

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, December 7, 2009. Mayor Peggy Dunn presided.

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

Councilmembers absent: Mike Gill

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

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

**Discuss Transportation Development District [TDD] financing for
Park Place Improvement District [CIP # 80196]**

Mayor Dunn called the work session to order at 6:10 P.M. Introductions were made by those present.

Opening Remarks

City Administrator Scott Lambers noted this meeting was a continuation regarding Special Benefit Tax [SBD], Transportation Development District [TDD] and Transient Guest Tax issues.

Councilmember Rasmussen confirmed with Mr. Lambers that any money collected thus far was being kept in an allocated City fund. There had been no disbursement of funds for any fees associated with financial/legal advisors.

Melanie Mann, Park Place Developers, reported the first issue to discuss was the SBD conversion to a TDD. They had asked George K. Baum and Stifel, Nicolaus & Company to give projected debt service payments under the SBD versus the TDD. Based upon that preliminary analysis, the SBD debt service was substantially less than the TDD; therefore, they wanted to pursue maintaining the SBD.

Mr. Lambers clarified that the City's policy was for level payments. The interest rate is considerably higher for the TDD. The SBD is backed by the City's general obligation responsibilities; therefore, if payment isn't made, the City has to make those bond payments. Under the TDD, the bondholders take the risk of getting paid and they don't have recourse to be paid by the City. The SBD is for the public infrastructure improvements that were constructed as part of the project.

Charles Miller, Esq., Lewis, Rice & Fingersh, stated this SBD was formed to pay certain improvements related to roads surrounding the project as well as stormwater related improvements along the creek. This has been completed and the notes were issued for funding the work.

Park Place consists of a large piece of property with only a small portion currently developed. The issue on funding and issuing the bonds was that the vacant land was going to be assessed at the same rate per square foot as the improved land. They preferred to equitably distribute the assessments so the improved property was actually paying the higher percentage of the assessments. They wanted the funds to be allocated based upon property value and spent time with the Attorney General [AG] on how to structure the assessment. The AG was more comfortable with level payments each year.

Mr. Lambers had suggested they do a TDD, which Council had previously accepted. At that time, it was appealing because the bond market was in a position that they could do a TDD for approximately the same amount in payments as the SBD. They continued to find a way to convert the TDD to an SBD; however, it was concluded that there was a significant difference in the annual debt service.

Councilmember Rasmussen confirmed that if they ran the SBD on a valuation basis, the appraised value would vary year-by-year.

Mayor Dunn confirmed with Mr. Miller that they wanted to stay with the SBD if they could figure a way to do the assessment acceptable to everyone and not base it upon each square foot of land assessment.

Mr. Lambers noted that in order to do this the City would need to change their SBD policy, which since its inception has had an equal payment per square foot, regardless of valuation. The original policy is for 10 years and allows the Council to grant 15 years, which has served the City well. He indicated since his employment, everything had been granted for 15 years. This transfers the risk to fewer properties and has higher assessments, which if a default occurs, this would be a greater amount. The City would have to pick up this amount as a general obligation.

If the Council approves their request, it would be contingent upon AG approval. If the Council decides the current policy should remain, there would be no reason to continue pursuing with the AG.

Councilmember Rasmussen didn't understand how the City's liability would increase. Mr. Lambers stated the risk was on the individual parcels of property; there would be a large percentage of the assessments on the developed businesses with less on the undeveloped land. If one of these businesses closed, that assessment would not be paid, which would represent a large percentage of the annual debt service payment.

Ms. Mann noted if the developer went out of business; there would be a larger portion at risk.

Councilmember Bussing thought if any party was to go under, regardless of the valuation method, they would still be exposed to the same amount of risk. He thought the debt service was for the entire parcel. Mr. Lambers clarified that individual parcels have individual obligations.

Councilmember Rasmussen confirmed with Ms. Rogers that if they changed the valuation technique, it wouldn't affect the 15-year limitation. Mr. Miller clarified they didn't want to change the SBD limitation beyond the 15 years.

Roger Edgar, George K. Baum & Company, confirmed that the maximum debt service obligation doesn't change with this request; however, he felt the City had an obligation to make sure distribution of the assessments was equitable to each of the property taxpayers. He thought the City's current policy had proven to be a fair way to assess in the past.

