

Minutes

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 5:30 P.M., on Monday, May 3, 2010. Mayor Peggy Dunn presided.

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

Councilmembers absent: None

Staff present: Scott Lambers, City Administrator Joe Johnson, Public Works Director
Patty Bennett, City Attorney Chris Claxton, P&R Director
Chief John Meier, Police Department Lovina Freeman, HR Director
Chief Ben Florance, Fire Department Kathy Byard, Budget Coordinator
Kathy Rogers, Finance Director Deb Harper, City Clerk
Mark Andrasik, Info. Systems Director Pam Gregory, Assistant City Clerk
Richard Coleman, Comm. Dev. Director

Others Present: Mary Tearney, Chair Leawood Arts Council
Dr. Ann Kenney, Leawood Arts Council
Carl McCaffree, Leawood Arts Council

Roger Edgar, George K. Baum & Company, City Financial Advisor
David Arteberry, George K. Baum & Company
Bill Hess, Esq., Bryan Cave, LLP, City Bond Counsel
James Lahay, Stifel, Nicolaus & Company
Jim Pratl, Underwriter for Stifel Nicolaus & Company [via teleconference]
Andrew Folland, Nuveen Investments [via teleconference]
Charles Miller, Esq., Lewis, Rice & Fingersh, RED Development Counsel
Julie Jurden, RED Development
Bart Lowen, RED Development
Matt Webster, Leawood resident

**Art in Public Places
AND
Transportation Development District [TDD] financing for
One Nineteen Development**

Mayor Dunn called the meeting to order at 5:35 P.M. Introductions were made by those present.

Art in Public Places**Opening Remarks – Councilmember Bussing**

The intent of the work session was to discuss a particular piece of art the Arts Council had been working on for a few years. They wanted to ensure that the Council would be comfortable with a proposed expenditure of \$200,000 with an additional cost of \$50,000-\$75,000 for installation. They thought if there were concerns regarding the size of this art expenditure, it would be best if those concerns were voiced prior to any additional work with the Park Advisory Board or Planning Commission.

Councilmember Debra Filla joined the meeting at 5:40 P.M.

Presentation

The Arts Council had this art piece budgeted for 2010 and 2011 with some remaining money from 2009. They understood this expenditure exceeds the budget for any one year and had been saving for it.

Mary Tearney, Chair of the Leawood Arts Council, stated the art piece is titled “Splash” and is planned to be installed in the northern lake along Tomahawk Creek Parkway. There are plans to drain this lake because of silting and it will be less expensive to install the art once the lake is dry. The dimensions are approximately 20’ feet by 20’ feet and will light up.

Mayor Dunn confirmed with Ms. Tearney that a lot of the brush will be removed so the art piece could be visible from the road.

Mayor Dunn clarified that dredging the lake was not scheduled in the budget this year and if the art installation was combined with dredging, it would need to be deferred a year.

Carl McCaffree, Leawood Arts Council, thought it may take two years to construct the art piece and they would need to coordinate this with the dredging.

City Administrator Scott Lambers noted delaying the dredging will cause a modest price increase because the lake continues to silt. Ideally, they preferred to drain the lake, complete the dredging, and install the base and art piece at the same time.

Councilmember Bussing thought the Arts Council had done a good job with budgeting in the past and felt they were among the most successful of the City’s volunteer committees. In the past, they left the art selection process up to the committee and he felt they should continue to do so. The art in Leawood is attractive; however, he thought they should take the opportunity to buy a more substantial piece for the City.

Mayor Dunn noted she loves all of the art that has been placed around the City. In the 2010-2015 Capital Improvement Project [CIP] there are six art pieces for the sculpture garden with each one priced \$50,000-\$120,000. There is \$100,000 in the 2010 budget for art. This piece is obviously 100% over budget; therefore, she felt the Governing Body needed to have this discussion. It could be put in the 2011 budget with a footnote stating they plan to use three years of accumulated funds.

Dr. Kenney didn't understand how this could be over budget with 240,000 shown in the CIP.

Mr. Lambers stated this was incorrect; there is \$100,000 approved in the 2010 budget. Accumulating money for the ending fund balance is fine; however, the expenditure per Kansas State Law has to be shown in its entirety. The total project cost should be \$275,000-\$300,000; therefore, they would need to amend the budget to proceed in 2010, or defer the dredging to 2011 and include the full project cost in the 2011 budget. Until it is incorporated in the budget, the CIP is used only as a guide.

Mr. McCaffree noted he could speak with the artist regarding the timeframe of the art piece.

Mr. Lambers clarified there is \$100,000 in the end cash balance from 2009 for art and \$100,000 in the 2010 budget. They intended to budget another \$100,000 in 2011 to accumulate all three-year allocations for the \$300,000 project. Based on today's numbers, this would include a \$15,000 contingency.

