

Minutes

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting, 4800 Town Center Drive, at 6:00 P.M., on Monday, November 9, 2020. Mayor Peggy Dunn presided.

Councilmembers Present: James Azeltine, Lisa Harrison, Debra Filla, Mary Larson and Chuck Sipple

Councilmembers Present via Zoom: Julie Cain, Jim Rawlings, and Andrew Osman

Councilmembers Absent: None

Staff Present: Scott Lambers, City Administrator Patty Bennett, City Attorney
David Ley, Public Works Director Dawn Long, Finance Director
Ross Kurz, Info. Services Director Mark Tepesch, Info Services Specialist
Stacie Stromberg, Assistant City Clerk

Staff Present via Zoom: Mark Klein, City Planner

Others Present via Zoom: John Petersen, Polsinelli PC; Mark Simpson, Fontana Land Company;
and Ben Thompson, GilmoreBell

- 1. ROLL CALL**
- 2. PLEDGE OF ALLEGIANCE**
- 3. APPROVAL OF AGENDA**

A motion to approve the agenda was made by Councilmember Azeltine, seconded by Councilmember Larson. Motion was approved with a unanimous roll-call vote of 8-0.

4. CITY CLERK STATEMENT

To reduce the likelihood of the spread of COVID-19 and to comply with social distancing recommendations, this meeting of the Leawood Governing Body is being conducted remotely using the Zoom media format and some of the members of the Governing Body are appearing remotely. The meeting is being livestreamed on [YouTube] and the public can access the livestream by going to www.leawood.org/.

Public comments on non-agenda items will not be accepted during this meeting. Public comment on agenda items not requiring a public hearing may not be accepted. As always, public comment on any agenda item can be submitted in advance. Written public comments received at least 24 hours prior to the meeting have been distributed to members of the

Governing Body prior to the meeting. Public comments should be directed to LeawoodPublicCommentGB@leawood.org.

5. SPECIAL BUSINESS

COMMITTEE RECOMMENDATIONS

[From the September 22, 2020 Planning Commission meeting]

Resolution approving the Planning Commission's recommendation of denial of a Final Plan and Final Plat for Villa de Fontana, located south of 135th Street and east of Roe Avenue (PC 81-20)

Alternative Resolution: Resolution overriding the Planning Commission's recommendation of denial and approving a Final Plan and Final Plat for Villa de Fontana, located south of 135th Street and east of Roe Avenue (PC 81-20)

Patty Bennett, City Attorney, stated City Planner Mark Klein, received items late this afternoon and had not been able to fully review them. Mr. Klein addressed the Governing Body via Zoom. He confirmed that his department did receive revised plans with more detail than before, but there is still missing and inconsistent information in landscaping, lighting, and monument signs. He stated he is currently reviewing the street lighting plans.

John Petersen, Polsinelli PC, addressed the Governing Body via Zoom. He stated Mark Simpson of Fontana Land Company was also with him via Zoom. He commented on the challenges of working on this project remotely via Zoom. He stated there are some clean-up items in a list he received from the City regarding landscaping and materials, but that the plat and the plan are sound. Mr. Petersen stated they have agreed to the Planning Stipulations, Nos. 1 – 28. He stated in the Public Works (PW) Stipulation No.1a, there would be no public access to 137th St., but it has been rectified now to allow the eyebrow street and shared driveway. He asked to discuss PW Stipulation Nos. 13 and 14 as they are the premise of the Development Agreement (DA.)

Mayor Dunn asked if staff was aware that PW Stipulations 13 and 14 were issues. Ms. Bennett stated these were discussed at the last meeting in terms of all public improvements that must be completed before drawing the building permit, which is also covered in the Leawood Development Ordinance (LDO) as a standard. She stated she is unsure why these stipulations are a problem with the DA because it does require the Developer to comply with all stipulations. Ms. Bennett stated the Developer has agreed to Stipulations 1-28, but No. 25 states that prior to all Governing Body approval all details will be provided, and mentioned Mr. Klein has not had the chance to review the final details. Mr. Petersen reiterated they are not objecting to the substance of Stipulations 13 and 14, they have agreed to them, but he is only pointing them out. He stated in terms of Stipulation No. 25, they can confirm the corrections by next week.

