

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, May 16, 2011. Mayor Peggy Dunn presided.

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

Councilmembers absent: Councilmember Carrie Rezac

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

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 Development Counsel
Jeffrey Alpert, Park Place Developers
Melanie Mann, Park Place Developers

Discuss Special Benefit District [SBD] 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 tonight's meeting is a continuation of the series of work sessions regarding Special Benefit District [SBD] financing for Park Place. Park Place developers had requested that the City Council consider alternative assessment methodologies for SBD financing. Tonight's discussion will include:

1. Bill Hess, Esq., Bryan Cave, LLP, City Bond Counsel - Discussion with Attorney General [AG]
2. City Attorney Patty Bennett - Review the process and potential liability the City will be required to go through on an annual basis
3. Conclude which method will be incorporated into the documents

The intent is to have everything brought before the Council at the June 6, 2011, Governing Body meeting in order to timely market the bonds in September, 2011, and bring this portion of the development to closure.

Bill Hess, Esq., Bryan Cave, LLP, City Bond Counsel,

They were asked to present the issues that were discussed in the last work session to the AG given the fact that typically, SBD's are done under K.S.A.§12-6(a)01. Concern was expressed using this methodology if they proceeded under this statute; however, the alternative would be to supplement the statute under the City's home rule authority. The developers prepared a third amendment to the petition for the benefit district and they prepared a draft ordinance accepting that petition. They presented only one methodology, knowing that if they agreed upon that methodology, any of the three methodologies would be doable. They received confirmation that the AG is fine with what they have developed as a documentation of the process and any of the three methodologies that have been discussed would be fine under this context.

The City's Standard Assessment is based upon square footage for streets and improvements.

Definition of Options:

- Option 1 – Assessed Valuation of Land and Improvements for both Stormwater and Streets
- Option 2 – Assessed by Square Footage for Stormwater and Assessed Valuation for Land and Improvements for Streets
- Option 3 – Assessed Valuation on Improvements Only for Streets and Square Footage for Stormwater.

Councilmember Rasmussen confirmed with Mayor Dunn they had reached consensus at the last work session on Option 3.

Ms. Bennett noted Park Place had requested additional time to consider their options.

City Attorney Patty Bennett

They wanted to adopt most of the SBD statute into any approving ordinances; however, when they did this some red flags appeared. For instance, on most benefit districts, when they are ready to assess, the City Clerk sends out assessment notices with the amount due. They then have 30 days to challenge it. With this, the amount of the assessment will change every year. They don't want to go through the re-assessing process every year. They should be giving the people that own the land a chance to object. After speaking with Interim Finance Director Dawn Long, staff came up with the following suggestion: As of February 28th, take the assessed value, hire a third party to gather the information from the appraiser and calculate the math, which would be paid for by Park Place. The City Clerk would then send out assessment notices and everyone would have 30 days to ask the Council to change it. At that time, whatever the City Council decides is final; however, there could be several issues with this, including several unhappy people saying the math was miscalculated or saying the City shouldn't have the authority to change this every year. At her request, Park Place would give the City a Letter of Credit [LOC] of approximately \$50,000 to secure reimbursement for third party costs and secure attorney fees if challenged in court. There are risks in that the City doesn't do this on most benefit districts and is something the City and City staff would be doing every year for the next 15 years. The value will continue to change as Park Place continues to develop the phases.

Councilmember Filla asked if they would be able to explain the full build-out assumption to people. Ms. Bennett replied they don't know what the full build-out value would be.

Charles Miller, Esq., Lewis, Rice & Fingersh, Park Place Development Counsel, stated the people buying the commercial property would have a better idea of the value than the City would. When they do a title search, they will see this assessment district created and how it is assessed.

Councilmember Rasmussen asked who is responsible for filing the paperwork and collecting any back taxes. Ms. Bennett replied the County handles all tax lien issues and would not affect the collection procedure.

City Administrator Scott Lambers stated the annual dollar amount may differ; however, if they don't pay any of it, at the end of five years the aggregate of that dollar amount would be delinquent. Mr. Hess clarified eventually the County would levy an assessment and collect.

Councilmember Osman confirmed with Melanie Mann, Park Place Developers, that they do not have an escrow account set up with their lender for their taxes.

Roger Edgar, George K. Baum & Company, City Financial Advisor, commented trying to predict what the future assessment would be is difficult to explain to someone, particularly a condominium buyer, and asked if it would be so complicated that it would be a marketing issue. Ms. Mann didn't think it would be a marketing issue; however, currently, all they have is commercial property. A lot of the variation will be due to the phasing of the development. Once it is fully developed, it should only vary slightly. They have the same issue with the Transportation Development District [TDD], which is based on the assessed value of land and improvements every year.

Ms. Mann didn't think the tenants would be unhappy with Option 3 and Park Place Developers are agreeable to Option 3. The hotel developer has agreed with the concept of Option 3; however, they hadn't had a chance to get full approval at this time. A conference call is scheduled with him tomorrow.

Councilmember Filla confirmed with Ms. Bennett that explaining the assessments is between the developer and the tenants. It is not unusual for people who are buying land to call the City to ask what the assessments are. This may be something the City is not equipped to answer if it is a newly built parcel. Everyone should be in agreement that the City will not speculate this and it will be up to the developer.

