Special Call Meeting

THE LEAWOOD CITY COUNCIL

February 1, 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, February 1, 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; Kathy Byard, Budget Coordinator; Pam Gregory, Assistant City Clerk

Others Present:
Roger Edgar, George K. Baum & Company, City Financial Advisor
Charles Miller, Esq., Lewis, Rice & Fingersh, Park Place Counsel
John Klaus, 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]

Presentation of 2011-2015 Capital Improvement Project [C.I.P.]

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

Transient Guest Tax [TGT] Presentation Proposal

Melanie Mann, Park Place Developers, requested that the current condition requiring two hotels be open and operating prior to allowing them to issue bonds be modified to only one hotel. When they initially met with the City and agreed on the use of the TGT, they expected to have two hotels under construction at the same time. The second hotel, The Element, was redesigned and by the time the developer was able to incorporate the design changes for approval, The Aloft was already under construction and financing was not available for The Element due to changes in the hotel financing market.

They were asking that the Council allow them to issue the bonds to pay for one level of the garage that was necessary to accommodate The Aloft, which is currently open and operating.

Mr. Lambers stated this condition was in place recognizing if bonds are issued, they would be relying on TGT revenue from both hotels. There was concern if this revenue source was to dry up, there would be no other way for payments to be made and the bonds would go into default. By going to one hotel as the sole revenue source, the concern is even greater.

Councilmember Debra Filla joined the meeting at 6:15 P.M.

In the Special Benefit District [SBD] discussion regarding the methodology, the Governing Body was concerned that in the beginning, the developed properties were going to be assessed much larger than the undeveloped ones. Gradually; however, the assessments would level out. Mr. Lambers had severe reservations having all of the revenue on one property for a bond.

Roger Edgar, George K. Baum & Company, City Financial Advisor, agreed that the current hotel would be the only source for a TGT secured bond issue and was also the major source of generated sales tax. For added security; however, they could consider requiring higher debt service coverage or a higher assessment on the hotel and then reimburse the assessment with the TGT.

Ms. Mann didn't understand the risk analysis since originally, in addition to the $2.2 Million; the second garage was going to be over $4 Million, for a total of $6.2 Million. They would have had the second income source; however, it would be a much larger bond amount. Mr. Lambers stated the amount would be determined by generated revenues and could be considerably less.

Mr. Miller indicated the bond buyers will have the same concerns as the City and will have to evaluate how sound the revenue stream is. They weren't asking the Council to approve the precise terms of the future bond issuance; however, wanted approval to move forward and issue the bonds with one hotel.

Councilmember Rasmussen wanted language clarification of Article III-A in the development agreement. Mr. Lambers noted the intent was to issue the bonds for no more than 22 years and they would not be extended. Mr. Rasmussen asked why there would be a term if there was no limitation on the number of times the bonds may be refunded. Mr. Lambers stated the bonds were at very high rates and were subject to having reduced future rates.

Mr. Edgar thought according to the statute, if they allow a subsequent bond issue for reimbursement of construction costs, then each of the bond issues would have a 22-year clock and refinancing would not reset it.

Councilmember Rasmussen confirmed that the developer was currently requesting $2.2 Million. He reiterated his concern for clearer language on the terms of the bonds.

Councilmember Azeltine confirmed with Mayor Dunn that the TGT was put in place in 2005 and the development agreement was signed in 2007. Mr. Lambers noted they were just beginning to receive TGT revenue and at this time, there was no data for projections. Ms. Mann stated the general manager of the hotel had projected gross room revenues to be $5.2 Million over the next year.

Councilmember Rasmussen confirmed with John Klaus, Stifel, Nicolaus & Company, that if the Council agreed to one hotel, they would need approximately three to six months to sell the $2.2 Million in bonds.

Councilmember Azeltine confirmed with Mr. Lambers that the City's charter ordinance for TGT has a maximum of 9% interest.

Mr. Lambers clarified that $260,000 was 5.5% of the 7% TGT. The $2.2 Million over 22 years would be equal annual debt service payments of $215,000.