Scott Lambers, City Administrator, addressed the Governing Body. He suggested that the Council start discussing the DA first. Councilmember Azeltine asked if the City has ever issued building permits in new developments prior to all the public amenities being completed. David Ley, Public Works Director, addressed the Governing Body. He stated they have issued them before with the Village of Leawood project. Councilmember Azeltine asked about the Hills of Leawood receiving permits prior to public amenities and Mr. Ley explained that was due to underground power lines and the Developer working with KCP&L. Mr. Ley stated that sometimes due to the cold weather, staff will work with a Developer in terms of installing street lights or laying asphalt.

Councilmember Sipple asked about other municipalities allowing the issuance of permits before public infrastructure is completed. Mr. Ley stated he spoke with staff in the cities of Shawnee, Lenexa, Overland Park, and Olathe. He explained there are two types of standards – one for commercial/office developments and one for residential. He stated they are all about the same as Leawood.

Mr. Petersen emphasized they are not contesting the stipulation that states all public improvements will be completed before permits are issued. He stated that they accepted the stipulation last week.

Ms. Bennett stated that she and bond counsel have worked on the DA to convert it from a Community Improvement District (CID) to a Special Benefit District (SBD) in compliance with the City's policy. They worked with Mr. Petersen and his staff to finalize the draft late today. She stated it does comply with the City's policy and it does not allow for building as many improvements as the CID. She stated it does include an escrow, required by the City's policy, to be used if any of the payments are not paid. This agreement can be released back to the Developer after 50% of the lots have an occupancy permit. Ms. Bennett stated that after working with the City's Finance Department it has been determined that there is approximately \$950,000.00 in an existing escrow account that the City can apply to the past due assessments. She explained it is money the Developer would not have had otherwise. Ms. Bennett stated the SBD has a default term of 10 years, but it does allow the Council to approve up to 15 years. The Villa de Fontana DA requests 15 years in terms of determining the assessments. The assessments would be on a per lot basis, not including the common areas. Ms. Bennett stated one area of disagreement is who would be doing the construction. She explained that the Developer wants to do the construction, but the City's policy states the City generally will do the construction since the City is issuing temporary notes and general obligation bonds. The staff did make an offer to the Developer that if they wanted to do the construction, then they could do it with their construction financing. Once it is completed, inspected, and approved the City would then reimburse them.

Mayor Dunn stated the SBD escrow amount under Section 4.0.2 on the DA is blank. Ms. Bennett explained that the amount is determined by what is allowed in the SBD. She stated there are still some amounts in question between what the Developer provided and what Mr. Ley calculated.

Councilmember Harrison asked what the amount of assessment is per lot. Mr. Petersen estimated it is approximately \$3,000/year, depending on the cost.

Councilmember Cain asked for staff to elaborate on the \$950,000.00 amount in escrow. Mr. Lambers stated it has been in effect for some time. He stated when he decided to make the payments out of the bond and interest fund, the City could afford it. He explained he was holding that money back to make the final year or 2-year payments to shorten the time in which the City had to make payments out of the City's bond and interest fund. Councilmember Cain stated that money has been in the bank for a decade. Mr. Lambers stated it is only money that can be paid to the City to pay the back taxes, so it is a credit to the Developer and does not go to the Developer. Councilmember Cain asked if the Developer was aware of it. Mr. Lambers stated no.

Councilmember Filla asked how the current owner of the property is involved in the process and who is owed the escrow money had Villa de Fontana never made their proposal. Mr. Lambers stated the City could have called in the note at any time, but otherwise, the money would continue to stay in the escrow account. Mr. Lambers stated he chose not to call it in because the City could afford to make the

payments. If the Developer pays the back due taxes the City would need to inform the County to reduce the amount that the Developer has to pay.

