Special Call Meeting

THE LEAWOOD CITY COUNCIL

November 2, 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, November 2, 2009. Mayor Peggy Dunn presided.

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

Councilmembers absent: None.

Staff present:
Scott Lambers, City Administrator
Patty Bennett, City Attorney
Deb Harper, City Clerk
Kathy Rogers, Finance Director
Joe Johnson, Public Works Director
Pam Gregory, Assistant City Clerk

Others Present:
Roger Edgar, George K. Baum & Company
David Arteberry, George K. Baum & Company
John Klaus, Stifel Nicolaus & Company, Inc.
Bill Hess, Esq., Bryan Cave, LLP, City Bond Counsel
Charles Miller, Esq., Lewis, Rice & Fingersh
Melanie Mann, Park Place Developers
Jeffrey Alpert, Park Place Developers

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 6:10 P.M. Introductions were made by those present.

Councilmember Gill left the meeting at 6:11 P.M.

Opening Remarks

City Administrator Scott Lambers stated tonight's discussion included three specific issues related to the Transportation Development District [TDD] for Park Place. The November 16, 2009, Governing Body Work Session has been reserved for a continuance of this meeting, if necessary.

Issue No. 1: Affirmation of the developer's request to transfer the Special Benefit District [SBD] that has been temporarily financed. These notes expire in September, 2010. The assessment for the SBD would be the same for the TDD; a property tax assessment at 100%.

Issue No. 2: Developer's request to receive TDD funds the City has been collecting that are going toward the first parking garage. This money is retained in an account and is only to be used for that purpose. If the Council favorably considers this request, he recommended that they have a 25% special assessment held in reserve. The developer intends to use this toward the debt for the project costs, interest not included. Ultimately, they will be issuing TDD bonds for the project.

Issue No. 3: The development agreement states when the second hotel is operational, 5.5% of the 7% transient guest tax will be used to pay for the parking garage attached to the hotel. They are requesting to start receiving these funds as soon as possible. The City has the authority to expend this for convention tourism activities in a variety of ways and it is not restricted to be used for a development project. Disbursements would be made from money collected in a transient guest tax fund. Mr. Lambers did not support this request.

If the Council approves the change from the SBD to a TDD, it would need to occur quickly since the temporary notes are outstanding. Should they not be able to place the bonds, the City has to begin the process of long-term financing in April, 2010. This will give them until March 19, 2010, to go through this process. If this is not successful, they will begin the process for a SBD at the first meeting in April, 2010.

Mr. Lambers clarified for Councilmember Filla that the reason they wanted to convert this to a TDD was because the SBD is very specific to how assessments can be placed on a property, whereas the TDD has more flexibility.

Councilmember Rasmussen asked if there was a difference in the assessment with the SBD versus the TDD as it relates to rent.

Charles Miller, Esq., Lewis, Rice & Fingersh, clarified that this TDD doesn't have any sales tax associated with it. This assessment would be relatively the same and either one could be passed through to a tenant or the owner.

Roger Edgar, George K. Baum & Company, wanted everyone to keep in mind that the City has temporary notes outstanding and didn't want to put them in a position where they are unable to redeem them. These are general obligation notes currently set up in a SBD. If they bonded this option and the TDD doesn't work out and need to return to the SBD, the process would begin in April, 2010, and would take approximately 150 days. The City would close the bonds in August, 2010, with the temporary notes due September 1, 2010. Mr. Edgar felt they should keep the SBD as a fall-back option to pay off the notes.

Councilmember Peppes joined the meeting at 6:22 P.M.

Mr. Edgar was concerned with the developer's ability to sell TDD bonds before the first week of April because a TDD would require the same statutory proceedings. Other than giving them an April deadline, he thought the only other option was to roll the temporary notes for another year. The TDD is a more expensive option for the developer.

Mr. Miller understood the reasoning to keep the SBD in place. He couldn't recall discussion of the bonds having to be funded by April, but would look into getting them issued by then.

Councilmember Azeltine asked if there were stipulations included in the current lease agreements regarding how financing would occur. Mr. Miller stated the leases didn't have any impact on their ability to move forward. The petition has to be submitted by the land owners.

Councilmember Azeltine asked how it would expose the City if the temporary notes were extended. Finance Director Kathy Rogers confirmed it could be a risk since they don't know what interest rates will be from 2010 to 2011.

Bill Hess, Esq., Bryan Cave, LLP, City Bond Counsel, recalled discussion that they couldn't get the assessments processed in time and would have to roll the notes from 2008 to 2009 and would mature in 2010.

Councilmember Filla thought Council should decide if they should roll the notes to allow them to do the TDD if they can't get this done by April. Mayor Dunn felt the developer needed input because the costs would be incurred by them. Ms. Filla asked what the impact would be of rolling the notes.

David Arteberry, George K. Baum & Company, indicated much of the cost would be from the interest rate. Currently, it is 1.25%; however, historically, the cost of rolling if over for a year could range from $150,000 to $300,000. This would be included in the borrowing and ultimately be paid by the developer.

Councilmember Gill rejoined the meeting at 6:37 P.M.

Mr. Edgar indicated rolling the note for a year would be a market risk put on the developer.

Councilmember Filla confirmed with Mr. Edgar that if the developer and Council were willing to roll the bond due in September, the deadline could be extended from April, 2010, for another year.

Mr. Miller thought with everything being time sensitive, they should have the petition signed and filed right away. In the meantime, they could determine what can be done in terms of selling this by the end of March.

Mr. Hess confirmed for Councilmember Bussing that if a conversion to a TDD goes into default, the district would be responsible and no responsibility would be placed upon the City.

