Special Call Meeting

THE LEAWOOD CITY COUNCIL

October 26, 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 6:30 P.M., on Monday, October 26, 2009. Mayor Peggy Dunn presided.

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

Councilmembers absent: Mike Gill

Staff present:	Scott Lambers, City Administrator	Kathy Rogers, Finance Director
	Patty Bennett, City Attorney	Kathy Byard, Budget Coordinator
	Deb Harper, City Clerk	Pam Gregory, Deputy City Clerk

Others Present:
Roger Edgar, George K. Baum & Company
Julie Jurden, RED Development
Bart Lowen, RED Development
Nancy Zielke, Alvarez & Marsal
James Lahay, Stifel, Nicolaus & Company
Charles Miller, Esq., Lewis, Rice & Fingersh

Transportation Development District [TDD] for One Nineteen Development Project, located at 119th and Roe Avenue [Project # 80456]

Mayor Dunn called the work session to order at 6:40 P.M. Introductions were made by those present.

Opening Remarks
City Administrator Scott Lambers stated the developer had paid for the report; however, it was commissioned by the City for the City. Charles Miller, Esq., Lewis Rice & Fingersh, had indicated the developer is satisfied with the contents of the report.

As the report will indicate, the revenue stream is not at the level that was originally envisioned at the time the request was made to create the Transportation Development District [TDD]. If the current revenue is not sufficient, the Council could consider amending the development agreement to provide a second issuance once the revenue stream becomes sufficient.

As part of the financial scenarios, the developer is making requests that are not consistent with the development agreement and the debt service policy of the City. There is also a proposal to fully utilize the special tax assessment revenues that have been collected to date. City staff feels some of these should be used in an alternative method.

The sales tax coverage ratios are different in the two proposals being presented this evening. They are proposing utilization of the special tax assessment revenues for annual debt service payments, opposed to being utilized as a backstop.

There will need to be an end date for the report to bring it to closure.

There are two financial scenarios with regards to the TDD, one based upon actual and the other as projected receipts.

As consensus is reached, staff can proceed with a TDD in an amount agreed upon and hopefully complete the process by the end of February, 2010.

Lou Rasmussen left the meeting at 6:50 P.M.

Nancy Zielke, Alvarez & Marsal, gave a presentation of the One Nineteen Development TDD Project Retail Sales Tax Study.

The City had requested them to complete the following tasks:

Study the Application Materials - Reviewed all materials provided by the developer and the City that relate to the construction cost totaling approximately $3.1 Million, and the impact as it relates to development.

Review Developer Assumptions – a) Tested the trends as they related to the existing tenants. b) Tested market conditions as it related to spending. c) Compared construction costs with other city construction related projects.

Assess Competitive/Comparable Developments - Prepared an analysis of projects that would compete with the proposed development.

TDD Revenue Projections - The TDD took effect on January 1, 2009. The City began receiving receipts on March 1, 2009; there is always a two month lag. The report identifies a delay of remittance, which is not uncommon. City staff had asked the Kansas Department of Revenue to be notified of the monthly remittances.

Prepare Detailed Report - Developed two scenarios; Scenario A, based upon the existing 14 tenants who have been operating for at least three months, and Scenario B, projected sales assuming a certain occupancy level of the development complex.

TDD Overview
The City entered into an agreement in September, 2008, with RED Development to levy a 1% sales tax on the existing properties. The development is located at the corner of 119th and Roe and includes 15.808 acres of land. Almost 64% of the properties are currently occupied. On an average, almost 38,000 vehicles pass through this intersection daily.

Mayor Dunn asked if RED owned this tract of land, as well as developing it.

Julie Jurden, RED Development, stated the property was owned by the One Nineteen Development Group and RED was a partner and manages all of the lease negotiations.

The TDD was approved for a cost not to exceed $4,950,000 with construction costs totaling approximately $3.6 Million. Some of the costs associated with the TDD may change since they were forecasted approximately 9 months ago.

Most of the tenant lease terms are 10-12 years with lease amounts based upon gross revenue. Projections for future occupancy include signed leases for three additional tenants for by spring or winter of 2010. These tenants were not taken into consideration for Scenario A of the report.

Roger Edgar, George K. Baum & Co., asked if the tenant's sales per square feet were adequate or if there was concern they could exercise their lease termination rights. Ms. Jurden stated most of the terminations wouldn't hit until the fifth year.

The One Nineteen Development is considered a lifestyle center, which caters to a household income of $85,000 or more. Lifestyle centers typically have 150,000 to 500,000 square feet of gross leasable area with an open air concept and high-end boutique retailers as well as specialty restaurants.

Trade competitors within the area include six different retail centers similar to One Nineteen. Their primary market focus is within a 3 to 5 mile radius. The median income and number of households within this area supports the types of retail development in One Nineteen, and in most cases, the level of spending either meets or exceeds the national average.