Councilmember Filla asked about the City versus the Developer doing the construction. Mr. Ley stated in an SBD, the City oversees the construction of the project. The Developer does the administration of a project and the City does the inspections. Councilmember Filla mentioned the difference in what staff estimated the costs of the project were and what the Developer provided. Mr. Ley stated on the cost estimates for the streets, he used past bid projects, and for the cul-de-sacs he used a Developer supplied typical cost. He stated in his estimate for the street lights he found the Developer did not have enough lights included in their estimate. Ms. Bennett stated with past SBD projects, the Developer and Public Works staff would have enough lead time to work through the costs together. Ms. Bennett suggested that staff use the higher estimate to avoid an amended SBD petition later. She mentioned this higher estimated costs will affect the escrow amount because it is 35% of the project cost.

Mayor Dunn stated she is unsure if the street lights are private or if they would be covered by the SBD if they are public. Mr. Ley explained the complexity of the wiring, poles, and boxes in the consideration of being either public or private. Mayor Dunn stated the City pays for the electricity.

Councilmember Sipple asked if the street lights inside the development are similar to those along 137th St. Mr. Ley stated they are similar. He stated the lights along 137th St. are City owned. Mr. Ley stated it has been the policy of the Council that if a Developer wants to do custom street lights, the Home Owners Association (HOA) would be responsible for the maintenance of the poles.

Mr. Petersen stated they have agreed to the stipulations that state that all public improvements will be completed prior to the first building being built. He stated that the DA they received fundamentally changed the premise that the Developer would do the construction. He stated they have bid most of the work already. He stated they were under the premise that they would utilize the financing of an improvement district through temporary notes, then use bonds to pay off the notes. The assessments would go against the 63 lots. He stated the escrow agreement listed in the DA states once bonds are issued under the City's policy, the new Developer will fund an escrow in case future bond assessments are not made. He stated the Developer has made several compromises and it is their preference to do the construction because of time and costs. He suggested that projects could be coordinated with the City in regards to timing and who would do the work, but it was rejected. He stated he received the most recent DA late this afternoon.

Mr. Petersen presented an incentive summary based on the DA of a timeline and approximate costs. He pointed out that in the City's DA the Developer would be in debt approximately \$5M without the City's commitment to creating an SBD. He stated the Developer would then need to wait for the City to go through the design and bid processes with the potential loss of a construction season. He stated if the Developer cannot do the construction themselves using temporary notes and SBD financing, he suggested that within 30 days of the agreement they will close on the property, buy the bonds, and pay the property taxes. He stated in terms of paying the delinquent assessments and to defease any future SBD payments of the City, they ask that the City create an SBD conditional upon the Developer paying those amounts.

Councilmember Azeltine stated since the City bids out for contractors to build streets, what is the difference between the City and the Developer doing it. Mr. Ley explained that the City goes out to a

public bid and chooses the lowest, most qualified bidder. Councilmember Azeltine expressed his desire for the City and Developer to come to an agreement.

Mr. Lambers questioned the \$3M that Mr. Petersen requested be reallocated and how much of that would be paid to the City. Mr. Petersen stated it would be paid after the approval of an SBD and that the City would receive all of it. Mr. Lambers proposed that if the Developer paid the \$3M, and the City did not create an SBD, the City would refund the money. Mr. Petersen stated he welcomes that compromise, but they could present the Council a petition in December. Ms. Bennett stated this was suggested in earlier discussions with the bond counsel.

Ben Thompson of GilmoreBell, addressed the Governing Body via Zoom. He explained the issues are timing and the creation of the SBD. He stated the SBD petition must be signed by the property owner and without paying off the past due SBD assessments, the property owner cannot purchase the property to get title free and clear.

Mr. Petersen advised that the petition can be signed by the current owner and his office would facilitate that process. Mr. Thompson further explained that per the DA that his office prepared, the SBD is considered after the Transportation Development District (TDD) Bonds are purchased. The TDD Bonds are tendered to the TDD Bond Trustee for cancellation; this essentially waives past or future due TDD assessments. The Developer pays the City's past due and future SBD assessments, all delinquent ad valorem property taxes and interest, and acquires the property site. After this point, the SBD petition can be brought forward.

Mr. Petersen said they can get the petition signed but they need the SBD signed for the next two payments that total \$2.5M. He explained the Developer needs to know that after an appropriate public hearing and separate consideration of developing an SBD that the City will do so. Mr. Lambers stated he appreciates that timing is important, however, the City does not control timing. He stated that the City would send out requests for proposals for engineering.

