

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, July 5, 2011. Mayor Peggy Dunn presided.

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

Councilmembers absent: Councilmember Lou Rasmussen

Staff present: Scott Lambers, City Administrator Franki Shearer, Assistant City Attorney
Joe Johnson, Public Works Director Deb Harper, City Clerk
Richard Coleman, Comm. Dev. Director Pam Gregory, Assistant City Clerk

Others Present: James Harpool, MD Management Real Estate Development
David Block, Block & Company
Reuben Pate, Block & Company
Phil Peck, Block & Company
Charles Renner, Esq., Husch Blackwell

**Discuss Transportation Development District [TDD] for
Village of Seville Development, located at
133rd & State Line Road**

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

Opening Remarks – City Administrator Scott Lambers

This meeting continues discussions from the August, 2009, work session regarding a possible Transportation Development District [TDD] for the Village of Seville to finance road improvements associated with their project. Eligible costs were estimated to be \$600,000. Because of the costs associated, it is not feasible to issue bonds for less than \$2 Million; therefore, the conversation had shifted to the possibility of a Community Improvement District [CID]. At that time, there was no CID authority with the State and the City did not have a policy on it. In the interim, the State has authorized a Pay-As-You-Go [PAYG] TDD and the City amended its Finance Policy to accommodate PAYG. The policy is clear that PAYG is the preferred method and there would need to be extraordinary reasons to issue bonds. Village of Seville is requesting that the Council approve a PAYG TDD Sales Tax to finance the \$600,000 in improvements.

Presentation – Charles Renner, Husch Blackwell

There are special taxing districts set up for retailers on State Line Road in Missouri, as well as in Martin City, Missouri. There is an additional 2% Restaurant Tax in place, which makes their tax rate 11.725%. He requested they continue to work with Mr. Lambers on a TDD petition supporting the development agreement.

Mayor Dunn confirmed with Mr. Renner that the tax rate for non-restaurant retailers on the Missouri side that are within the TDD is 9.725%. If they are not located within the TDD, the rate is 8.725%.

Mr. Lambers stated in April, 2011, the City of Leawood's tax rates were reduced by .40%, making the effective rate 8.65%. Adding the 1% TDD, would increase it to 9.65%.

As part of the TDD process, the applicant would need to submit costs that have been certified by Public Works Director Joe Johnson. All of the requested reimbursements are street related, either surface or underground, and are eligible under the TDD authority by the State. The maximum payout would be \$600,807.

Councilmember Filla thought they had decided to issue TDD's for only unique development improvements, versus standard improvements. Mr. Lambers agreed; however, the argument the applicant is making is that all of the retailers on the Missouri side of State Line received TDD participation.

David Block, Block & Company, stated the development has been completed since 2007-2008. Mr. Lambers confirmed for Councilmember Filla the additional tax rate had been included in their initial plans. They first approached the City when they were completing the project; however, the requested dollar amount was so low, he recommended they not issue bonds. As a result of the changes in legislature, they have returned.

Mr. Renner felt one of the distinguishing factors for their development was its proximity to the Missouri side of State Line Road. Part of the stall in their application was tied to knowledge that the TDD Act was being amended to allow PAYG financing. They have costs over and above this amount and wanted to be reimbursed through this TDD. They still need to review all of the eligible line items with City staff.

Mr. Block stated tenants are incentive driven and they have had problems being competitive. Expenses for tenants run \$4 less per square foot on the Missouri side. Also, due to some foreclosures, they are willing to take a low rate.

Mayor Dunn asked if the 9.65% tax rate would put their development at a disadvantage. Mr. Block stated this should not be a factor because most local and national chain stores are used to the additional 1% tax for TDD's and CID's.

Councilmember Bussing couldn't understand how \$600,000 plus a 1% increase in the tax rate would improve their competitiveness. Mr. Renner responded this would not totally solve the issue. They would also need to make business sacrifices to attract tenants.