Mayor Dunn noted several places in the development agreement that state "unless waived by the City." The intent was to have two hotels open and operating; however, they can choose to waive the requirement of the second hotel being completed. She thought for security to the City, they could give the TGT revenue in a lump sum appropriation and possibly never have bonds issued. Mr. Edgar agreed this would be safer from the City's perspective; however, he thought the developers would need the bond issued. When this development agreement was signed, they didn't have the ability to do a PAYG option under the statute.

Mr. Lambers felt since they would be issuing bonds with one hotel, they needed a number of safeguards to ensure that the payments are made. One option would be a 100% special assessment against the hotel, and then have the TGT reimbursed to the hotel. He agreed with Mayor Dunn that it may not be worth the risk to issue bonds when they could do PAYG with the 5.5%. When this comes in, they could do an annual or semi-annual appropriation to the property and the City's $2.2 Million obligation will have been met within eight or nine years.

Mr. Edgar indicated since there would be no interest and no cost in the issuance of bonds, the TGT would sunset much faster on PAYG. Mr. Miller confirmed that they were suggesting they pay it out over time with no interest. Mr. Lambers argued that PAYG doesn't include interest because there is no debt. Mr. Miller indicated the developer will have expended $2.2 Million and will wait over a 20-year time period to receive their money. Normally on a PAYG, the City is paying the developer back for paying this money up front plus the cost of carrying it over a period of time. Either they borrow it and the City reimburses them for their interest, or there is an interest factor computed into the agreement.

Mr. Edgar had gotten indication from prior meetings that the developer wasn't willing to consider PAYG. Ms. Mann stated their preference was to have the bonds issued; however, they needed to know what the restrictions would be. Based on figures from Stifel, Nicolaus & Company, they had almost a 2.5 Million par value. They preferred to have the coverage increased enough for the City to feel comfortable, but still be able to reach the $2.2 Million.

Mr. Miller noted this would be a private placement. He didn't feel the institutions that have to sign-off on the placement and disclosure letters would believe the City would have any responsibility for the bond.

Councilmember Filla was in agreement to issue the bonds with only the one operating hotel. She asked the total amount they would need as PAYG to equal the $2.2 Million plus interest for the bonds. Mr. Edgar thought they could negotiate by requiring evidence from the developer of their financing costs. Ms. Filla thought the developer hadn't had sufficient income in comparison to their investment and thought the purpose of the TDD was to help with the higher density multi-level parking, which is much more expensive than surface parking. Mayor Dunn clarified that they currently have income coming in with $5.2 Million in projected hotel revenue in 2010. Ms. Filla wanted to begin receiving some of their obligated tax money as soon as possible.

Mr. Miller reiterated that the City would have no liability for the bonds under the TDD statute; however, he wasn't sure if a future Governing Body could bind the City. Councilmember Azeltine thought this had happened in other areas. Mr. Miller noted they could do an annual appropriation pledge to back it up.

Mr. Lambers reiterated he couldn't recommend issuance of the bonds with only one hotel open and operating.

Mayor Dunn confirmed they were committed to $2.2 Million in bonds, which would be $4.7 Million over 22 years. Mr. Edgar thought they shouldn't state a specific amount until they have negotiated it.

Mr. Klaus stated the 22-year bond issue would be at 6.25% interest with 1.35 coverage. This nets a par amount of $2.4 Million. Mr. Miller clarified they weren't asking the Council to approve the coverage ratio; however, just approve the concept of dropping one hotel as a pre-condition and working toward a $2.2 Million bond issuance.

Councilmember Gill thought since the second hotel was larger than the first one, disaggregating the two would be appropriate. He asked if they floated the bond at $2.2 Million, how much comfort they could have that the sales tax proceeds would be adequate to discharge the bond over 22 years. Mr. Edgar noted they have commentary from the general manager of hotel sales expectations with only a partial month of income. There is still risk of the hotel performing at or near the levels expected. Mr. Gill was concerned of this going to market for investors without having performance results over a period of time.

