Special Call Meeting

THE LEAWOOD CITY COUNCIL

January 19, 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 Tuesday, January 19, 2010. Mayor Peggy Dunn presided.

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

Councilmembers absent: None

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

Others Present: Roger Edgar, George K. Baum & Company, City Financial Advisor
David Arteberry, George K. Baum & Company
Charles Miller, Esq., Lewis, Rice & Fingersh, Park Place Counsel
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 commented on previous discussion regarding financing for Park Place. The developer is requesting alternative methodology for Special Benefit District [SBD] financing that would consider the improvement of land value of each tract of land so the assessments would not be uniform.

Mr. Lambers proposed draft language for revision to the City’s Debt Service Policy; the development project would need to be 20 acres or greater in size, have an approved overall floor-area-ratio [F.A.R.] of .5 or greater, and have a Certificate(s) of Occupancy for 35% of the total approved square footage.

Councilmember Gregory Peppes joined the meeting at 6:15 P.M.

In consideration of this methodology for assessment, the Council may consider requiring a Letter of Credit with the amount and deadline to be determined on a case-by-case basis. If the Council accepts this, they will need to amend the agenda this evening and adopt it into the policy. Park Place would not meet the 35% threshold; therefore, they would need to roll over the temporary notes for the SBD for one more year. With Phase II under construction, it's possible they could meet the threshold by this time next year.

Councilmember Cain confirmed with Mr. Lambers that Park Place currently has 28% occupancy.

Councilmember Peppes confirmed with Mr. Lambers that the developer would incur the costs of rolling over the temporary notes. This would be less expensive than actually issuing the bonds. The assessments are also delayed for a year, so the developer benefits on both of these aspects.

Councilmember Rasmussen asked in terms of the mill levy, if it would be in the City's best interest to encourage multiple rollovers of the short-term notes. Mr. Lambers confirmed there would be no effect on the mill levy rate. He clarified that the accrued interest becomes the developer's obligation to roll into the bond.

Charles Miller, Esq., Lewis Rice & Fingersh, Park Place Counsel, stated the developers supported this; however, they asked that the language read "for each tax parcel within the district" because there could be more than one tax parcel owned by a particular owner. Mr. Lambers recommended they revise it to read "for each tract of land and/or tax parcel within the district." Mr. Miller concurred.

Mayor Dunn confirmed this would be added to the agenda for action during the Council meeting this evening.

Councilmember Bussing confirmed with Mr. Lambers that there were remaining 20-acre tracts of undeveloped land along 135th Street. Mr. Lambers stated there would be a more intense effort for greater density on the remaining tracts of land.

Mayor Dunn asked when the bonds are issued, what comfort level the City would have of acceptance by the tax parcels for the assessments. Mr. Miller noted with the SBD already in place, the City could currently levy the assessments. He thought if they revised the policy, an ordinance would be prepared with an amendment to the SBD petition to increase the amount of the assessment. Once this is signed by the property owners, they are bound by it.

Finance Director Kathy Rogers indicated the notes were coming due and the amended SBD petition would need to take place by February 1, 2010, to begin the assessment process.

Mr. Lambers clarified that the Council could adopt the policy revision this evening and the developer would return with a petition that is consistent.

City Attorney Patty Bennett thought they may want to keep the accepted methodology in the petition as is until they reach the 35% threshold. Mr. Miller wanted to go ahead and include the alternatives in the language so everyone has a complete understanding when moving forward.

City Clerk Deb Harper confirmed they needed to do a resolution amending the Debt Service Policy, followed by a resolution accepting the amended petition for the SBD on the February 1, 2010, agenda.

Mayor Dunn clarified that the motion this evening would be to accept the language for the revision to the Debt Policy to be adopted on February 1, 2010. This will include the additional language requested by the developer regarding tax parcels.

Mr. Lambers stated the developer was not ready to issue the bonds; therefore, they are requesting that the City advance the current proceeds collected from the Transportation Development District [TDD]. The City's practice has been to have the TDD in place, collect the monies, and then once the bonds are issued, this money is anticipated to pay down the total amount of the bonds. This would benefit the developer by being able to pay down their outside loan.

As part of this discussion, Councilmember Rasmussen had raised the issue of the 22-year time limit on the bonds for a TDD. His position was that if the City were to start making Pay-As-You-Go [PAYG] payments, the 22-year calendar should begin. If the Council desired this, the developer's may not want to proceed with this request. Bill Hess, Esq., Bryan Cave, LLP, City Bond Counsel, had advised that they could have a dollar amount with PAYG and keep the TDD in place until this amount is achieved.

Councilmember Peppes confirmed that if they agreed to advance this money, there would be fewer bonds when finally issued because they would be paid down.

Mayor Dunn asked why the proposal was for a period not to exceed three years. Melanie Mann, Park Place Developers, stated they preferred to do PAYG for an indefinite time frame until they could issue the bonds for a full recovery. They understood Councilmember Rasmussen's concern and thought the bond market would become more favorable within a three-year period to issue the bonds. She clarified that if this doesn't happen, they would need to make a decision or the 22-year calendar would begin.

Councilmember Azeltine confirmed with Mr. Lambers they would need to amend the development agreement to enable the PAYG.

Councilmember Azeltine concurred with Mr. Rasmussen's concerns regarding the maturity of the bonds. Mr. Rasmussen thought they could begin with PAYG; however, he didn't want to extend time that the City would be giving up its taxing authority.

