Work Session

THE LEAWOOD CITY COUNCIL

August 16, 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, August 16, 2010. Mayor Peggy Dunn presided.

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

Councilmembers absent: None

Staff present: Scott Lambers, City Administrator; Kathy Rogers, Finance Director; Deb Harper, City Clerk; Patty Bennett, City Attorney; Pam Gregory, Assistant City Clerk

Others Present: Charles Miller, Esq., Lewis, Rice & Fingersh, Park Place Counsel
Melanie Mann, Park Place Developers
Jeffrey Alpert, Park Place Developers
David Harrison, Caymus Real Estate

Discuss Transient Guest Tax and Transportation Development District [TDD] financing for Park Place Improvement District [CIP # 80196]

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

Opening Remarks

City Administrator Scott Lambers stated during the February, 2010, Work Session, Park Place Developers had requested that the City Council consider amending the existing development agreement, which currently requires that the second hotel be completed prior to their ability to issue bonds for the project and for the Transient Guest Tax [TGT] proceeds to be used for the debt service of the parking structures. At that meeting, the Council reached consensus that they were favorable to amending the agreement to allow the proceeds to be received with only the completion of the first hotel. Mr. Lambers had suggested if they advance the TGT monies, (he suggested $100,000 per year) that it be used as a credit against the City's agreed upon $2.2 Million bond issue. If bonds are issued in the future, this reduced amount would be the total amount of bonds for the principal. At that time, Park Place Counsel Charles Miller had interjected that the developer should receive credit for the interest they are paying on the debt.

One of the Councilmembers questioned the 22-year maximum timeline for bonds to be issued for a Transportation Development District [TDD]. It was his position that if the City were to make disbursements, whether they were for bond payments or Pay-As-You-Go [PAYG], the 22-year clock would begin. Several Councilmembers had agreed. The developers expressed they may not be interested in proceeding if this was the position of the Council. The Council never reached a consensus on this issue and Mr. Lambers wanted tonight's meeting to begin by discussing whether a disbursement for either the bond payments or PAYG would start the 22-year clock since this would affect the position of Park Place.

Councilmember Bussing had sent an email stating his position that if disbursements are made, the 22-year clock would begin with the first disbursement.

Mayor Dunn stated since their Work Session in February, the State had raised the retail sales tax by one cent. The City of Leawood currently has the highest sales tax rate in the entire metro-area.

Mayor Dunn referred to the memo from the developer stating "PAYG payments would reduce the amount of the principal received by Park Place prior to the bond issuance." She thought using this method would only pay the interest and wouldn't reduce the principal.

Mr. Lambers stated this was in regard to their interest on the $2.2 Million they are privately carrying. Almost all of the amount collected would go toward interest with very little reduction in the principal.

Councilmember Filla confirmed with Finance Director Kathy Rogers that to date, no construction expenses had been submitted for financing. Mr. Lambers clarified that the development agreement calls for the issuance of $2.2 Million in bonds for certified costs in construction of the parking structure. The underwriting fee and interest is inclusive of this.

Councilmember Azeltine asked if the statute spoke to whether or not the clock should start. Mr. Lambers clarified the statute was silent to this and if they issue the bonds, they would need to confirm with the Attorney General's [AG] office that the payments would not count against the 22-year clock.

Charles Miller, Esq., Lewis, Rice & Fingersh, clarified that the AG's opinion was that the 22 years starts when the bonds are issued. When the AG made the change to allow PAYG, it doesn't specifically speak to the 22 years. He interpreted this to mean that the 22 years does not apply to PAYG. Councilmember Azeltine confirmed the AG's opinion was issued before PAYG began.

Mr. Miller thought the statute allowed them to use the PAYG method for a while and then convert to a 22-year bond. Mr. Lambers thought this was an oversight, because the Community Improvement District [CID] legislation limits the PAYG to 22 years.