Mr. Petersen stated that Phelps Engineering has done the design work. It would be frustrating to have to start over. Mr. Petersen pointed out the Developer currently has a bid from O'Donnell & Sons, who do most of the City's streets. He asked the City to consider an exception to the bidding process.

Councilmember Azeltine stated since engineering is done and paid by the applicant and that they agreed to pay for the reconstruction of the streets, there should not be a problem as long as the City can oversee and inspect the project. He asked if there were any laws against Mr. Petersen's proposal to activate the SBD, subject to paying off items previously listed. Mr. Thompson advised no law states it cannot be subject to the DA, but if a property owner provides the SBD petition as it is currently set up, the new owner has to own the property free and clear. In further response to Councilmember Azeltine, Mr. Thompson stated that the current property owner can petition the City for a new SBD and a DA can be made.

Mayor Dunn interjected that this would be subject to the City agreeing with the current property owner since they have not made any payments. Councilmember Azeltine expressed concern with why an additional hurdle is being made, since the Developer is putting up money to take this off the City's balance sheet.

Mr. Petersen acknowledged concern shared by Mr. Thompson about filing the petition. Under the assumption that the City would create an SBD subject to payment of money and transfer of title to the Developer, Mr. Petersen requested that they are allowed to start work, subject to City inspection and with temporary note utilization, so the City receives the money within 15 days of the SBD. He stated that by January 1, 2021 all money will be paid and the City will have money in escrow for future assessment and by the fall all monies will have been paid.

Mr. Lambers responded that when the City does the work it requires the contractor to inspect it before it gets covered up and warned of prior incidents when private developments have not done that. He advised that he wants it stated explicitly, that if any work is performed and covered up, it would be torn out and started again. Mr. Petersen agreed to this language.

Ms. Bennett stated that the City's bond counsel has indicated that the City has always done the work because the City's good faith and credit are on the line. Ms. Bennett noted that although this is part of the policy this does not mean that the policy cannot be changed. Ms. Bennett advised that the City did offer the Developer a chance to do their own work, however, they would have to get their own temporary financing that the City would bond. Once it was done the City would pay off the construction financing with the bonds. Mr. Petersen responded that this would be an additional cost.

Mayor Dunn asked if the engineering work is done. Mr. Ley said there would be some delays with the City bidding the project because of the time to advertise, then it would have to come before the Governing Body for approval. He advised that the sanitary sewers would have to be done first, and will take a couple of months. Mr. Ley mentioned that while those are under construction, bidding could be underway for the road work. Once the sanitary and storm sewers are completed the street contractor begins. Mr. Ley stated that the sanitary sewers have not been approved by Johnson County Wastewater and he is not aware of the length of that process and at this time they have not seen any plans for stormwater, sewers, or lighting. Mr. Thompson advised that there is a 60-day protest period and notes cannot be issued during that time. Ms. Bennett stated that considering the amount of work that the Developer has done, it may not make sense to go with another engineer but the Legal Department would have to review this.

Mr. Petersen restated their compromise to allow time to get the SBD created so they could get the City the money and allow them to move forward, subject to the approval of plans by the City, inspection by the City to do sanitary and storm, then the City comes in when the weather breaks and in the meantime, they can bid the streets.

Ms. Bennett stated she and the City's bond counsel do not recommend splitting these projects due to the coordination of timing and payments. Mr. Thompson stated that there is no 60-day protest on the SBD, but there is on the CID. Mr. Lambers' expressed his concern that there should be only one contractor. Mr. Petersen said the Developer would be the General Contractor for this project.

Councilmember Osman asked if there were any past incidents with the Developer concerning putting in stormwater streets on various projects and any concerns with this project. Mr. Ley answered there are concerns and mentioned a project in the Village of Leawood when the Developer continued to work without approved construction plans.

