

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, March 7, 2011. Mayor Peggy Dunn presided.

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

Councilmembers absent: None.

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

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
Melanie Mann, Park Place Investors
Jeff Alpert, Park Place Investors

**Discuss Special Benefit District [SBD] financing for
Park Place Improvement District and Development
Agreement [CIP # 80196]**

Mayor Dunn called the meeting to order at 6:05 P.M. Introductions were made by those present.

Opening Remarks – City Administrator Scott Lambers

For the first portion of tonight’s meeting, Public Works Director Joe Johnson will review the Special Benefit District [SBD] assessment methodology for Park Place. Second, they will have discussion regarding the Transportation Development District [TDD] agreements and amending them to reflect the discussion that took place last November regarding changing one level of parking from a bonded project to a Pay-As-You-Go [PAYG] project, and utilizing Transient Guest Tax [TGT] and TDD sales tax monies to meet the requirements contained in the agreement. Intentions are to issue these bonds in the fall of this year.

Councilmember Bussing joined the meeting at 6:10 P.M.

Councilmember Filla joined the meeting at 6:11 P.M.

SBD Assessment Methodology Presentation – Public Works Director Joe Johnson

Typically, the City figures an SBD assessment on a square foot basis. The total cost is divided by the square feet of the development to determine the cost per foot. They then multiply that cost per foot by the area of each individual lot. They were asked to consider alternate ways of doing assessments and came up with the following four options:

- Option 1: Assessment of Square Foot Area
- Option 2: Assessment of Appraised Value – Land and Building
- Option 3: Assessment of Appraised Value – Buildings Only
- Option 4: Assessment Combination – Storm Sewer Costs Assessed by the Square Foot with Remaining Infrastructure Costs Assessed on Building Value

The figures illustrated on the spread sheet include the new parking structure, office building and changes in assessment values. Construction costs are \$5,150,000. The financing costs may change at the time of the bonding. The engineering construction is complete. There are a total of 22 different tracts.

Councilmember Bussing confirmed with Mr. Johnson that the assessed value is based upon the County's property tax valuations. Some of the tracts are not developed and are still listed as agricultural valuations.

Charles Miller, Esq., Lewis, Rice & Fingersh, Park Place Counsel, clarified that the assessors' values are based upon a percentage of fair market value. They will either use comparables or actual data provided by the property owner to determine the values, which could be different for two buildings side by side. Mayor Dunn thought the qualities of the finished areas could make a difference in the values as well. Melanie Mann, Park Place Investors, noted the value could also vary depending upon building vacancies.

Councilmember Rasmussen confirmed with Mr. Johnson that the \$5.1 Million included stormwater improvements.

Councilmember Filla asked if they had estimated the value of the project once it is completely built out. Roger Edgar, George K. Baum & Company, City Financial Advisor, confirmed that as construction continues, the assessed values would change and they would need to redistribute the assessments against the properties each year.

Bill Hess, Esq., Bryan Cave, LLP, City Bond Counsel, thought the agricultural land would benefit from the street improvements. Mr. Johnson confirmed it would benefit because of direct access to roadways and utilities; however, the County may not establish that value.

Councilmember Rasmussen asked if they could leave the stormwater assessment on a square foot basis and include the street assessment on the building value. Mr. Johnson noted this would be Option 4.

Mr. Edgar confirmed this option figures part of the value of the improvements and distributes it based upon the square foot of each parcel, which is a fair way to figure for stormwater. This option also takes part of the value of the total cost and distributes it according to the present buildings and then adds them together.

Councilmember Filla confirmed with staff that traditionally, they have always figured the assessments on square footage; however, other options were requested because of the change in density. The hotel has significantly changed things in that they are a greater revenue producer with more traffic than in most developments. Option 4 blends the traditional square footage based upon stormwater and streets benefiting and also the appraised value recognizing the density benefit that the hotel and some of the other structures will be bringing.