Councilmember Gill clarified with Mr. Lambers that the bond option would mean that the City will help finance the parking structure with up to $2.2 Million and the bond would be a private placement TDD bond. If they issue the bond, 5.5% of the 7% TGT would be used to fund the principal and interest repayment of the bond. This bond option has a 22-year maximum issuance and they would need to waive the condition that the second hotel be completed. The PAYG option means that as they receive the 5.5% TGT, rather than paying a bond, they will pay the developer who will then reduce the $2.2 Million. In the future, if they decide to bond what is remaining, they would need to discuss the amount and timeframe. Mr. Lambers clarified that the developer wants the City's disbursement to go toward their interest costs as well.

Melanie Mann, Park Place Developers, thought the interest rate for the PAYG option would currently be 8%-9%. Ms. Rogers indicated this would generate approximately $160,000 per year. Mr. Lambers stated there would be a shortfall in making the interest payments. Ms. Rogers clarified this was part of a combined financing package, which includes the one cent TDD tax plus the TGT. The financing wasn't originally structured to identify a specific segment to a particular improvement.

Councilmember Rasmussen felt they should determine how long the City could commit the TGT to the developer. If they begin PAYG, this tax, in effect, could last for 40 years and the City would only receive 1.5%. The City would be sacrificing their taxing authority for a long period of time.

Mr. Lambers clarified their request was for an indefinite amount of time because they don't know how long it will be before they issue the bonds.

Ms. Rogers clarified the PAYG was a general tax and was in the City's special revenue funds. They could not use it to pay the interest and needed to pay the debt service of the City.

Councilmember Filla confirmed with Mr. Lambers that the $2.2 Million was the principal and all the costs associated with issuing the bonds and the bond payments would total $4-$5 Million.

Ms. Rogers clarified the PAYG that was passed by legislation was not intended to pay the developers carrying costs. Mr. Miller stated it was to pay the cost of the project, which would include interest. Mr. Lambers stated they would need to get clarification on this.

Ms. Mann understood staffs need to base their decisions on how much the hotel has paid to date, which opened the end of September, 2009. The hotel is projecting $5-$6 Million in annual revenue. Figuring the 5.5% TGT, the annual payments would be $280,000. Their current loan is variable at 4.5%, which is $80,000-$90,000 in annual interest. Any payments received beyond the interest payment will be applied to reduce the principal. The 8%-9% would be the interest amount if they floated the bonds. If they go with PAYG, they would seek an interest rate that would be equal to the interest they are paying on the construction loan.

Ms. Rogers confirmed with Ms. Mann that they were proposing to receive funds to pay their short-term carrying costs, not permanent financing. Ms. Rogers wanted everyone to understand they were asking for this in addition to the long-term financing. These carrying costs could continue for 4-5 years, and then convert to permanent financing for 22 years.

Councilmember Bussing joined the meeting at 6:45 P.M.

Mr. Miller stated the short-term financing would be reducing the amount of the long-term financing. If the City accepts the $280,000 projection as the annual amount of generated taxes, this would take care of the interest of $80,000 and reduce the principal by $200,000. Ms. Rogers stated they won't accept their projections due to sales tax being down in every community in Johnson County.

Mr. Miller clarified that they didn't want the financing to be less that 22 years because they are assuming the risk that these projections would be met. If projections are not met, they want the full 22 years to recoup the $2.2 Million. If they are met, the return would be much less than the 22 years.

Councilmember Osman confirmed with Mr. Lambers that PAYG was enacted last year. He confirmed that no other cities had utilized this PAYG method and that Park Place was not currently receiving any funds under the PAYG method. He wanted a legal opinion to determine if the PAYG would start the 22-years.

Mr. Lambers confirmed the development agreement was established in 2007. PAYG didn't exist, therefore; they assumed they would start the tax when the developer owned 100% of the property. That way, if they were to parcel off some of the property, it would avoid issues of new owners objecting to it.

Councilmember Osman thought they would need to amend the development agreement to convert from PAYG to the bond. Mr. Lambers clarified they would need to amend it anyway because it is currently tied to the second hotel. If they decide to allow the TGT monies to be used for a bond for the $2.2 Million, whatever monies have been accumulated would be used to pay down the principal of the bond. This TGT is not TDD sales tax and is money cities can use for general purposes within the statute. The TDD tax can only be used for improvements.