Councilmember Filla stated she does not believe that the City is in desperate need of this project. Based on what the City's Finance Director and the City Administrator have stated the City does not have an

issue with its money being tied up in this land. There is a limited amount of land in Leawood, but it has been proven that if the City waits years there will still be interest in developing within the City. If the City is not paid back the City is not in financial jeopardy especially since there is an escrow account for the property taxes. She stated she supports the policy that when the City carries the debt of a project the City also manages the project. This policy has served the City well in the past and should be adhered to in this project which she supports. She further stated that she does not understand why the Developer continues to stress the huge amount of money that is upfront which has been reduced by the escrow, yet insists on paying it off in advance which they do not have to do. She stated that she wants to make sure this project is done by the City's Public Works Department because of the lighting issue. She stated she would like to see the HOA agreement in advance. She expressed concern with the timing of how items are being provided and why there is so much pressure to get this done when everyone is scurrying around with this process. Also, this project is not keeping with the City's 135th Mixed Use Master Plan because there is no mixed residential, and this is not the target market that Leawood needs. She stated her belief that diversity makes a City strong. She stated concern with this request that asks for the Council to bend over backwards and jump through hoops for a project to provide housing that is not needed in this City.

Councilmember Osman said he is biased toward development. Once he received his MBA specifically in real estate it bridged the gap between what he understood as a Developer and what City Planners and City Administrators go through. As a Developer, the goal is short term but cities look at long term investment. He stated that when he ran for City Council his goal was to take some of his expertise in development and try to change some of the Leawood Development Ordinance (LDO) to be more favorable for the City of Leawood. He said when considering a project he looks at what is before the Council, but he also talks to several people including staff. Councilmember Osman said he has a problem with this particular site. He said the City of Leawood has the mantra "Growing with Distinction" and right now 75% of the City's land is currently developed, leaving the remaining 25% on 135th Street. Once the development is finished there may be some infill. Councilmember Osman reminded the Council that several years ago the Council came up with a Master Plan for the 135th Street Corridor and at that time he was the only one that sounded the alarm that the City should not have five and six-story buildings/Mixed Use, going up and down the streets because it is not reasonable or viable, but he dissented. Councilmember Osman listed five reasons why he does not believe this project should be developed on this site:

- 1) Hard corner at 135th & Roe is best for commercial
- 2) Rezoning concerns
- 3) A shiny, new thing may not be the best thing
- 4) The City's plan for reimbursement
- 5) Developer builds high end, expensive villas

Councilmember Osman stated he believes this project has been presented to the Council haphazardly. Another concern with this project is the potential for excessive HOA fees. He said the project came to the Council in August and the staff has done a phenomenal job with getting the information to Council, but at this point and time this project does not align with what the Council is looking to do for the City.

Mayor Dunn asked if any of the 28 stipulations from Planning are addressed in the DA. Ms. Bennett advised that the DA does address that the Developer must comply with all Planning Stipulations. Ms. Bennett stated that as the DA is currently written the City does the construction because the City's SBD is being used.

Mr. Klein said some of their concerns are that they have a lot of information, but plans are showing different layouts and some landscape plans are in conflict with each other. Mr. Petersen stated he agrees there is more work to do on stipulations, but he believes it can be done by next week.

Mayor Dunn asked if a continuance for another week was in order because she has not had a chance to read the DA. Councilmember Filla asked if she would be allowed to make the motion to affirm the approval of the Planning Commission. Further, she stated that she does not want to continue to burn the time of staff, Council, and the Developer.

A motion to affirm the Planning Commission's recommendation of denial of the application was made by Councilmember Filla, seconded by Councilmember Harrison.

Councilmember Larson said that she has a great deal of respect for Councilmember Osman's statement, however, she drives by this location often and frequents businesses near this area and every time she drives by this is a sad reminder of a failed project. She stated she is excited that this project has been proposed. She agrees with Councilman Osman that the 135th St. Master Plan needs to be reworked and that the highest and best use is subjective. Councilmember Larson said she thinks the financial aspect of this project is mutually advantageous to the Developer and the City. She stated that she would love to see affordable housing in Leawood but not sure it will be solved on 135th Street. She stated the land is too value and is not sure it can be solved in Leawood, however, she still supports the project.

Motion failed with a roll call vote of 5-3. Councilmembers Filla, Harrison and Osman voted AYE. Larson, Sipple, Azeltine, Rawlings and Cain voted NAY.

