Special Call Meeting

THE LEAWOOD CITY COUNCIL

January 4, 2010

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, January 4, 2010. Mayor Peggy Dunn presided.

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

Councilmembers absent: Gary Bussing

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

Others Present: Roger Edgar, George K. Baum & Company, City Financial Advisor
Bill Hess, Esq., Bryan Cave, LLP, City Bond Counsel
Charles Miller, Esq., Lewis, Rice & Fingersh, Park Place Counsel
James Lahay, Stifel, Nicolaus & Company
Melanie Mann, 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 6:15 P.M. Introductions were made by those present.

Opening Remarks
City Administrator Scott Lambers stated this meeting was to continue discussion regarding Park Place. There are three issues; the first included originally doing a Special Benefit District [SBD] for the public improvements of Park Place. They wanted to change the assessment methodology, which was not permitted under the City's policy, and pursue a Transportation Development District [TDD]. In the interim, they have decided not to pursue the TDD and want to return to an SBD and change the City's methodology, which is based on square footage.

The developer had presented three scenarios at the last meeting; one showing the City's current policy, and two others for consideration. Mr. Lambers had proposed another option to bifurcate the improvement costs between storm drainage and street costs. He felt square footage was the appropriate methodology for storm drainage.

Staff was directed to return with cost scenarios for these options. He presented four scenarios with each showing three entities; the hotel, retail/office of the existing development, and the balance of PPD. He asked the Council not to base a policy decision on these figures since this would be a decision for City-wide future projects. He reiterated that they should keep the City's current policy in place.

Mr. Lambers clarified for Councilmember Filla that the assessments on the value of improvements and land was based upon the value of the parcels.

Mr. Lambers clarified that whichever methodology the Council chose would need to be amended in the policy before they could approve the SBD. If there is a second methodology, it opens the door for other changes.

Charles Miller, Esq., Lewis, Rice, & Fingersh, joined the meeting at 6:25 P.M.

Melanie Mann, Park Place Developers, clarified that based upon changes in the bond market; the debt service for a TDD would be over $700,000 per year. Under the SBD, it is estimated at $500,000 per year.

Mr. Lambers confirmed that a district was currently in place; however, no bonds had been issued. There have been temporary notes issued to finance public improvements, which are coming due in September. They need to know how to proceed in order have a bond sale in the fall.

Councilmember Gill wanted clarification if they were doing a SBD for the entire project.

Mr. Miller stated there were three financing proposals; 1) a TDD financed by assessment and sales tax, 2) a TDD funded by guest tax, and 3) a SBD already in place and set up to finance the completed improvements regarding stormwater and streets. There was a proposal to terminate that SBD with a TDD in its place, which is what they had been considering. They wanted to allocate the SBD based upon the assessed value of the properties.

Bill Hess, Esq., Bryan Cave, LLP, City Bond Counsel, clarified that the SBD was currently based upon square footage and the developer wanted to change it to the developed value of the properties.

Councilmember Gill asked if the TDD had already been determined to be based upon the assessed value of the properties. Mr. Lambers indicated this was their intent since the TDD was designed to be more flexible.

Mr. Lambers clarified that a TDD funded by guest tax was essentially equal to the sales tax. The City has committed a dollar amount to be paid to the developer over a period of time commencing with the full operation of the second hotel. He clarified they had anticipated a 7% Transient Guest Tax to be imposed on the rooms, which is currently in effect. Of this, 5.5% will go toward the debt service payments for a TDD bond to be issued to pay a portion of parking structure one and all subsequent parking structures.

Councilmember Gill confirmed that this committed dollar amount would be a separate TDD. He was concerned of a shortfall and inadequate funds to cover it. Mr. Lambers stated if the second hotel is operating and the revenues are insufficient to handle the debt, the Council has the authority, per the development agreement, to reduce the amount to be authorized. Until the second hotel is operating, this issue will not come before them.

Ms. Mann stated they preferred to do the assessments based upon the value of the improvements as well as the land. She thought Scott was proposing a valuation of stormwater based upon square footage of the land and street costs on the value of improvements (buildings only).

Mr. Miller noted their numbers may not track the same, but Scenario No. 2 had the same methodology.

Ms. Mann confirmed with Public Works Director Joe Johnson that he received these values from the tax assessor. She noted the hotel cost approximately $20 Million and it shouldn’t remain at the $3.5 Million estimated value. Mr. Johnson clarified that these were the values based upon year ending 2008.

Councilmember Filla wanted clarification between Scenario Nos. 2 and 3. Mr. Johnson stated as the development continues to grow, eventually Scenario No. 2 becomes Scenario No. 3; all of the land will have a building on each parcel with increased value. Ms. Filla thought with the density and an 86,000 square foot hotel, they should consider the flexibility of having costs incurred by encouraging density.

Councilmember Rasmussen felt they should go with Scenario No. 2 based upon the improvements of the land to encourage development.

Roger Edgar, George K. Baum & Company, noted in the past most of the SBD projects were well served by assessing the square footage and had been largely done for streets or stormwater. He agreed that the City hadn’t had a project with these density differentials. He thought the main question was the difference in stormwater runoff and if it was enough justification for moving away from the square foot policy. Any changes made to the policy could affect the City’s stormwater issues in the future.