They studied the household income and population growth within the target area. There isn't a lot of opportunity for new residential development within the City; therefore, some of the growth will come from existing housing. The employment rate either meets or exceeds the U.S. averages.

Although the economy has shifted in consumer spending, there has been improvement within Leawood, as well as Johnson County. With information provided from RED, there have been $34.1 Million in retail sales from November, 2008, through August, 2009, from the existing tenants. This represents approximately 73% of where RED thought they would be on an annual basis.

Mr. Edgar thought they should be able to verify the sales numbers provided from RED through sales tax collections from the State. Ms. Zielke stated they were unable to see the totals that were actually remitted to the State. Almost $14.2 Million, or 41%, of sales are from two tenants.

Mr. Lambers stated they were unable to discuss specific retailers and their performance because of signed agreements.

Ms. Zielke indicated cities in Kansas that impose a retailer's sales tax receive detailed reports each month of actual sales tax receipts. Information provided by the City of Leawood reflects that as of July, 2009, $175,072 was collected from the 14 existing tenants. Some retailers have not been paying the 1% TDD and the Department of Revenue is looking into this. If all of the retailers were current with their sales tax remittance, the City should have collected an estimated $297,594 from the 1% collections, versus the $209,420 actually collected for the City's existing 1% tax.

The projections under Scenario B for annual retail sales are based upon 94% occupancy, estimating a total of $1,232,388 Million by year 22. They are expecting to be fully occupied (94%) by March, 2012. Based upon the current 64% occupancy, 93% collections and projected growth assumptions, the 1% retail sales tax totals range from $389,985 in 2010, to $470,110 in 2030.

Councilmember Rawlings asked why they were projecting a 93% collection rate and wanted to know where the other 7% goes.

Finance Director Kathy Rogers stated it was a timing issue due to slow pay and on average they receive 93% per month instead of 100%. Ms. Zielke thought they would see better compliance as the center matured more.

Mr. Edgar confirmed with Ms. Zielke that they were projecting that collections would improve to levels that were better than they had historically seen.

Councilmember Azeltine confirmed with Ms. Zielke that it could take up to two years to reach 93% collections.

Councilmember Azeltine asked what assumption Mr. Edgar envisioned the City using in a bonding situation. Mr. Edgar thought the most important thing in a private placement is that the investor that purchases the bonds knows and has all of the information and is capable of evaluating it on their own.

Councilmember Bussing confirmed with Ms. Zielke that the growth rate in total retail sales beyond year three was at or below 1% per year. Ms. Jurden indicated they took a conservative approach in their figures. Mr. Bussing understood them wanting to be conservative; however, thought it would be good to know what they could realistically expect from the One Nineteen center. Ms. Zielke indicated the trend data wasn't projecting the growth in the 4%-5% range they would have seen several years ago. With the lack of data provided from the State and not having a steady flow of trend data, projections were based upon information provided by RED.

Mr. Lambers wanted acceptance from RED of the Retail Sales Tax Report.

Charles Miller, Lewis, Rice, & Fingersh, stated acceptance of the report wasn't required from RED; however, they were accepting the sales tax projections and wanted to work with the Council as a basis for moving forward.

Mr. Lambers stated they envisioned one bond issue of $4,950,000; however, as stated earlier, given the lack of revenue that has transpired, the developer requested the agreement be amended to provide a maximum of two separate bond issues. He was in support of their request and thought is was prudent for them to proceed in a conservative fashion with the current information provided.

Mr. Edgar understood this to allow a second bond issue, or a subsequent/completion bond, at a later date; once more lease activity had occurred or sales increase. In concept, he didn't see an issue with this; however, noted that the second bond issue would need to have the same interim by law as the first.

Mayor Dunn asked how soon he thought the second bond could be issued. Mr. Edgar didn't think they needed to have a specific time frame; however, they would want substantial activity to have occurred.

Mr. Edgar clarified for Councilmember Filla that if $4,950,000 in bonds are issued, the payments with interest related to the issuance of the bonds would be approximately $500,000 per year.

Mr. Edgar confirmed for Councilmember Bussing that the environment has improved over the last year for high investment grade credits; however, not as much for non-investment grade credits.

Mr. Lambers stated the development agreement would be amended to show the provision for Council to approve the second bond issuance.

Mr. Lambers stated the developer is requesting that Council consider a non-level debt service payment; however, the debt policy, TDD policy, and the development agreement all clearly state this is to be level payments. This is a more conservative approach to the bonding because of concern over the volatility of the sales tax revenue stream. He indicated they want the principal to be paid down at an equal level throughout the terms of the bond. If they weren't going to consider a second bond issue, then consideration of future growth over time would be appropriate.