Mr. Lambers clarified that the developer was assuming the bond market would improve in three years; they would then meet all of the requirements for the bonds to be issued for 22 years. Their proposal is essentially a 26-year TDD sales tax. Mayor Dunn clarified that they first began collecting in December, 2007, and there is approximately $200,000 collected to date.

Mr. Lambers noted they had anticipated at the time of the development agreement that they may need additional time to improve sales before the bonds are issued.

Councilmember Filla confirmed with Mr. Lambers that if they begin receiving PAYG funds, the clock would begin with the first disbursement.

Mr. Miller confirmed that the developer wanted to wait until all of the conditions of the existing development agreement were met and issue the bonds on favorable terms. In the meantime, receive the money on a PAYG basis, which will reduce the ultimate bonding.

Mayor Dunn asked what their estimated time frame was to issue the bonds. Ms. Mann indicated they needed to meet the 50% lease requirement for retail in Phase I. They currently have a letter of intent and were hoping to meet this by the end of 2010.

Councilmember Rawlings asked what the projected sales tax revenues were over the next three years. Mr. Lambers indicated they hadn't yet received good data on the hotel and there were no projections at this time. The idea was to get them to 50% and extrapolate when they anticipated the next 50% and issue the bonds based upon this. The Council has the authority to issue $6.5 Million or less depending upon revenues.

Mayor Dunn thought they needed to decide whether to release the PAYG and then once they reach the 50%, the developer would return for further discussion on issuing the bonds.

Mr. Lambers wanted the Council to decide whether to begin the clock with the issuance of the bonds or give them a three-year window to return. If they decide to allow the three years, the clock will begin then. They will issue the TDD bonds for less than what is projected by the development agreement, which will be amended to provide for a second issuance once the revenues justify it.

Ms. Rogers stated before they could release any funds, they needed to have the certified costs.

Councilmember Bussing was concerned of releasing any money on the off-chance things don't improve. Mr. Lambers stated they would keep some reserve money for any operating expenses the City incurred over the next three years.

Mr. Lambers noted he had met with the Johnson County Administrators and the government proposal had been announced. There were concerns that a 10% threshold was a psychological barrier; however, they agreed this would eventually be broken and didn't feel it would be a barrier for future increases beyond that.

Mr. Lambers recommended that the City retain the money and issue the bonds in three years for an amount that can be supported. The City can use the money being collected to pay down the amount as well. If the Council decides to release it, it wouldn't be a significant amount. He felt the sales tax revenues would not be sufficient to justify the full amount of $6.5 Million within the three years.

Councilmember Azeltine agreed that if they do PAYG, they should start the clock.

Ms. Mann stated if the clock begins when they receive any funds, then they needed to wait for the bonds.

Councilmember Gill confirmed with Ms. Bennett that the development agreement states not to exceed 22 years. Mr. Gill thought they should indicate that the duration of the bonds would be determined at the time of issuance, pursuant to the authority of the Council at that time. He also wanted accountability from the developer that their future bonded debt would be paid down as opposed to being used elsewhere. Mr. Miller didn't think this would be an issue because the money could only be used for certified costs that the City would have to approve in advance.

Ms. Bennett clarified that the development agreement states the term of the bond is 22 years, unless the developer elects a shorter term.

Mayor Dunn received consensus from the Council to retain the money until they could issue the bonds.

Mr. Lambers clarified that the development agreement states they must meet the 50% threshold before asking the Council to issue the bonds. If the Council wants this to remain in place, it will remain open-ended until then. If the Council wants a deadline to issue the TDD bonds, the development agreement would need to be amended. Mayor Dunn noted it was predicted that this threshold should be met by the end of 2010. Mr. Lambers stated the developer is not required to return once they meet the 50% threshold.

Councilmember Peppes noted it would be less expensive for the developer if they returned once they met the 50%. Mr. Lambers stated they don't want to issue these speculatively. Back in 2005/2006 when the market was better, the 50% was intended as a basis to reasonably extrapolate issuing bonds in anticipation of future revenues.

Ms. Mann indicated if conditions were right, they would want to issue the bonds at the earliest possible time to pay down debt that continues to incur interest. Mr. Miller noted the lenders made these loans with anticipation of getting paid by the TDD bond funds. The developer has significant incentive to ultimately get the bonds issued.

Mayor Dunn confirmed that the development agreement would remain as is and the issuance of the bonds would remain open-ended until the developer returns.

Mr. Lambers stated the developer had also requested to receive the Transient Guest Tax [TGT] revenues. Councilmember Filla had suggested they discuss a partial payment from the revenues. He did a financial analysis making an assumption of revenues, which the developer had informed him were optimistic. Any disbursements would be made once the money is received and would not be provided in advance. He suggested they consider a partial payment amount of $100,000 per year. They have obligated a certain amount of the TGT to go to the developers for the parking structures. Unlike the TDD tax, this is City money that can be used for a very broad definition of projects that benefit the City.

Councilmember Rasmussen confirmed with Mr. Lambers that according to the development agreement, they are obligated to give the developer 5.5% of the 7% TGT fund for the parking structures upon completion of the second hotel. Up until the second hotel is completed, this is the City's money. The developer is asking for this to be amended to receive proceeds from the current tax from the current hotel. The revenues from the second hotel would be used to fund the bonds.

Mr. Lambers noted they would have further discussion of the TGT at the work session on February 1, 2010.

There being no further business, the meeting was adjourned at 7:29 P.M.

Pam Gregory, Recording Deputy City Clerk