Ms. Mann stated assessments are addressed in every lease before the lease is signed.

Councilmember Bussing asked why he should consider this when Option 3 appeared to be inequitable and also appears there will be ongoing issues with regard to predicting assessed values.

Mr. Edgar felt the City's obligation under statute is to create a method of distributing these costs to the benefited properties that is equitable and fair to each of the properties. Currently, there are a very limited number of individual property owners; however, this could change in the future. The Governing Body needs to decide what is equitable and what isn't. The City's current standards have worked well in the past on other projects; however, an individual property owner may complain something is unfair using this standard. Another issue to keep in mind is that this is the first time the City Council has considered deviating from its standard assessment process on a SBD.

He shared Ms. Bennett's concern that the City doesn't do this on most benefit districts and is something they would be doing every year.

Ms. Mann responded they were requesting this because of the density and mixed-use nature of the project, which requires a different methodology to make it equitable. It is very different than any project Leawood has had in the past.

Councilmember Filla wanted clarification of why they moved from land plus improvements for distributing the costs for street development, versus just improvements. Mr. Miller thought a Councilmember had suggested that.

Mr. Miller noted the equitable nature of the assessments varies by situation. The standard way of assessing is often not perceived as fair by certain people in certain developments. They may be holding land to be developed and they are paying the same amount of money per square foot of land that the improved property is paying for the streets, with the improved property using the streets. K.S.A. §12-6(a)01 was written to use square footage, but could also use any other reasonable method that allocates the burden. Here, the current improvement owners are willing to bear the brunt of this. As each improvement takes place, that piece of ground will start to bear a greater share and will decrease for those that began bearing it.

Ms. Bennett stated from a lawyer's point of view, the assessed value on a building and land is something they are more used to seeing because traditionally, they assess properties that are vacant. They get the exact same assessment as someone for example, on 135th Street because the value would improve because of the street. Even when the land is vacant, it has enough value that it sets the same amount on a square footage basis. Even though the consensus was previously for Option 3, she thought the Council may want to consider Option 2, which is more similar to what they would normally do. Mr. Hess concurred and commented case law states not to worry how property will be used in the future. If streets are being constructed, the property is being benefited.

Councilmember Bussing thought just because the hotel sits on "x" acres of land and is six stories high, doesn't mean it is more valuable than a similar plot of land that has a two-story building on it. The two-story building could be generating more revenue. Whether the structure is occupied or vacant, under the standard method, it is assessed a value. This seems to be much simpler, cleaner, and more equitable. The land has value. The developer can choose to maximize that value by developing it, or leave it vacant and pay the higher assessed valuation taxes.

Ms. Mann stated Park Place Developers are agreeable to Option 2, as well as Option 3.

Mr. Johnson clarified that the stormsewer assessment is based upon only the square footage of the land and has nothing to do with value. This is the same in Options 2 and 3. The street costs were \$3.65 Million. The total of all the tracts that have appraised value were added together and divided into the \$3.65 Million to come up with the cost per dollar of appraised value. That cost was multiplied by the appraised value of each tract, which included land and buildings. Next, the total value of only the tracts with buildings were added, which is Option 3.

Councilmember Rasmussen thought assuming everything is constructed 15 years from now; Option 3 would be the end result. Mr. Hess replied yes; however, that calculation puts no assessment at all on a property that has no improvements. He questioned when allocating benefits, whether or not unimproved land is benefited by the value of the street improvements.

Councilmember Osman compared the appraised value of the parking structure, \$10 Million, versus the appraised value of the retail building, \$11 Million. Under Option 2, both are worth about the same, approximately \$800,000; however, under Option 3, the retail building is worth \$1.4 Million and the parking structure is only worth \$48,000. He felt it would be unfair to assess these equally because of similar square footage. He felt the office or retail users that have the most value should be charged the most and was in favor of Option 3.

Mr. Hess clarified that the parking structure has no value and the \$48,000 is the assessment for the stormwater.

Ms. Mann clarified that parking garages provide parking for both retailers and office personnel, which is considered basically the same value. Office personnel stay all day. Retail traffic comes and goes, but use parking spaces all day.

Mr. Hess asked if an assessment against the garage is treated as common area maintenance that is passed on. Ms. Mann responded yes and stated they are currently appealing the taxes on the garage addressing some of the same points made by Councilmember Osman. The garages are simply a support vehicle for the office and retail buildings.

Councilmember Rasmussen confirmed with Ms. Bennett that this request from Park Place was a special circumstance and it would not automatically change the language in other SBD agreements.

Councilmember Rawlings confirmed with Mayor Dunn that both Options 2 and 3 would require the re-assessing process every year because of the change in dynamics of the project.

Mayor Dunn confirmed with Ms. Bennett that, generally speaking, the dollar amount should decrease on an annual basis as other properties are developed.

Councilmembers Cain, Filla, Rasmussen, Osman, Azeltine, and Rawlings stated they were in favor of Option 3. (Councilmember Rezac absent).

Councilmember Bussing preferred the City's standard square footage assessment.

Ms. Bennett stated the petition and ordinance should be presented under Special Business at the June 6, 2011, Governing Body meeting.

There being no further business, the work session was adjourned at 7:15 P.M.

Pam Gregory, Recording Assistant City Clerk