Mr. Edgar commented that the hotel is the largest structure with the highest amount of square footage; however, it sits on the smallest parcel. This is why the question was presented of assessing it solely based upon square footage.

Mr. Miller indicated they had originally planned to do a TDD to pay for the SBD improvements when the bond rates were lower and things were better in the development industry. The TDD that has been formed and the one they were going to form both pro-rate the assessments based upon the assessed value of the improvements. When they considered going with the traditional SBD, they had hoped to utilize that same methodology. They included this information in their recorded documents to preserve the ability to do this with the owners of the hotel. The hotel owners have already consented to having this methodology put in place.

Mr. Lambers confirmed that the Council had agreed to change the policy to allow the values to be an option; however, as Councilmember Rasmussen had mentioned, they were not sure this would be a fair way to assess the stormwater. He recommended they go with Option 4, recognizing this could not only be used for Park Place, but other developments as well. He wanted to maintain their consistency in assessing stormwater.

Councilmember Rasmussen noted this doesn't require that the next developer must choose Option 4; however, for Park Place, Option 4 makes the most sense.

Mr. Hess clarified with Mr. Johnson that Option 4 would be based upon storm sewer costs assessed by the square foot with the remaining infrastructure costs assessed on building value. There is the assumption of an increase in property value when a capital improvement is made immediately adjacent to it. Mr. Hess felt that property should be assessed for the benefit. Mr. Lambers clarified that the assessor of agricultural land places a value on it from \$1-\$12 per square foot. The AG will need to determine whether or not they want to go with the figures from the appraiser.

Mr. Edgar thought if the AG has an issue with it, they could go with a combination of Options 1 and 2, which would be by the square foot and assessed value of each property.

Mr. Johnson clarified that his figures were calculated by taking the total value of the improvements divided by either the appraised value of the land or the appraised value of the building.

Mr. Lambers stated if the consensus was to proceed with Option 4, he would have Mr. Hess inform the AG. If there is an issue, the AG can review their fallback position of a combination of Options 1 and 2.

Ms. Mann confirmed that from a timing standpoint, waiting to hear from the AG would not impact them since the improvements have already been made. Their agreement with the hotel was to assess it by value. If this changes, they will need to have further discussion with them.

Mr. Johnson confirmed that Lots 1 and 2 of the proposed hotel and another lot along Town Center Drive did have assessed value.

Mr. Lambers clarified for Councilmember Cain that over time, the payments would eventually even out; however, the properties currently developed will pay a higher share.

Mr. Johnson noted if they go with assessed value only, the hotel will be paying \$371,000, versus Option 4 at \$434,000, which is picking up a portion of the storm sewer costs.

Councilmember Rasmussen asked where this would leave the City if there are issues when the developer discusses this methodology with the hotel. Mr. Lambers clarified that the developer has a private agreement with the hotel, which doesn't involve the City. Mr. Rasmussen felt they had an understanding with the developer and wanted to maintain their integrity. Mr. Lambers indicated they could always go back to Option 1 if there were any issues.

Ms. Mann thought they may consider Option 4 with a combination of Options 1 and 2 so that the liability of the hotel would decrease. She asked the Council for time to review the options with the hotel.

Transportation Development District [TDD] Discussion

Mr. Lambers recalled his proposal last fall to amend the existing TDD agreement to a PAYG basis, in which the City would agree to increase its TGT rate from 7% to 8%. The City would agree to provide the developer all TGT and TDD sales tax revenues collected and then make an annual distribution to the developer until \$2 Million is achieved. This \$2 Million is the net amount out of the \$2.2 Million bond issue the City had agreed to.

Mr. Miller summarized the legal documents addressing the TGT and the TDD sales tax. He confirmed they would be combining all of the existing TGT and all of the existing 1% TDD sales tax and would use these funds to pay the developer as the funds come in once a year to pay the \$2 Million on a PAYG basis. The documents contemplate that the City will increase the TGT from 7% to 8%. Once the \$2 Million is paid to the developer, the TGT amount will return to 5.5% of the 7% or 8%, whichever is available to pay for bonds by the developer in the future. The remainder of the 7% or 8% is used by the City for City purposes.