Ms. Rogers clarified for Councilmember Bussing that the difference between a SBD and TDD going into default is that under the SBD, the City will front the payment from reserves until it has worked through the legal proceedings. Mr. Edgar confirmed with a SBD, there is an obligation to pay the delinquency until it's resolved; however, with a TDD there isn't.

Mr. Lambers stated with a private placement, the sophisticated buyer comes into play and further removes the City from this obligation. These are bonds to be paid by the district.

Mayor Dunn indicated they could continue discussion of Issue No. 1 on November 16th when the developer returns with more information.

Mr. Lambers stated with Issue No. 2, the developer wants to begin receiving the TDD revenue that's been collected in PAYG, and the money they receive go toward the certified project cost to reduce the debt. As previously stated, if Council approves this, they should retain a 25% assessment. If this were a request to go to a PAYG type of TDD, there would be no reason to retain this because there would be no special assessment. The development agreement was signed before the PAYG option was available for these.

Mayor Dunn confirmed with Mr. Lambers there was between $250,000 and $300,000 in the TDD sales tax fund for Park Place. The 25% assessment would be based upon the amount of the bonds and should total approximately $170,000 that would be retained.

Councilmember Rasmussen confirmed that the amount of the bond issue would be lower by the amount of the PAYG and asked if the term of the tax would also be reduced. Mr. Lambers indicated there was no time limit for the PAYG and the bonds could be issued for a 22-year maximum time limit. Mr. Rasmussen was concerned about the ultimate amount of the total tax and how a future City Council would be limited by the tax. Mr. Miller clarified that regardless of how much money is generated, the term should be limited.

Councilmember Filla confirmed with Mr. Lambers that the PAYG option wasn't available when they did this; however, nothing precluded them from switching to that. Ultimately, this will be paid for with sales tax and the transient guest tax; however, currently, it is only being paid for with the sales tax. The transient guest tax is contingent upon the second hotel being fully operational. With the PAYG, there would not be any assessment.

Ms. Rogers stated they need to certify the costs in order to proceed with the TDD.

Ms. Filla wanted to know if the developer decided to go PAYG, if they would wait until there was enough money to cover the debt before the City issues the TDD. Mr. Miller stated they would issue the bonds as soon as the market was reasonable.

Melanie Mann, Park Place Developers, stated they didn't know when the bonds would be issued and would depend upon several things. One of the conditions is that 50% of the first phase has to be leased and generating income for a period of three months. Another issue is the bond

market. They were proposing the PAYG until they can meet the conditions and the bond market improves.
Councilmember Gill asked what if anything, does the City need to do to ensure that the money is being appropriately applied in PAYG. Mr. Miller stated the developer would be reimbursed for costs already incurred. Mr. Gill confirmed that the City would not be funding any of this.

Mr. Edgar stated the City would need to get the total construction costs certified before any funds were disbursed.

Councilmember Gill felt this was a little too complex and wanted the developer to return with a presentation that would show how the funds were being placed.

Councilmember Rasmussen confirmed with City Attorney Patty Bennett that the City was the administrator of the funds under the PAYG option. Mr. Rasmussen thought there was no legal obligation of the City in terms of their administrative functions and the PAYG.

Mr. Hess felt the City was obligated to apply the money in accordance with the statute, which would be for certified transportation district costs.

Mr. Miller didn't think it was the City's responsibility to pay anyone other than the party they are contracted with.

Mr. Hess concurred and felt the contract would outline how the administrative functions would be handled.

Councilmember Filla confirmed with the developer that everyone had already been paid for the garage and felt it shouldn't be the City's concern as to how their day to day cash flow is managed.

Mr. Hess clarified that once the money has gone to the developer; the City has reimbursed them for their costs and has met their obligation.

Councilmember Filla asked if they could do all PAYG. Mayor Dunn clarified that their current agreement was for bonds at some point in the future.

Mr. Lambers clarified that the Council could tell the developer if they wanted to do PAYG, it would be all or nothing, or they could continue with the development agreement as is. The City would continue to retain the money and when the bond market improves, the money collected would be used to pay that down and the City would issue the bonds for 22 years.

Mayor Dunn confirmed with Mr. Miller that they would return on November 16th with a presentation on how the funds are distributed. Mr. Miller stated they wouldn't be selecting the all PAYG option because the financing had been structured assuming the bonds would be issued and the lenders had factored this in when they advanced their money.

Ms. Mann stated they need an opportunity to get as much of the money back as they were expecting.
Councilmember Filla confirmed with Ms. Mann that if they did the PAYG for two years before the bonds were issued and there was 20 years remaining, it would still be an issue for them.

Mr. Lambers noted if the Council gave them 22 years; it would leave the existing development agreement unchanged. Then when the bonds are issued, the money would be released to pay it down.

Mr. Lambers stated with Issue No. 3, the current development agreement provides that upon the full operation of the second hotel, 5.5% of the 7% transient guest tax revenue would go toward the TDD along with the sales tax that is being collected. Of the 7% that is currently in effect for the Aloft Hotel coming to the City, it is City money to be appropriated by the Council on an annual basis within the confines of the statute.

Councilmember Filla understood the question was whether to currently allow this to be used for just the one hotel.

Mr. Lambers stated this was intended to cover the additional costs of the parking structure to accommodate the needs of the second hotel and was never envisioned as part of this. He was also concerned that if they were to spend this as a deduction against the money of the second garage and the revenues aren't there, the developer would return and request additional money.

Councilmember Bussing was frustrated that the Council had not received any prior recommendation from staff and wanted time to study the material.

Mayor Dunn confirmed with Mr. Miller they would present more information to the Council in advance of the next meeting.

There being no further business, the meeting was adjourned at 7:26 P.M.

Pam Gregory, Recording Deputy City Clerk