Mr. Edgar projected a first bond issue in the amount of $3,190,000. They had discussed 1.25 times coverage on sales tax with level debt service.

Mr. Lambers confirmed for Councilmember Azeltine that a TDD has a maximum 22 year maturity and a Special Benefit District [SBD] has a 10-15 year maximum. Mr. Edgar noted that the interest rate can affect the bond issue.

Mayor Dunn asked what the level payments would be for the $3,190,000. Mr. Edgar stated it would be approximately $312,000 per year, which would produce 1.25 times coverage. Mr. Lambers stated they discussed appropriate coverage and felt 1.35 was high and reduced it to 1.25 coverage. The special assessment is .25%, which is intended to be a backstop and not the debt service. This gives a 50% security in terms of the debt service coming in. If the property tax assessments are not needed, they are returned to the individuals that paid it. If sales tax is in excess, it goes to retire the debt.

Councilmember Azeltine confirmed with Mr. Lambers that the 1.25 did not include the backstop.

Ms. Rogers noted that special assessments, just like sales tax, are not at a 100% collection rate. Mr. Edgar stated this should be 100% collection; however, because it is all paid by one property owner.

Mayor Dunn received consensus from Council that they preferred the level debt service payments with two bond issues.

James Lahay, Stifel, Nicolaus & Company, gave a presentation of the financing analysis based upon the prepared Revenue Projection Report.

These figures do not include the level payment amortization and will need to be adjusted. The debt service reserve fund is 10% of the par amount of the bonds. The developer is being reimbursed by $3,005,000 of the approximate $4.1 Million they were hoping to be reimbursed of the bond issue. The $1.1 Million could be recovered in a second bond issue as discussed earlier.

Councilmember Filla asked what they did with the reserve fund if they don't need it. Mr. Lahay stated it was held as long as the bonds are outstanding and was eventually used to pay debt service.

They have assumed an 8% interest rate on this non-rated bond issue and are using figures based upon the conservative approach under Scenario A. The assessment is 25% of the debt service and is approximately $82,000.

Ms. Rogers noted they were showing an extra payment of $82,000 in 2009, when it actually begins in 2010. This amount will need to be redistributed equally among the remaining payments. Mr. Lahay noted they have 22 years to amortize the bonds. If the bonds are issued in March, 2010, the last payment would be in February, 2032.

Councilmember Filla confirmed that the $82,000 would be assessed against the property owners.

Mr. Lambers stated the $82,000 was being used as annual debt service, not as it was envisioned in the development agreement to not be used at all and used as ongoing reserves. The Attorney General had confirmed that this is required to be collected.

Mr. Miller clarified that the development agreement didn't state the assessment would only be used as a backup, so there have been many discussions of whether this was intended by everyone. Staff's policy recommendation is that it be used for debt service and not for sizing the amount of the debt.

Mr. Lambers stated the $9,766,552 is from sales tax and the total of the $11,570,097 includes the special assessments. The City staff felt the $1,803,545 should not be carried over to the total pledged revenues.

Mr. Lahay noted the sales tax only from Scenerio A would average at 1.25 coverage. This is based upon level coverage, not level debt service. The coverage averages 1.50 when the sales tax and assessments are included. Scenario A is consistent with today's market; however, they would have been comfortable accepting Scenario B over a year ago. They didn't feel it was always going to be 64% occupancy. Scenario B includes sales and assessments with almost 1.90 coverage.

Ms. Filla asked if the forecast goes beyond Scenario B and they began collecting more sales tax, if it would apply to buying it down sooner. Mr. Lambers stated approximately 18 months ago they envisioned this 22-year note to be paid off within 8-10 years. Once the first bond is issued for 22 years, the subsequent bond has to be issued within that 22 year time frame.

Councilmember Azeltine recalled discussion of TDD guidelines of how to use an assessment in addition to sales tax and thought the consensus of the Council was to use it as only a backstop. Mayor Dunn recalled that discussion as well.

Councilmember Filla asked how they would determine when the second bond was going to be issued. Mr. Lambers indicated it would be up to the developer to make the request and the Council would have to approve it. They would need another report prepared to confirm that the revenue stream is sufficient to cover the debt service for the number of years left in the 22-year time frame.

Mr. Lahay indicated the remainder of the analysis was based upon 1.10 coverage, with a growth rate of .5% the first year and approximately 1% thereafter. If the City allows, they will use 1.10 coverage with just sales taxes, and 1.35 with assessments included under Scenario A. With Scenario B it would be 1.75 coverage.

Councilmember Bussing understood that they wanted to split the original bond issue into two bond issues because income projections didn't meet the original assumptions. He was concerned because they wanted the City to amend their underwriting guidelines and didn't feel it would be prudent to do so when they didn't receive the anticipated revenue.

Councilmember Filla was concerned of the risk to the City in collecting the $81,000 every year. Ms. Rogers stated they would collect either 0% or 100% in a current year.