Bill Hess, Esq., Bryan Cave, City Bond Counsel, clarified that under the SBD there was a general obligation to the City, whereas under the TDD there wasn't.

Mr. Lambers clarified for Councilmember Bussing that under the SBD if one of the businesses closed and didn't pay their assessments, the City would make up the payment until they could recover the money through the statute process.

Mr. Miller clarified that this entire tract was owned by only entities affiliated by Park Place, except for the hotel. The assessment is done on the land owned by the property owner. They may have something worked out with the tenant to pay part of the assessment and it's up to the property owner to collect it. If there is a shortfall, the lien is placed upon the land and the building.

Mr. Lambers clarified that the hotel doesn't currently pay and represents a large portion of the assessed valuation. He was concerned, for example, if the hotel was assessed and went out of business with a remaining balance, the City's obligation would then come from the reserve or bond interest fund.

Mr. Miller clarified that all of the property owners had agreed to this method of assessment, including the hotel.

Councilmember Azeltine asked if this would be considered a shift of risk from the developer to the City if there were delinquencies on certain parcels. Mr. Edgar thought the redistribution of assessments wouldn't necessarily mean a shift of risk to the City; however, it could be a shift of financial exposure to the property owners. Under a SBD on any of the assessments, the City would pick up a delinquency until it could be cured.

Mr. Hess clarified that the statute states they can assess on a basis of square foot, front foot, or any other methodology that provides equitable distribution. The AG's hesitation was primarily with a specific provision in SBD Chapter 6(a) regarding assessing on equal annual installments over the period of the bond issue; however, the AG recognized that the City could do this under its own rule powers.

Mr. Lambers noted that the AG wasn't comfortable giving a verbal confirmation and preferred a specific situation in front of them. It will be up to the AG's office to accept this once the Council has approved it. If the City charters out to allow this, it's a significant change from the state statute. The reason the state statute exists is for cities to perform uniformly.

Mr. Edgar didn't understand the developer's goal other than shifting the assessment dollars to the hotel.

Ms. Mann demonstrated that under the assessment based on square footage of land, the hotel has approximately 75,000 square feet; pays approximately \$3,000, and is one of the major beneficiaries of the improvements. Based upon the assessment of the land improvements, the hotel pays \$108,000, which is more equitable. The vacant land that isn't benefiting pays \$350,000 of the \$500,000 assessment each year. If this is done based upon value of improvements and land, the current buildings pay \$300,000 or \$1.50 per square foot. Under the leases, they can pass some of this cost through to their tenants. The per square foot costs on the improved land continues to go down. They felt the properties that are benefitting should bear more than the vacant land.

Mayor Dunn asked if their current tenants would be upset because of greater assessments. Ms. Mann reiterated that all of their leases provided for this and shouldn't be anything unexpected.

Councilmember Rasmussen asked who would be responsible for determining the variable assessments per parcel. Mr. Miller indicated they would work with the assessor's office and the City. Mr. Lambers confirmed there would also be a third party involved with additional fees for their assessment services.

Councilmember Bussing asked how they convinced the hotel to accept an increase in cost for the assessment from \$2,700 to potentially \$133,000. Mr. Miller stated it wasn't presented as an alternative. At that time, they had planned to do the TDD and this was the cost.

Mr. Lambers noted the difference with the TDD was a sales tax and 25% special assessment. This particular one will be 100% special assessment. Mayor Dunn confirmed with Mr. Miller that this TDD was for \$5.9 Million.

Mr. Edgar felt the issue was the 85,000 square foot hotel utilizing 1/10th of an acre. He asked if it would be equitable to distribute the costs based upon the total square foot of the existing and proposed construction of the site. It would; however, still burden the vacant land disproportionately. Ms. Mann indicated they don't know what will be constructed due to market changes. Also, with many different densities within the development, it impacts the way they are valued.

Mr. Lambers thought one possibility was to have two assessments; one based upon the square footage of the entire project, the other based upon the valuation of the property. The first \$250,000 would remain constant for 15 years and the second \$250,000 would be divided annually by the assessed value of the individual parcels. Mayor Dunn noted they didn't know if the AG would accept this scenario.