Mr. Lambers confirmed with Mr. Block that in order to be more competitive they need to lower their lease rates. If this goes into effect, it will be used to offset new negotiated lease rates. Mr. Block stated although this isn't a large amount, it still makes a difference because it's tied to public improvement costs.

Councilmember Bussing understood the developer had incurred a lot of costs; however, he didn't feel the City should be responsible to offset those costs. He wasn't sure approval of this would cause an increase in lease activity and felt the City doesn't have financial ownership or stake in this. Mr. Block responded this began back when this tool was not available. There are other developments, such as Cornerstone and Park Place, that have already been approved based upon those same statements. The City may not own the center; however, he felt the City has a stake in the viability and lease ability. They are trying to accomplish something with the least amount of necessary commitment from the City.

Mayor Dunn clarified Cornerstone does not have a 1% TDD; they have a Special Benefit District [SBD] with special assessments for road improvements. There is a TDD in place to underground the utilities at 135th Street. The only 1% TDD Sales Tax currently in place is for the Park Place and One Nineteen developments.

Councilmember Rezac couldn't see how \$600,000 would begin to compete since tenant expenses on the Missouri side are \$4 less per square foot. Mr. Block responded because of their lower taxes, they would need to drop their rates to be competitive and to do this, any incentive would help. Mr. Renner felt in part Village of Seville was a higher quality development because of Leawood's high standards.

Councilmember Azeltine asked how long it would take at 1% to satisfy the \$600,000. Mr. Renner replied the amortization works out to be 11 years. Mr. Azeltine was in favor of their request for the PAYG TDD; however, he thought the Council should implement a time limit for allowing someone to return for reimbursement of incurred infrastructure costs. Mr. Renner replied their request was timely and reiterated they had deferred that request because of the pending legislature amendment.

Mr. Lambers stated if the Council wants to impose a time limit to their current policy, they would need to schedule a work session to discuss several factors that would need to be considered.

Mayor Dunn thought they may want to consider placing the time limit on a case-by-case analysis of what the specific use may be.

Councilmember Rawlings asked if this is approved what their lease rates would be, if they currently have any potential tenants or tenants they've lost, and what the outcome would be on the 3 parcels of land yet to be developed directly next to State Line. Mr. Block responded currently, their lease rates are well under \$20 per square foot and if this is approved, they would need to reduce them even further. They currently have 3-4 potential tenants. Several others have decided to lease on the Missouri side. They have lost some restaurant tenants because of their additional 2% Restaurant Tax.

Mr. Lambers needed a majority consensus to direct staff to begin preparing the documents. Costs will be incurred by the City; however, those costs will be reimbursed by the district. If a district is not formed, the developer would have to agree to reimburse the City. This could be placed on an agenda within the next 30-45 days.

Councilmember Azeltine supported the applicant's request for the PAYG TDD sales tax and reiterated the need to discuss implementing a time limit to their policy.

Councilmember Filla did not support their request; however, would compromise and agree to bury the utility lines, which is just under \$370,000. She didn't feel the project had the unique characteristics they had discussed for TDD's.

Councilmember Rezac was not in favor of their request unless they could provide information to prove the TDD would make it competitive.

Councilmember Osman supported their request because of their location on State Line.

Councilmember Bussing stated although this project does not meet their criteria for TDD's, he would support it because they had requested this early in the development process.

Councilmember Cain did not support their request; however, she concurred with Councilmember Filla regarding burying the utilities.

Councilmember Rawlings supported their request, concurring with Councilmember Osman.

Mayor Dunn confirmed 4 Councilmembers were in favor of the PAYG TDD sales tax, 2 wanted to compromise with a lesser amount for burying the utilities, and 1 was not in favor unless there is more information regarding competition. (Councilmember Rasmussen absent).

Mayor Dunn was in favor of their request; however, she was very concerned this could create precedent for the 1%. She hoped the applicant would use these dollars for what they had professed and lower their lease rates. They all want to see this development be successful.

Mr. Lambers confirmed with 5 in favor of the applicant's request, he would have staff proceed.

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

Pam Gregory, Recording Assistant City Clerk