Councilmember Azeltine confirmed with Mr. Lambers that the dredging would be a separate cost of \$267,000.

Councilmember Azeltine was concerned the sculpture lighting could fail and asked if this possibility was included in the engineering costs. Dr. Kenney indicated the power source would be computer operated and was unsure if those costs were included.

Dr. Kenney stated they didn't want to install the art in the southern lake because it is used for fishing and they were concerned the lines could get entangled. Also, it's more cost effective to install it in the northern lake since it was already planned for dredging.

Mayor Dunn confirmed with Dr. Kenney that it would be installed in the narrowest part of the lake so it would be visible from the road. Dr. Kenney noted the sculpture will be constructed of stainless steel and poly carbon.

Councilmember Rasmussen thought the artist could proceed with the understanding that the money would be accumulated and paid for over a two-year period. He wanted to find a way to accomplish this and still remain within the annual budget of the Arts Council and cash flow requirements of Kansas.

Councilmember Gill thought they could pay a fee in 2010 to lock in the negotiated price of \$200,000, and if for some reason they don't proceed in 2011, they would lose this contract price.

Mr. Gill noted concern that the lake tends to flood. Ms. Tearney indicated this was taken into consideration during planning as well as making sure the power source would be safe.

Mayor Dunn received no negative comments regarding the art piece and indicated it would be placed on a future City Council agenda for action.

Transportation Development District [TDD] Financing for One Nineteen Development Opening Remarks

City Administrator Scott Lambers recommended that they not proceed in issuing the TDD bonds for One Nineteen because of deviations being requested and wait until Stifel, Nicolaus & Company could find a buyer to comply with the City's policy.

Presentation

James Lahay, Stifel, Nicolaus & Company, updated the Council on the status of placing the One Nineteen bonds and discussed the offer of purchasing these bonds by Nuveen Investments.

Mr. Lahay requested that the Council allow them to proceed in getting the bonds placed with Nuveen. It would require some changes to the Preliminary Placement Memorandum that was drafted in February. The City requires the bonds to be purchased by a qualified institution and that the bonds are properly structured with good debt service coverage. Also, the City has a high expectation for the bonds to be paid-off within the scheduled maturity date. Nuveen's offer to purchase these bonds addresses all of these goals.

The City wanted assurance before any bonds were issued that they had met an occupancy threshold and had a report of at least three months of revenue. Once these thresholds were met, they began the bond process. On February 1, Alvarez & Marsal completed a projection study; Scenario 'A' showed 57% occupancy with a growth rate ranging from 6/10 of 1% to 1% in projected sales. Scenario 'B' showed 94% occupancy (future leasing). The bond size was based on the City's requirement of 1.25 debt service coverage. They only included the sales tax, assuming there will never be more than what is currently there and assuming no growth in revenue. Because sales fluctuate and stores close, the City required RED Development to pay an assessment. With these assessments, there is 1.50 debt service coverage with no growth in revenue and up to 1.77 coverage with growth as projected in the study.

The proposed offer from Nuveen is to purchase the bonds at a 9.50% interest rate. The traveling investor letter requires the initial purchaser of the bonds to be a qualified institution and any subsequent purchasers would be required to meet this same definition. They have requested that the City relax this restriction so subsequent purchasers are not required to sign this letter.

Jim Pratl, Underwriter for Stifel, Nicolaus & Company, indicated the restriction of the letter limits bond liquidity. The buyer may decide not to sell; however, they would still want that option in case the opportunity arose. In a seller's market they could get away with several restrictions; however, when the credit market froze it was very different with everyone aware of the risks.

Mr. Lahay confirmed with Mr. Pratl that once other potential purchasers discovered the letter restriction, they were no longer interested because of today's market.

Mr. Lahay noted if the City's decides not to accept the offer from Nuveen, they will continue to do everything possible to find a buyer that meets the current policy requirements. He was skeptical; however, that they could find another one in the near future.

Andrew Folland, Nuveen Investments, stated they are a large investment firm that manages in excess of \$65 Billion in municipal bonds. If they are purchased, they would go into one or two funds with long-term investors. They do not have any short-term money market funds and don't flip bonds like some institutional investors. The investor letter restriction diminishes the liquidity of the bond. Even though other investors often invest long-term, no one can predict the market; therefore, there are reasons institutional accounts need to liquidate bonds. In times of crisis, the only ones they can liquidate are good, strong, credit quality bonds.

Mr. Folland referred to Paragraph No. 5 of the investor letter and indicated most investors do rely on information in the public bond documents. Indemnification, under Paragraph 7, is something they typically won't agree to in terms of negotiating a bond deal.