Councilmember Rasmussen was concerned of the City's liability with other types of investors under the petition (page 3, iii - second paragraph). He was also concerned with the language under the amended development agreement regarding the 22-year clock. He thought the Council had made it clear that if they begin the PAYG, the 22-year clock would begin. He wanted to maintain their original agreement of 22 years. He had no issues with 5.5% of the 7% TGT going toward the payment of the bonds; however, he felt it was bad policy that 100% of the 7%, plus the additional sales tax, would go toward the payment of the \$2 Million.

Mayor Dunn clarified there was consensus for this when they previously met since they were not going to issue bonds and it would pay it off within an estimated 5 years.

Mr. Lambers confirmed the consensus was to expedite as much money as quickly as possible to meet this obligation of increasing the rate and give them 100%, including the TGT and TDD sales tax. The 22-year clock will start with the first bond issue. If they request a second bond issue and three years have passed, there would be a 19-year window for the bond.

Mr. Miller clarified that the 22-year language Councilmember Rasmussen referred to was identical to that of the existing agreement. Mayor Dunn confirmed that the language was changed when they did the development agreement with the One Nineteen Development so that the 22-year clock would begin with the first bond issuance. Councilmember Rasmussen stated this was done not only for the bonds, but for PAYG as well.

Mr. Hess stated as far as the liability issue, the language in the petition has been in all of the agreements. He didn't feel it was saying anything that would bring a liability on the City.

Ms. Bennett confirmed this had been the same language as in previous years. Councilmember Rasmussen asked her if this exposes the City to additional liability in determining who is a sophisticated investor. Ms. Bennett replied arguably yes; however, she deferred to Mr. Hess' comments that he didn't feel this would bring liability on the City.

Mr. Miller clarified this language is in the petition, not in the agreement. Agreements can change fairly easily; therefore, they could always approve an investor who doesn't meet the narrow confines of the institutional investor. If it is in the petition, they have to file an amended petition and go through a several week process in order to add an acceptable investor. The thinking at that time was why set up a petition that may need to be amended if the City ultimately found an investor they wanted to sell the bonds to.

Councilmember Filla wanted clarification of the legal documents. She recalled previous conversations to confirm that PAYG didn't exist when this discussion began and that the sales tax that was new under PAYG wasn't under the bonding.

Mr. Lambers clarified that the \$2.2 Million for one level of the existing structure was originally intended to be funded through the TGT only. The \$4.3 of the remaining existing structure was to be funded through TDD sales tax only. He confirmed that the \$2.2 Million is the bond amount, which includes reserves and issuance costs. The net amount to the developer is \$2 Million.

Ms. Bennett clarified that the remaining legal documents were for the existing structure, other than the one floor, plus two garages yet to be constructed.

Councilmember Filla asked when the \$15 Million bonding would start for the second portion of the project. Mr. Miller wanted to get the bonding now since the one garage of the hotel has already been built and the costs have been approved by the City; however, they could not meet the conditions at this time. Ms Filla asked if PAYG would be considered for this second portion of the project. Mr. Lambers wanted to keep this as simple as possible at this time; however, if the developer wants to discuss PAYG for the second portion in the future, they can do so separately.

Councilmember Rasmussen stated his concerns of no term limit in the agreement. Mr. Hess stated the State Statute allows a 22-year term for the maturity of the bonds; however, the sales tax can be extended further. Mr. Rasmussen stated that the additional 1% sales tax meant the City was giving up a taxing authority. This agreement is open-ended. Whether using the PAYG method or issuing bonds, the 22-year clock should start. This has already been agreed to; however, it is not in the agreement. If they issue the bonds at 5.5% of the total tax, then assuming they want to go 100% PAYG, it should be 5.5% as well.