Mr. Klaus clarified that if they had the collections and were ready to go, closing time would be in three months. The market will require some sort of collection history. They were contemplating a September bond issue; however, it may be later and would be comfortable with six months of collection history.

Councilmember Rasmussen noted this was the reason he wanted the Council to consider adding a termination date for any revised agreement.

Mr. Edgar thought the risks investors would look for was if the projected occupancy would be there or if turbulent economies would affect it; therefore, coverage is needed. There is also the worst case risk that the hotel would go dark. When considering City exposure or liability, there are different kinds of risks and the City will be required to administer this TDD and receive and remit the payments on the bonds. If the transaction struggles, an investor could come to the City and ask for assistance in curing it by increasing the level of tax. He thought it was understated that the City would have no liability or responsibility.

Mr. Edgar confirmed for Councilmember Gill that the bond holders would not have a lien against the property. They would have the pledge of the TGT revenue from the hotel as their security. Mr. Gill was skeptical that a bond was floatable with the current uncertainties. He thought they could move forward pursuant to a timeline suggested by Councilmember Rasmussen to explore issuing a bond.

Mayor Dunn asked if anyone had reservations of amending the development agreement to move forward with only the one open and operating hotel.

Councilmember Bussing wasn't comfortable moving forward until they had the subsequent conditions attached. He didn't object to continued discussion of alternatives; however, he wasn't in favor of dropping the second hotel and bonding a single property. The performance risk of a single property is too high. Mayor Dunn clarified they hadn't determined for sure they were going to bond.

Mayor Dunn received consensus from the Council to consider the one hotel; however, not move forward with the issuance of bonds at this time.

Councilmember Azeltine asked what they thought the current market was for a TDD of this size. Mr. Klaus stated it would be a private placement, hopefully with one buyer. He felt the assumptions of the interest rate and coverage were realistic. Councilmember Azeltine approved of moving forward and bonding it.

Mr. Lambers stated they need at least 6 months of actual receipts on hotel operation for an analysis and then they could place this on the agenda for a June City Council meeting.

Ms. Mann wanted to work with staff to advance a bond they would be comfortable with and then discuss the PAYG option, versus the bond, with their equity partner.

Councilmember Rasmussen wanted the developer to submit a draft of the terms and conditions they need from the City to finance all costs.

Councilmember Bussing thought it would be more productive to have further discussion at another work session once they receive the analysis, rather than at a Council meeting. Mayor Dunn concurred.

CIP Discussion
Mr. Lambers stated this was a preliminary discussion to help put them in a proactive position regarding special benefit debt and the City's overall debt. He displayed a graph showing debt service payments being made aggressively in the early years. As time goes on, because the City is built out and incurring less debt, the slope is downward, which is positive.

The City has; however, experienced an increase in non-payments on commercial properties for tax years 2008 and 2009. The total delinquent in 2009 (tax year 2008) was $381,000 and delinquency for 2010 (tax year 2009) is over $1 Million. These are general obligation SBD payments to the City, which has reserves in its bond and interest fund for these payments. The City will eventually get this money back. If it is not paid, the properties will be foreclosed upon. There are also residential properties in which payments are not being made, which the county could choose to foreclose on. If the county is slow in pursuing the foreclosures, the City would need to take the lead to ensure this occurs. There could be a four-to-five year timeframe in which these monies are returned. As a result, it is putting a strain on the bond and interest fund and the City's mill levy.

The City's plan is to involve advance refunding for some debt, which would help level it out to have less debt payments in the early years, more in the middle, and less in the outer years. The other plan is to take the county-wide sales tax that is currently in a capital project fund for the Justice Center receiving $700,000-$800,000 per year. He proposed in combination of the advanced refunding plan, that they transfer money from the Justice Center fund after it has been built to offset this. He clarified that the transfer would take place from 2015-2018.

Mr. Lambers noted that because of the downturned economy, people were making business decisions to not pay their taxes. There is minimal penalty and they receive three years almost interest free. Staff planned to stay on top of this and continue working with the City's financial advisors to develop a plan.

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

Pam Gregory, Recording Deputy City Clerk