

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, January 3, 2012. Mayor Peggy Dunn presided.

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

Councilmembers absent: None

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

Others Present: Jeff Alpert, Park Place Developers
Bart Lowen, RED Development
Charles Miller, Esq., Lewis, Rice & Fingersh
James Taylor, Leawood resident

Discuss potential revisions to existing Transportation Development District [TDD] Policy

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

Opening Remarks – City Administrator Scott Lambers

There was a request over a year ago from the Village of Seville to do a Pay-As-You-Go [PAYG] TDD; however, they only requested \$600,000 in improvements. The City's TDD Policy does not allow for anything under \$1 Million to be bonded. At that time there was intent by the legislature to modify the State TDD statutes to allow PAYG. This authority did not exist at the time of their initial request. They subsequently returned with their request, in which the Council agreed to consider. They were preparing to return to work out the legal documents; however, it was reported they were delinquent on their property taxes. He advised them he would not forward their documents to the City Council until those taxes were current. That meeting led to questions that additional requests may come forward from developments that have already incurred improvement costs wanting to return seeking reimbursements through a TDD. Discussion this evening includes to what extent the Council wants to permit this under the City's TDD Policy. The Village of Seville was a unique case. It would not be in the City's best interest to allow this to occur; however, if allowed, there should be a very short window of opportunity. They would not want to finance improvements made 15-20 years ago. He thought they should also consider requiring that this request be submitted prior to submitting their planning application.

Councilmember Azeltine asked if this would preclude them from returning and asking for TDD financing after the planning application is approved. Mr. Lambers replied they could decide a date certain they cannot make that request. A developer should know going into the process whether they want to use TDD financing.

Councilmember Bussing thought part of their TDD criteria was intended for projects that offered the City something unique or had some unique aspect to the development. Mr. Lambers replied the Council had agreed to allow the Village of Seville to proceed with this in order to compete with other entities that had TDD's in the area. TDD's are also issued for undergrounding utilities because this is considered an extraordinary cost. Special Benefit District [SBD] monies cannot be used because the City doesn't own the facilities. Councilmember Rasmussen concurred with Councilmember Bussing stating he didn't want to sacrifice the City's taxing authority by allowing a developer to request a TDD without having something unique to offer.

Mr. Lambers clarified a Community Improvement District [CID] is intended to be used as a redevelopment tool, not for new construction. Currently, the City does not have a CID Policy. He had concerns a developer could increase tenant lease payments for improvements and then seek money through a sales tax to do the same improvements and then pocket the money. Councilmember Rezac thought if they decided to move forward with a CID Policy, they may not need to change the TDD Policy. Mr. Lambers replied there will be new development along 135th Street that will want to utilize a TDD because of undergrounding utilities. It may be utilized less in the future if they decide to adopt a CID Policy.

Mayor Dunn confirmed consensus at the July 5, 2011, work session included four Councilmembers in favor of the PAYG TDD sales tax for Village of Seville; two wanted to compromise with a lesser amount for burying the utilities; and one was not in favor unless there was more information regarding competition. [One Councilmember absent].

Mr. Lambers felt the TDD Policy should state if an applicant is in arrears on their property taxes it would be a part of their consideration process. Mayor Dunn received majority consensus to include this in their TDD Policy.

Councilmember Filla felt their TDD process, thus far, had been working well with developers requesting it in advance. Discussions for TDD criteria have included that they be for unique circumstances. Councilmember Azeltine thought they should consider allowing them to apply within a certain timeframe of commencement of the TDD Policy. Mayor Dunn noted this was the only project in this situation and wouldn't occur again.

Mr. Lambers confirmed the TDD Policy states PAYG is the preferred option. The Council would have to identify specific circumstances for bonds to be issued. One example would be relocating utilities because the developer incurs all of those costs up front. They could reconsider a TDD for Village of Seville if they become current with their property taxes by giving an exception for requests that were received prior to the statutory being enacted and setting a timeframe for 1-2 years beyond this.

Councilmember Rezac noted this development had been completed since 2007/2008.

Mayor Dunn received majority consensus to issue TDD's with the intention for new development only and to include this in their TDD Policy. Councilmembers Rawlings, Rasmussen, Bussing, Filla and Rezac were in favor of this. Councilmembers Cain, Osman and Azeltine wanted to include a timeframe.

Mr. Lambers stated if they have an existing TDD and someone comes in with another request for an improvement that has not been previously presented, they need to consider how long to finance that improvement. If bonds have been issued the clock has already begun; therefore, that issue is resolved. If PAYG, it could go through perpetuity. They have amended the TDD Policy to have the 22-year clock begin with the implementation of the sales tax. This only applies for new TDD's, not existing districts. Another question is whether to allow them to amend the dollar amount of their existing development agreement for a previously approved project. They should not feel obligated to provide financing above what was originally proposed.

Mr. Lambers confirmed for Councilmember Rezac that a TDD agreement is specific improvement based.

Several scenarios were given by Councilmembers regarding understanding the difference between an amended TDD agreement and a new one. Mr. Lambers clarified an amendment would occur during the construction process, for example, for project costs. New construction within the district would be considered a separate TDD application. Any new costs must always be certified.

Continued discussion took place regarding whether to allow the existing development agreement expansion to only occur during the construction process. Consensus was not determined; however, additional discussions to clarify the distinction will be held at a future work session when the potential policy for CID is discussed.

Councilmember Bussing requested that their TDD Policy become more definitive on describing when and how they feel TDD's are appropriate.

There being no further business, the work session was adjourned at 7:20 P.M.

Pam Gregory, Recording Assistant City Clerk