Mr. Lambers proposed that they issue the bonds based upon their current revenues. They could then issue the second bond, like they did for the One Nineteen Project, when the revenues have generated to their projections. The first bond issue would be for less than half of the $2.2 Million.

Ms. Mann clarified that the projected hotel revenue of $5-$6 Million was based upon an occupancy rate of 70%. Since March, they have averaged 60%-70% occupancy.

Councilmember Filla felt if they disburse any funds, the 22 years should start. She was opposed to disbursing funds for carrying costs for the construction loan and then bonding it for 22 years. Any disbursement needs to go against the costs so when they bond it, it would be for less than the $2.2 Million. The money should be spent for the combined package of principal, interest and bonding costs. She was in favor of the suggestion to bond it in two parts.

Mayor Dunn confirmed that the first bond issue would be for 22 years; however, the second bond would be issued for less than 22 years.

Councilmember Gill concurred there should be a finite period of time on how long the sales tax revenues are made available.

Ms. Rogers stated they were projecting $160,000 in sales tax over the next year.

Councilmember Gill stated they need enough proceeds to cover the principal and interest and he was concerned of a shortfall and who would pick up the difference. Mr. Miller clarified the difference would either be paid from reserves or rolled over to another year.

Mr. Lambers clarified that because this is a sole industry, they should have a minimum of 1.5 coverage ratio; therefore, one third would not be eligible to be spent.

Councilmember Azeltine confirmed that Councilmember Filla was suggesting starting the clock in regard to PAYG, or if all of the PAYG goes to principal, they could bond the remainder for a maximum of 22 years, assuming it could be funded. Mr. Azeltine stated he would be in favor of either.

Ms. Rogers confirmed that from January through May, there was $50,000 in revenue from sales tax $80,000 in revenue from the hotel.

Councilmember Gill thought there could be value for the City utilizing Ms. Filla's idea to have all the PAYG going toward principal and wanted to explore this method.

Councilmember Rawlings concurred with Councilmembers Gill and Filla.

Councilmember Bussing wanted clarification to Ms. Rogers comments regarding $4 Million of exposure. City Attorney Patty Bennett clarified that this agreement is for $6.5 Million; $4.3 for the hotel garage that has not yet been built and $2.2 Million for one floor of the existing garage. They can negotiate on the TGT, because they have to amend the agreement anyway. If the second hotel is taken out of the agreement, they may not be doing the $4.3 Million.

Mr. Miller confirmed they had no obligation to the $4.3 if the revenues were not adequate.

Ms. Rogers clarified that the garage currently under construction was being funded by the one cent TDD funds.

Councilmember Bussing wanted further clarification on some of this; however, he concurred with Councilmember Rasmussen that if the City makes disbursements, whether they were for bond payments or PAYG, the 22-year clock begins.

Councilmember Cain concurred.

Councilmember Osman wanted a definite period of time, such as 3-5 years, for the PAYG option to allow the hotel to become fully operational. At 4% interest, it would be $145,000-$150,000 in interest only-payments. If they are currently making this, anything above it could be paid toward principal. After the allotted timeframe for the PAYG, they would convert to the issuance of the bonds for 22 years. This is a new operation and they are still trying to estimate what the taxes will be and are only calculating on assumptions.

Mayor Dunn confirmed that other than Councilmember Osman, everyone preferred Councilmember Rasmussen or Councilmember Filla's position. Everyone wanted more information; however, it was clear there were concerns over the length of time to dedicate the TGT.

In summary, Mr. Lambers stated the options were as follows:

1. PAYG starts 22 years – $2.2 Million or $2.2 Million plus carrying costs
2. PAYG = $2.2 Million (principal) – Bond remainder @ 22 years
3. Existing Development Agreement – Bond $2.2 Million @ 22 years and continue to accrue TGT tax
4. PAYG = Principal and Interest for 3-5 years, then issue bond @ 22 years

Ms. Mann requested to meet with staff before the next Work Session to review their projections and options.

Mr. Lambers received consensus from the Council that these options do not envision payments for interest on their temporary financing.

After much deliberation, the Council wanted further clarification.

There being no further business, the meeting was adjourned at 7:25 P.M.

Pam Gregory, Recording Deputy City Clerk