Mayor Dunn resumed her previous recommendation to continue this for one week. She asked Mr. Petersen whether he could state with real confidence if one week is ample time or if more time is needed. Mr. Petersen said in terms of the plan he believes they can get adequate information to resolve Stipulation No. 25 with Mr. Klein. However, in terms of the DA, there has been some talk on areas of compromise. If things remain as is in the DA now, then he does not believe they can move forward. Mr. Petersen stated the issues are who is doing the work, does the Developer pay certain things within 30 days of the approval of the DA, and the SBD created condition. He stated if there is an atmosphere to resolve these issues then one week should be enough time.

Mr. Lambers said he agrees with Mr. Petersen and believes this issue should be resolved tonight. He stated this matter will not be resolved in a week. Mayor Dunn stated that she is going to be leaning heavily on the City's position in the DA and there could be one or two things to discuss further, but she does not want to go against the City's policy or the City's bond counsel.

Councilmember Cain said at this time she cannot say if she would support it. She said she heard a lot of compromises, but based on Mr. Petersen's last comments, it sounded as if the door closed. Mr. Petersen responded that the door has not closed and he restated the issues noted previously.

Ms. Bennett stated that she and the bond counsel would not recommend splitting the work, as stated earlier. She said she has some concern about titling and when title would pass.

Councilmember Azeltine asked the question that if the City insists on doing the streets, is that a deal-breaker. Mr. Petersen responded no. Councilmember Azeltine asked Mr. Petersen if he was okay with the City doing the infrastructure even though the engineering is already done. Mr. Petersen responded

it would double the costs. Councilmember Filla interjected stating they have not seen the costs and Public Works has had problems with this Developer in the past.

Mayor Dunn asked that if the quoted amount for adjusting existing storm and sanitary sewers is reasonable. Mr. Ley responded that since they have not seen the completed plan they have no cost estimate.

Mr. Petersen responded to Councilmember Azeltine's previous question concerning the City doing all the work. He stated if they are going to be pushed to allow the City to do all the work, then yes, it is a deal killer.

Councilmember Azeltine asked if the Developer would agree to go to the first Monday in December. Mr. Petersen said he agrees with Mr. Lambers, if the Council is agreeable to split the work with them and move a portion of the costs until they know if there is an approval on the SBD, then there is no need to extend it another week.

Councilmember Filla stated she thought Mr. Lambers agreed to put in a clause that the City would reimburse any money if an SBD is not put in but that there are timelines that the County has to adhere to. She suggested listening to bond counsel's recommendation of the City doing the work.

Councilmember Cain said she hates being forced into a project. The Council or staff has not had time to review and has been fast-tracked all the way through. The only reason she reconsidered this project was because of her conversation with Mr. Lambers on special consideration of this property. She has voted no from the beginning and she does not like being put into this position.

Mr. Thompson stated this is not a legal matter but suggested that either the City does all the work or the Developer does all the work. If the Developer does the work they provide the financing and can pledge the DA as collateral for construction financing, knowing that the City has a contractual obligation to perform on the DA. The concern is that if the City performs a portion and the Developer performs a portion of the work and temporary notes are issued essentially, the Developer is using the City as their financing bank. Mr. Petersen stated this is correct and what their proposal has always been. Councilmember Azeltine stated this is going to happen anyway if there is an SBD. Mr. Thompson said construction financing is not, and once it is taken out of the SBD bond, the Developer is using the City's credit.

Ms. Bennett commented that this has been the discussion for weeks and explained the issues when splitting the work is allowed.

Mayor Dunn stated that the City has a deadline for the Agenda Packet which has yet to be met with this project. She asked if documents could be to the City Clerk's office in a day and a half or would Mr. Petersen like to speak at the first Monday in December. Mr. Petersen said if there are not the votes to compromise, then he agrees with the City Administrator and believes this will not be able to move forward. He stated they should be able to get the documents in time, if the votes allow.

Mayor Dunn stated that Mr. Lambers' compromise is contingent upon the SBD being issued and paid back. She stated it is important to remember that Mr. Petersen is convinced that if City does the work it will take twice as long and twice as much money, which she does not necessarily believe.