Councilmember Filla thought the Council had always been consistent wanting to make sure the City had no liability for these bonds. She didn't understand why signing the letter would reduce the liquidity of the bonds if they could only be re-sold to a qualified institution. Mr. Folland indicated the investor letter further restricts being able to locate an approved institutional investor since there are currently only 25 in the market.

Councilmember Filla confirmed with Mr. Lambers that if they proceed, this would be the first TDD issued with the combination of sales/property tax.

Councilmember Gill was concerned of the liability to the City in case of a misrepresentation or omission in the bond documents and that this liability could be extended to members of the Governing Body. The indemnification is for their protection. The City does not have liability insurance that covers security fraud.

Councilmember Rasmussen concurred with Councilmember Gill.

Charles Miller, Esq., Lewis Rice & Fingersh, RED Development Counsel, clarified that under the disclosures; Nuveen was not requesting to remove the entire paragraph and only wanted to clarify the language. It would not affect the City's liability.

Bill Hess, Esq., Bryan Cave, LLP, City Bond Counsel, concurred with Mr. Miller indicating that the language in Paragraph No. 5 would only have minor changes. The indemnification was a different issue.

Mr. Miller clarified the traveling letter was included in the bond documents. If the Council wanted to remove the traveling portion, there would only be a few changes to the bond documents. Nuveen would still be required to sell the investor letter; however, it would no longer be signed-off by each transferee.

Mr. Miller stated the City is not liable for the debt of these bonds under any circumstances. He clarified that Mr. Gill was referring to liability under a securities act violation.

Councilmember Gill thought the City could still be liable for the remaining balance of the project if the bonds defaulted. Mr. Miller stated if the bonds defaulted, they would be mitigated by all of the protections. It is extremely remote for a City to be sued on a securities violation in conjunction with the bonds. Mr. Gill felt if there was no risk associated, they should indemnify it. Mr. Miller thought this was an unusual request but could look into it.

Mr. Miller clarified that the City's policies and TDD Agreement would not need to be modified to accommodate their requests. They weren't asking the City to change its policy. He noted the City's TDD policy states; "provisions and conditions under which debt for projects can be issued will be considered by the Governing Body on a case-by-case basis."

Mr. Lambers stated if the bonds had been issued in 2008 for the original amount requested of \$4.9 Million, they would be in default because of insufficient revenue. They had agreed to reduce the par amount of the bond to meet the revenue stream in place and agreed to a subsequent issue in the future.

Mr. Lahay agreed they would be in default if the entire amount had been issued; however, the \$4.9 Million was the authorized amount and the only time this would have been issued was if they had demonstrated they could support it. Hopefully, as the development grows and is built out, it can support it.

Councilmember Azeltine concurred with Councilmembers Gill and Rasmussen in terms of indemnification. He asked if the traveling letter was part of the City's TDD policy. City Attorney Patty Bennett stated this letter was in satisfaction to the City and its bond counsel and has traditionally been used in the past.

Councilmember Azeltine confirmed with Mr. Folland and Mr. Pratl that revenue stream would not affect their willingness to sign a letter of indemnification.

Roger Edgar, George K. Baum & Company, City Financial Advisor, thought indemnification would be an issue for most purchasers.

Mr. Miller noted if the Council was only going to approve this with the traveling letter and a backup indemnity, it would put them in a difficult position to proceed. They wanted to exclude the traveling letter and find a way for the City to feel more comfortable.

Mayor Dunn noted the decision of the Governing Body would be precedent setting for future issues.

Councilmember Filla wanted to continue what had been done in the past and thought they may be able to amend the language to accommodate everyone and still achieve the same objective.

Councilmember Azeltine stated he was open to not requiring the traveling letter; however, wanted to require the indemnification letter.

Councilmember Osman thought they should remain consistent and felt the City's TDD policy was lacking in comparison to other cities. Ms. Rogers stated the Governing Body reviews and approves the TDD policy yearly.

Mr. Lambers thought it was unfair to bring new Councilmember Osman into the middle of this discussion and didn't want him to make a decision if he was uncomfortable doing so. Mr. Osman indicated he understood the ramifications when this is backed by the City.

Councilmember Bussing concurred with Councilmember Gill's comments and concerns.

Councilmember Cain concurred with Councilmember Azeltine to being open to not requiring the traveling letter; however, still require indemnification.

Councilmember Rawlings felt the City's policy had worked well in the past and wanted to require both the traveling and indemnification letters.

Councilmember Rasmussen concurred with Councilmember Rawlings to require both.

Mayor Dunn understood the consensus from the Council was to require indemnification; however, there were mixed views regarding the traveling letter requirement.

Mr. Lambers reiterated his recommendation to not proceed in issuing the bonds until Stifel, Nicolaus & Company could find a buyer to comply with the City's policy.

There being no further business, the meeting was adjourned at 7:30 P.M.

Pam Gregory, Recording Deputy City Clerk