Mr. Miller stated there would be a lien on the property and if the assessments don't get paid, the property could be foreclosed. Ms. Rogers indicated it would normally take up to three years before it would go into collection, however, it could ultimately be collected in a SBD.

Mr. Edgar thought the assessments were intended to be an additional layer of security for the City. An assessment can be delinquent for up to three years with very little cure. Ms. Rogers noted there is a 10% reserve account in the event someone doesn't pay.

Mayor Dunn received consensus from Council that the assessments should only be used as a backstop and to leave the sales tax coverage at 1.25.

Councilmember Bussing felt it was important to note that as the market improves, they could consider being more aggressive with the second bond issue.

Mr. Lambers stated the developer had projected to have almost $300,000 at the time the City issued bonds and they wanted to use this as cash infusion in their numbers. Two tenants currently represent 41% of the revenue stream and debt service payments. He was concerned of decreased revenue if one of these tenants should go out of business. Some sales tax remittances are being used as cash flow for businesses. He recommended the City collect and retain one year's payment in addition to the debt service reserve.

Mr. Edgar confirmed that Mr. Lambers wanted to collect up to one year's debt service prior to the issuance of the bonds and would be held by the trustee as a fund balance. This would be a contingency deposit in addition to the debt service reserve.

Mr. Lahay stated with one year's sales taxes included, it would equal approximately 2 times coverage.

Ms. Jurden confirmed that this would be a backstop of a special assessment, 1.25 coverage, and a year's payment and felt this was over reaching.

Mr. Lambers was concerned since the developer owns the shopping center and controls 100% of the special assessments that the City would either be paid at 0% or 100%.

Mr. Miller stated most bonds are issued with reserves and capitalized interest and he felt this money should be applied to the associated costs rather than be retained.

Mr. Lambers thought they may be able to release all but $81,000 with the second bond issue; however, currently retain all of it for the short-term. Collections are at 70% with some retailer's not remitting at all.

Ms. Jurden thought the City could retain the $81,000 in the account; however, she felt the $300,000 in addition to the 64% Scenario, the 93% remittance, the 1.25 coverage, and the backstop of 25% seemed extreme.

Mr. Lambers indicated if the money was turned over to the developer, it would be spent to cover costs, as opposed to being retained and available to cover a shortage.

Councilmember Azeltine felt this was a little extreme as well.

Mr. Edgar stated there is supposed to be surplus collections each year, which would be used to accelerate the payment of the bonds. The trustee will have instructions to use whatever money is leftover in that bond and interest account to call and pay bonds up to a certain level. It is not unusual to ask the trustee to maintain a minimum balance in the account.

Councilmember Bussing understood Mr. Lambers position and appreciated the conservative approach; however, he felt this wouldn't be fair to the developer.

Mayor Dunn concurred with Councilmembers Azeltine and Bussing.

Mr. Edgar felt they should keep some type of balance in a bond and interest account, whether it came from cash up front or from accumulated sales tax before extra bonds are redeemed. The City Administrator has proposed a credit covenant that is not uncommon.

Mr. Lahay felt this would create inefficiency because the money would be sitting earning very little, versus instructing a trustee to use the money to pay down 8% interest bonds.

Mr. Lambers noted the developer had some leases they wanted to incorporate in the report to boost up the projections as shown in Scenario B. He felt they should keep Scenario A without the projections included.

Ms. Jurden stated they agreed to this and would not utilize the additional three leases and reiterated comments of taking the conservative approach.

Mayor Dunn received consensus from the Council to not retain the $300,000 in the account.

Mr. Lambers confirmed they would evaluate new leases in the future that are not reflected in this report.

Ms. Rogers reiterated that the table was incorrect on the timing so they can't get an assessment in 2009; the first time they'll have an opportunity to levy an assessment will be in 2010 and collections will be in 2011. The cash flow may require retaining some of those funds.

Councilmember Filla confirmed with staff that Scenario A represented actual collection receipts.

Bart Lowen, RED Development, confirmed that two of their additional tenants were Destination Maternity and Republic of Couture.

Mr. Edgar thought it was important for all parties involved to receive clear guidance from the Governing Body in order to understand their desires. The soonest the $81,000 would come in would be in the spring of 2011.

Mayor Dunn confirmed with Ms. Jurden and the Council that the $81,000 was acceptable. Ms. Rogers reiterated that this amount was inaccurate and would need to be refigured.

Mr. Miller indicated no one was assuming they were being locked into any projections this evening.

Councilmember Bussing confirmed with Mr. Lahay that the earliest the first bond would be issued would be in February or March of 2010 due to the assessment process. The first interest payment would be August, 2010.

There being no further business, the meeting was adjourned at 8:55 P.M.

Pam Gregory, Recording Deputy City Clerk