization schedule for the interest rate. Mr. Edgar stated PAYG financing revenues pay the reimbursable costs as quickly as possible and if there is interest associated, it would be subject to the terms of the development agreement.

Mayor Dunn was concerned because the retaining wall on State Line Road was constructed of poured concrete and requested that it be beautified.

Councilmember Azeltine understood that the developer would borrow funds from the bank and the 1% generated tax would pay off the eligible costs. Mr. Edgar concurred and indicated this would happen as rapidly as funds allow; there isn't a specific amortization or scheduled re-payment.

Mr. Edgar stated they put a lot of effort into protecting the City on a bond issue; however they can never be assured.

Councilmember Azeltine asked if the State had resolved their issues with collection. Mr. Edgar thought they were seeing improvements with each individual project.

Mr. Lambers clarified for Councilmember Filla that once the City collects the $600,000 from the developer, the tax and the district is eliminated. On the issue of interest, the City's participation is for eligible construction costs; whatever interest the developer incurs for borrowing money would be their responsibility. Staff didn't want to complete their analysis until Council gave an approval. They will then make sure this is consistent with state law for TDD. If the Council isn't interested in TDD financing, then there are several things that make this eligible for Special Benefit District [SBD] financing.

Mr. Edgar thought the change in the state statute became effective on July 1, 2009.

Councilmember Bussing asked how the PAYG would be reflected in the City's finances. Mr. Edgar indicated it would be in the notes of the audit as a district created by the City; however, there is no debt liability of an outstanding bond that would need to be tracked. It wouldn't affect the City's general credit worthiness. There would be no concerns of a dip or change in revenue collections, which currently occurs on a TDD with a delinquency on the payment of an assessment or a drop in sales tax revenue.

Mr. Bussing thought it would still be a transfer of a debt obligation from the developer to the tenants, and then ultimately the consumer. Mr. Edgar thought they would be allowing a supplemental sales tax to be placed on those merchants.

Councilmember Rawlings asked what percentage of the development had been constructed.

Charles Renner, Husch Blackwell Sanders, confirmed that Phase II had not been constructed. The total request is $600,000 with additional costs for completing Phase II. Mr. Rawlings asked how long it would take to satisfy the $600,000. Mr. Renner stated the amortization schedule factors in 11 years with interest; however, it should be less and doesn't factor in any sales from Phase II.

Councilmember Azeltine confirmed with Mr. Edgar there were no other state statute changes in SBD or TDD financing, other than the PAYG.

Councilmember Peppes asked if the City, as a conduit, was still able to charge fees as they would on a TDD. Mr. Edgar stated there would be reimbursable costs that need to be taken from the TDD reimbursements. There will be City and developer costs that have to be covered and would need to be handled in the developer agreement.

Mr. Lambers stated they would include a fee schedule established as a percentage of each annual payment with a cap. Mr. Edgar stated there would also be some up-front costs associated that will need to be worked out.

Mayor Dunn clarified for Councilmember Filla that the extra 1% sales tax would be paid by the consumer. Mr. Renner stated there were Community Improvement Districts [CID] directly across in Missouri that also have the extra 1% sales tax.

Mayor Dunn asked the total sales tax rate for Missouri. Mr. Renner noted it varied; however, thought it was predominantly 7.85% without the additional 1%.

Mr. Lambers clarified that their total sales tax rate was 8.05% without the TDD. There is .4% figured in for the Justice Center that will be gone in two years.

Councilmember Cain confirmed with Mr. Renner that all tenants would be subject to the taxing district.

Mr. Lambers wanted consensus from Council to direct staff to amend the City's policy to allow PAYG financing and consensus to review this application; then present it at a future Council meeting. If Council has concerns of financing a project, they could make it PAYG, versus issuing bonds.

Mr. Renner stated they had been working with Mr. Lambers, acknowledging that it would be appropriate to have the benefit of a special taxing district.

Councilmember Bussing confirmed with Mr. Lambers that the KCP&L charges did not qualify for SBD because they have to own the facility. Mr. Lambers indicated they would separate the items and establish what type of financing they would be eligible for.

Councilmember Azeltine confirmed with Mr. Lambers that the reimbursable costs are based upon each development at the discretion of the Governing Body.

Councilmember Rasmussen clarified that ownership interest is not affected by this and confirmed that the only collateral a lender has is promise to pay the sales tax imposed by the City.

Councilmember Filla confirmed with Mr. Renner that current and future tenants are aware this cost is forthcoming.

Mr. Renner identified a large number of costs that were affecting the project and determined that TDD was the preferred option and worked with staff to identify what the reasonably qualified costs would be. He thought most of Council's concerns were related to changes in the City's policy. Most of the current policy relates to risk allocation on bonds, which is what the PAYG option would eliminate. He thought another concern was their performance and indicated they could include beautification of the retaining wall in the development agreement.

Councilmember Rasmussen was concerned that some existing developments may view this as a refinancing opportunity. He asked if they should have a restriction or certain condition that the PAYG could only be applied within the first couple of years for a development.

Mr. Lambers thought the statute was intended for new construction; however, he agreed that they should include a limitation that within two years after the first building permit is issued; a request for a TDD will not be considered.

Mayor Dunn thought a CID could come forward with a parking garage request and felt it should be a case-by-case review. Mr. Lambers stated it would be intended for new additions/construction.

Mr. Edgar noted there were some statutory limitations to how far you can go back for reimbursement. With bond issues, there is a reimbursement resolution and intent needs to be established in advance.

Councilmember Azeltine liked Mr. Lambers' suggestion to include a limitation of two years.

Mayor Dunn thought the Governing Body could review their request and indicated there would be other vehicles they could consider, such as the CID.

Councilmember Cain confirmed with Mr. Renner that TDD's were prevalent in Johnson County.

Mayor Dunn received consensus from Council for Mr. Lambers to draft this policy allowing for PAYG for the TDD, as well as keeping what is currently in place.

Councilmember Bussing thought they should proceed with the draft of the policy and for staff to continue to work with Mr. Renner on evaluating this project. He concurred with Mr. Edgar that when they first considered TDD financing, it would be used for unique developments and felt this didn't fit this criteria. Mr. Bussing stated there was a limit to how much sales tax the City would be able to collect. If they continue to allow other entities to use the City's taxing authority, it limits the ability to fund the City's own projects. He felt this type of financing transfers risk from the developer to tenants and consumers. He thought they needed to be extremely judicious with applications, whether TDD or PAYG, and wasn't in favor of this application.

Councilmember Filla wanted comparative tax percentages done, with and without this financing, across State Line Road.

Mr. Lambers indicated they would evaluate this application and have information returned to Council in time for review before the meeting.

There being no further business, the meeting was adjourned at 7:20 P.M.

Pam Gregory, Recording Deputy City Clerk