Councilmember Filla asked if they had calculated what the numbers would be if they issued the bonds at 5.5% of the 8% for PAYG, versus 100% of the 8% with payoff in 5 years. Mr. Lambers hadn't estimated this because if they give 100% of the 8%, the sooner it gets paid off, and then 100% of the TGT is freed up earlier for City use.

Mr. Lambers clarified for Councilmember Rasmussen that the existing parking structure is financed through the TDD sales tax. The other parking structure is tied to the second hotel, which has not been built. There is no commitment of TGT beyond this \$2 Million until the second hotel is built.

Ms. Bennett confirmed that once the second hotel is up and operating and the garage is built, the developer can seek bond financing. The 5.5% of the TGT would be subject to annual appropriation with the remainder going to the City.

Councilmember Azeltine wanted clarification of the distinction made by Mr. Miller between the petition and the agreement. He referred to Councilmember Rasmussen's comments regarding the City's liability under the petition and commented that this Governing Body had taken a lot of time establishing a debt policy with the requirements for various forms of debt and the conditions under which the debt is used.

Ms. Bennett clarified that a petition is submitted by a developer and other owners of the property. The City sets forth its terms and it is then accepted by an ordinance. At that point, they could remove section iii of that paragraph in the petition.

Mr. Miller agreed they didn't need to keep that particular section in the petition and it was only inserted to preserve flexibility in the future.

Mr. Edgar commented that the City's policies have served them well. They have been under pressure to expand the universe of investors on every bond issue they've done. Since the City is doing a private placement, this should mean greater protection.

Mr. Lambers confirmed for Councilmember Azeltine that the TGT increase from 7% to 8% would be approved by ordinance at a City Council meeting and would go into effect 30 days later.

Ms. Bennett stated they were hoping to submit all of the documents at the same meeting if all of the terms could be agreed upon. Once the developer has a chance to get the signatures needed from the other owners, the Council will see the documents in final form. The petition will only be signed by the developer. If approved, the agreement will be signed by the Mayor on behalf of the City. The ordinance would accept the petition and do any tax levying that may need to be done.

Councilmember Rezac referred to the second amendment of the development agreement and asked how the special assessments played into all of this. Mr. Miller replied that the assessments were required by the City in order to provide another revenue source to pay back the bonds. Those particular bonds are paid by the TDD sales tax and a special assessment that is 25% of the principal amount of the bonds. Mr. Lambers clarified this doesn't come into play with PAYG because there are no bonds being issued. The City requires this for future bond issues as a backstop because of the volatility of sales tax revenues, which is identical to the One Nineteen Development.

Mr. Lambers confirmed they would amend the documents to reflect that when the PAYG payment is made, the 22-year clock starts whether the PAYG completes the transaction of \$2 Million or if for some reason they issue the bonds, the 22-year clock starts. If this is not paid off in 5 years, there would be a 17-year maximum issuance for the bonds.

Mr. Miller noted when the bonds are finally issued; it would create a hardship on the developer because they will have a shorter term paying them back.

Ms. Mann confirmed with Mr. Lambers that the 22-years would only be placed on the \$2 Million transaction. The PAYG is associated with this one transaction.

Councilmember Filla confirmed with Mr. Lambers that the TGT could not be used for stormwater. It is a restricted fund in the State Statute that is to be used for "convention or tourism activities."

Councilmember Rasmussen asked when the clock would start with the potential of the \$4.3 Million. Mr. Lambers replied with the first PAYG payment, the 22-year clock starts for the \$2 Million. As for the \$4.3 Million, the clock would start either with the first PAYG payment or the first bond issue. This is for different parts of the building with two different revenue sources, which makes it a different project. On tonight's agenda and moving forward, he was proposing that the Council adopt a position that the 22-year clock starts when the TDD sales tax starts so there would be no debate over bonded or PAYG.

Mr. Lambers thought they could have all of the documents completed and brought before the Council by the April 18, 2011, Governing Body meeting.

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

Pam Gregory, Recording Assistant City Clerk