Councilmember Filla said another sticking point is the disparity in the numbers in the DA which need to be settled.

Mayor Dunn stated again that the best answer is a continuance.

A motion to continue to Monday, November 16, 2020, to finalize details in the Development Agreement was made by Councilmember Azeltine.

Mayor Dunn offered a friendly amendment to have both items done since the Council is breaking policy.

Councilmember Azeltine accepted the friendly amendment, seconded by Councilmember Sipple.

Councilmember Osman said he agrees with Councilmember Azeltine. He stated that it makes no sense for a Developer to spend thousands of dollars on plans without understanding the DA ahead of time. He stated he is not in agreement with a continuance.

Councilmember Rawlings asked if the work that the engineer has done up to this point can be used by Public Works so that the work done by the Developer is not thrown out, if the City supervises the work, does the inspections, and is in charge of sewer and storm. Ms. Bennett stated the City will use the Developer's engineering work. The City would still contract for the work itself but use the design that has already been done by the engineer so that money is not wasted. Mayor Dunn stated that engineering has been done. Councilmember Rawlings asked then what part would the City be doing. Mayor Dunn responded that the construction is the issue under consideration. Mr. Petersen advised that Johnson County Wastewater does their own work and the Developer does have bids on the stormwater construction and engineering, which is why they can give numbers.

Councilmember Azeltine expressed his desire that this project be given another chance since so much work has been done so far. He warned that the Council may go through this exercise again with another developer wanting to develop this piece of property, if this does not go through.

Mr. Lambers stated that if the reason for the continuance is to give the Governing Body members time to deliberate, nothing is going to change on the part of the Developer's or the City's perspective. He stated this can be put on Special Business next Monday, so it can be addressed first. Councilmember Filla asked Mr. Lambers to explain what the impasse is. Mr. Lambers explained it in 3 options:

- Option A, City's position - City performs all the work and be responsible for it,
- Option B, Developer's position - City finances the work and they administer it,
- Option C, City's position - Developer does the work and finances it (this is a clean separation with the developer using their own money and not taxpayer money, although they will be reimbursed).

Mr. Lambers stated that the Developer is asking the City to provide temporary financing that will be taken over with the long term 15-year SBD.

Councilmember Azeltine said he agrees if we are going to be issuing the debt at the time of construction then we should be doing the work. Councilmember Azeltine stated that what he understood is that they are going to do the work and finance, then the City would have something in the DA to trigger the SBD once all costs have been certified.

Mr. Petersen said they are carrying the debt on \$4.5M in back assessments and property taxes all of which cannot be financed.

Councilmember Filla asked that if the Developer is concerned with the debt why are they continuing and try to buy off the \$1.4M that is not due and why do they want to be responsible for all the construction costs when the City says they will take it on and convert to the SBD. She stated she would rather the City do all the work because she does not like the controversy that can come up with the other scenario.

Mayor Dunn restated the motion for continuance to November 16th for the DA and the Final Plan.

Councilmember Filla asked that the maker of the motion withdraw it so that the Council can vote on the impasse. Councilmember Azeltine said he stands by his motion.

Councilmember Cain reminded everyone of the \$950,000 escrow discussed earlier that could be an offset. Mayor Dunn said if there is no compromise from the City on who does the work there can still be a compromise on the SBD language which is why she agrees with a continuance.

Mr. Petersen clarified that the Developer is not asking the City to finance construction, because they are doing that. He explained that temporary bonds will be used only when public improvements are received, which is the same way the City would use temporary notes. Ms. Bennett stated that the Developer would finance all the public improvements until they are completed and then they would ask the City to issue temporary bonds for the entire amount.

Councilmember Harrison asked for a reminder of the motion. Mayor Dunn restated the motion is to continue the DA and the review of the Final Plan and Final Plat of the Villa de Fontana until November 16, 2020.

Motion was approved with a unanimous roll-call vote of 8-0.

Mayor Dunn stated the motion was approved unanimously and this deletes other business on the agenda. Mayor Dunn thanked the staff that worked overtime all weekend on this.

The meeting was adjourned at 9:13 p.m.