Councilmember Gill felt the valuation of property was an equitable way to allocate costs. The improvements are designed to support a multi-parcel development and he didn’t feel it was appropriate to place the cost responsibility on the first entity. He thought they could take the proposed entities from the Master Plan and hypothecate the relative values as if they were constructed and allocate their value.

Councilmember Azeltine thought they could substitute using the assessed valuation instead of square footage. Mr. Lambers felt they should maintain using square footage for stormwater and the linear foot option for street improvements.

Mr. Miller understood Councilmember Gill’s proposal; however, he noted they were past the initial entity with a hotel and retail already constructed and an office building underway.

All of these properties are owned by Park Place Developers and their investment is a huge incentive to develop. They are willing to allocate part of the cost improvements to the land that generates no income; however, allocate a greater percentage to the buildings that do generate income. Their proposal was always based upon the concept of Scenario No. 2.

Mr. Lambers reminded the Council that a TDD assessment methodology is for a junk bond that the City has no obligation for. With a SBD, if the developer allocates it to one parcel and they go under, the City has to make up the difference. If the Council is considering Scenario No. 2, the same concerns are there, but they have been mitigated somewhat. The City carries a 20%-30% balance in a bond and interest fund in case of delinquent tax payments. The allocation should be spread among other parcels.

Ms. Mann argued that the City would be more at risk to keep it based upon square footage. They would be better off having an income producing entity paying part of the tax than a non-income producing parcel of land. Under the land and improvement valuation, the land would still be paying their appropriate share.

Councilmember Gill agreed that considering the size of the hotel and the footprint of land, they were underpaying; however, he didn't feel they should have to bear the full share of the cost.

Ms. Mann noted sometimes things develop differently than what is planned. There is a seven-story office building proposed on the north corner; however, it doesn't seem equitable to place a substantial burden on something that may never come about. The land should share; however, the hotel and improvements are benefitting the most. This is spread out over a 15-year period.

Mr. Gill asked if the tenants would be willing to provide written consent if the Council agreed to this. Ms. Mann indicated the tenants had already agreed and they understood from the beginning that this was based upon assessed value. Mr. Miller noted they thought they were going to have an assessment only TDD based upon the land and improvements in lieu of the SBD.

Councilmember Azeltine asked if changing from square footage to assessed valuation would increase risk to the City. Mr. Edgar stated this change would cause a re-distribution of costs from the developer to the hotel. In the event of a default, assessed valuation will make a difference in terms of the City's ability to collect. He thought from a collateral perspective they would have a higher probability to collect from the hotel, versus bare ground.

Councilmember Gill confirmed that the City has a general obligation that is backed by real estate. If the City has to pay off these bonds, the ultimate collateral is to foreclose on the land. When there is nothing developed and the allocation is 100% to the land, the recourse would be to foreclose the undeveloped land. Once the City begins to allocate the assessment to all the parcels and they aren't getting paid, the City doesn't have the ability to take the entire tract of land as collateral. Mr. Miller clarified that this would happen regardless of what scenario; they would no longer have the lien on the entire property. Mr. Gill thought it could be better to have a bigger proportion of the mortgage on a developed asset, assuming there was a buyer for the property.

Mr. Edgar thought they should include more discussion on how to assess the stormwater.

Mr. Miller clarified that as the lots are subdivided, the assessments are automatically allocated among each lot. He felt there would be no affect on the City's liability because this is the first lien on the property so it would come before anything else. The City could sell it for the equivalent value of the assessment. He didn't think they needed to determine if this was a fair way to allocate stormwater for every project in the future and felt the City could vary their policy for this particular development.

Councilmember Rasmussen wanted to have the assessments based upon the value of the improvements and the land as an alternative; however, not as a policy. Councilmember Filla concurred.

City Attorney Patty Bennett noted there was no assessed value given to the parking garages; therefore, they wouldn't be paying any part of the assessment. Mr. Miller indicated the assessor will adjust the assessments every year and they weren't advocating that they lock in what was currently there. Mr. Lambers noted if they go with a SBD in September, they will need to use these current figures. These figures will change the following year once the hotel is added.

Mayor Dunn confirmed that Councilmembers Rasmussen and Filla wanted to go with Scenario No. 2 as an alternative way. She clarified that this would be a policy change for everyone as they move forward.

Ms. Mann thought the Council could consider that this be approved only for projects that had air rights.

Councilmember Azeltine wanted staff to return with a draft of Scenario No. 2.

Councilmember Gill thought overall, this would be a bad policy and drive bad behaviors; however, he would review a draft. He wanted certainty that the City would not be faced with any type of legal claim from any of the existing property owners and if so, he wanted the City to be protected.

Mayor Dunn clarified that the developer thought they were doing a TDD based upon valuation from the beginning.

Councilmember Peppes wanted to move forward and see a draft. He concurred with Councilmember Gill and thought this could be one-time thing instead of a policy change.

Councilmember Cain concurred and felt this was a very unique development.

Councilmember Rawlings concurred and wanted to consider criteria for only this development.

Mr. Lambers indicated if they were using a TDD, they could consider that; however, this is a SBD that is a general purpose assessment for public improvements. He was concerned that by narrowing this, someone could pursue legal action against the City because of discrimination.

Mayor Dunn wanted to review a draft; however, she preferred that this be an exception for Park Place as well. She asked the professional consultants and legal staff to try and ascertain a way to do this.

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

Pam Gregory, Recording Deputy City Clerk