Mr. Lambers indicated the SBD was primarily intended to make sure property owners are assessed equally for street improvements. As far as the statute is concerned, this is moving away from that in regards to valuation.

Mr. Miller clarified that the statute has a catchall provision stating any other method that reasonably allocates the dollars.

Finance Director Kathy Rogers asked the Council for options they could review.

Councilmember Azeltine asked if there would be any advantage of getting clear guidance from the AG. City Attorney Patty Bennett indicated they could always do a home rule bond; however, this would be a different policy decision for the City because they hadn't done that before. Mr. Azeltine asked if there was any precedent for this.

Mr. Hess indicated there had been some different methodologies used from time to time. Mr. Lambers thought that would depend upon whether the home rule authority was utilized for those methodologies and he didn't think that had occurred. Mr. Hess stated the AG's office had indicated this wasn't the exclusive way to do this.

Councilmember Azeltine confirmed with Mr. Hess that by having a formal opinion from the AG first, it could mitigate any potential exposure to the City.

Councilmember Rasmussen was concerned that some developers use their land for agricultural purposes and land-bank it. He thought by having an evaluation based upon land appraisal; it wouldn't encourage development and wanted the appraisal to be based upon the improved value of the land. Mr. Lambers thought they would be more motivated to turn the property into a commercial development so that someone other than the property owner would have to pay it.

Councilmember Filla confirmed with Mr. Lambers that the \$5.9 Million covered the costs of the channel improvements behind City Hall, stormwater improvements on site, and the street improvements. Ms. Filla liked his idea of having the two assessments based upon the square footage and improvements.

Councilmember Cain confirmed with Mr. Lambers that they had already agreed to the SBD and issued temporary notes to finance the construction and rollover the notes.

Mr. Lambers clarified for Councilmember Rasmussen the best way to encourage land development in the City was to have the assessments spread equally on all of the square footage.

Councilmember Peppes asked if they could make changes only specific to this project. Mr. Lambers indicated the policy should be changed so that other people who want to be considered for this would have that option.

Mayor Dunn asked for thoughts from the Council on the idea of two assessments.

Ms. Mann wasn't sure of the impact from the City's standpoint and didn't think the risk would change if they allocated it more to the land than the improved property. Mr. Lambers stated it shifts the risk of a default being more evenly spread among the three entities; the vacant land, developed land, and hotel. The developer wouldn't have the benefit to transfer everything to the hotel and have their obligation be almost nothing.

Mr. Miller noted it would not only go to the hotel, but also to the other improved buildings. Mr. Lambers clarified they were recovering this in the leases. The developer's obligation is for the vacant land and money from the tenants pays the obligation for the lease.

Councilmember Bussing concurred with Mr. Lambers that they should equally spread the cost of improvements to all landowners. He didn't feel the hotel had benefited any more from the improvements than anyone else. The entire property had benefitted from the storm drainage improvements.

Councilmember Peppes thought this wouldn't be an issue if the economy had remained stable and felt they needed to work with the developer due to economic changes.

Councilmember Rasmussen preferred that the assessments be based upon the land value and improvements if they could encourage land development.

Ms. Mann noted that as a developer, they would profit greater from improved land. She thought "land-banking" was driven by the way the county assesses agricultural land, not by the way the SBD is allocated.

Ms. Mann addressed Councilmember Bussing's concerns and felt that an 85,000 square foot hotel on less than 7,000 square feet of land didn't seem like an equitable allocation. Park Place is different than any other development in Leawood because of the densities; therefore, it changes the equities.

Councilmember Azeltine agreed to the two assessment scenarios; however, he still wanted to review the blended version.

Mr. Lambers made a correction that the two assessments would be based upon the square footage of the land and the value of improvements (buildings only).

Councilmember Azeltine wanted further direction from legal counsel if there was precedent for this.

Mayor Dunn indicated staff would review any other possible scenarios and also evaluate the City's current policy.

Mr. Lambers clarified that the developer preferred the assessments based upon the value of the improvements and the City preferred the assessments based upon the square footage of the land. He indicated they could return with a breakdown showing the split assessments.

There being no further business, the meeting was adjourned at 7:27 P.M.

Pam Gregory, Recording Deputy City Clerk