

## **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, August 17, 2020. Mayor Peggy Dunn presided.

**Councilmembers Present:** Lisa Harrison, Julie Cain, Jim Rawlings, James Azeltine, and Mary Larson

**Councilmembers Present via Zoom:** Andrew Osman and Chuck Sipple

**Councilmembers Absent:** Debra Filla

**Staff Present:** Scott Lambers, City Administrator; Patty Bennett, City Attorney; Dawn Long, Director of Finance; Ross Kurz, Information Services Director; Mark Tepesch, IS Senior Specialist; Kelly Varner, City Clerk; and Stacie Stromberg, Assistant City Clerk

**Staff Present via Zoom:** Richard Coleman, Director of Community Development

**Others Present:** John Peterson, Polsinelli PC and Mark Simpson, Fontana Land Company, LLC

## **Discussion of refinancing of the Special Benefit District Debt for Villaggio**

Mayor Dunn opened the work session. Stacie Stromberg read the City Clerk statement into record:

To reduce the likelihood of the spread of COVID-19 the Leawood Governing Body Work Session is being conducted remotely using the Zoom media format and some of the members of the Governing Body may appear remotely. Public comments will not be accepted during this meeting. City Hall is closed to public access during this meeting, however, the meeting will be livestreamed on YouTube and the public can access the livestream by clicking on [www.leawood.org](http://www.leawood.org).

City Administrator Scott Lambers began with a brief summary of the current situation. He stated the original project was approved by the Council to provide Special Benefit District (SBD) financing for public improvements that would ultimately become the property of the City. Over time, the project floundered, and in 2015, it was sold. The new property owners made the decision to not make any payments for general property tax payments or SBD payments and are now in arrears for \$3.5M, most of which is owed to the City. Mr. Lambers stated if the property is foreclosed upon, the general property taxes would be paid first, and the City's SBD amount due would be paid second.

Mr. Lambers explained that the financing to be discussed tonight is separate and apart from the planning process, and the Council's decision will have no impact on the approval of the developer's plan.

Councilmember Azeltine asked if the developers have started their process with the Planning Commission. Mr. Lambers stated it is scheduled to go before the Planning Commission but not likely until September.

Councilmember Harrison asked to confirm if the current property owners have made no payments since 2015 and are now asking for a new financing plan. Mr. Lambers stated the refinancing would be made with a new entity who would take over the responsibility of the financing.

John Peterson with Polsinelli PC, 900 W 48<sup>th</sup> St., addressed the Governing Body via Zoom. He introduced Mark Simpson who also appeared via Zoom on behalf of the Fontana Land Company, LLC. Mr. Peterson began to outline some of the financial history of the Villaggio project. He stated the initial concept was a mixture of commercial uses, but believes the problem was the phasing plan in doing all the infrastructure at once. It was found that the financing plan was highly leveraged. Mr. Peterson stated an SBD is a good tool, but it is still borrowing money. In the case of the Villaggio project, three separate SBDs were created: Storm water, internal streets, and external streets. General Operating (GO) bonds were issued so assessments were placed on the property. In addition, Mr. Peterson stated TDD (Transportation Development District) bonds will also issued. Mr. Peterson explained over the first 12 years, only 4 pad sites were sold.

Mr. Peterson stated the Fontana Land Company is not the original owner or the second owner. The original owner lost the property to the bank. That bank owned the property for a period of time and tried to market it. The bank paid some assessments and some ad valorem property taxes. The bank finally found a buyer and sold to the second owners. The second owners took out a mortgage to buy the property, subject to the assessments and outstanding ad valorem property taxes. That developer lost the property in 2019 to their bank. Currently, the second bank holds the property.

Mr. Peterson stated he has worked with Mr. Lambers on the current situation. He explained the original owners and the first bank did make some payments toward the SBD bonds. Under the GO provisions the City began making payments equaling \$1,660,000.00 to date. Eventually, the payments were no longer being paid on the TDD bonds and are in default status. The outstanding amount is \$536,504.00. On future obligations to retire the SBD bonds, the City would have to pay out approximately \$2,098,665.00. To retire the TDD bonds, the obligation is \$536,504.00. Mr. Peterson stated that no property taxes have been paid for nearly 5 years. As of October 31, 2020, \$954,214.00 is owed.

Mr. Peterson explained the developers, Fontana Land Company, proposes to take responsibility for the first mortgage. The developers would pay and bring current the amount of past due property taxes. The developer proposes to pay off the outstanding TDD bonds. In terms of the SBD bonds, the developer would pay the City \$1,660,000.00 to protect the General Obligation nature of the bond. Their proposal would defease the bonds and take over the future payments.

Mr. Peterson stated if the developers take over all the payments, they would request to utilize a new SBD in a lesser amount that lay assessments over the entire property in a normal, balanced course and smaller percentage of debt.

Mayor Dunn asked if the proposal is requesting a 10 or 15-year time frame for the SBDs. Mr. Peterson indicated they would like 20 years, but they will commit to less. Mr. Lambers stated the original SBD have been on the books for a while. His recommendation would be for 15 years, but there will need to be a development agreement first, at a later date.

Councilmember Larson asked if the City has any other project in arears. Mr. Lambers replied there are many in arears for property taxes, but none for any SBDs. Mr. Lambers reminded the Council these are public improvements that someone else pays for. The property is the collateral for the debt and with these improvements, the property value increases significantly.

Councilmember Sipple asked if the Council followed this recommendation would the City has to write off any amount as a bad debt. Mr. Lambers stated no and that the developer would make all the taxing entities whole and the only thing that is outstanding is the new debt that they are requesting the City to issue in the form of an SBD.

Councilmember Azeltine asked if the SBD ordinance is a max of 20 years. Mr. Lambers stated the City's max is 15 years by policy, but the State's statue is 20 years. Councilmember Azeltine asked if Mr. Lambers had a general understanding of what the developers are proposing. Mr. Lambers stated he has not seen the plan but does have an understanding. Councilmember Azeltine commented that if the developers believe this plan is feasible yet the Council does not move forward, the property is likely to continue to stay dormant. Mr. Lambers explained the next step is for the County or the City to foreclose on the property.

Councilmember Osman asked what is the total amount due on property taxes. Mr. Lambers stated it is approximately \$1M. Councilmember Osman stated he believed the taxes owed were over \$3M. Mr. Peterson explained the \$3M figure, as listed on the Johnson County AIMS website, is the combination of ad valorem taxes and the assessments.

Councilmember Cain asked what the developers are bringing to the table that would be considered above and beyond compared to anyone else's proposal. Mr. Peterson stated he believes the uniqueness is this is the right people at the right time, to not have to go through any foreclosures or reposition of the property's use, and the ad valorem taxes. He pointed out the property is not worth the debt on it right now, but the developers are ready and excited to move forward. Mr. Lambers explained the purpose of this work session is to have a consensus of the Council to be favorable to the proposed financial plan and the developers need that in order to proceed. Mr. Peterson stated if their zoning and preliminary plans were acceptable by the Council in early October, he would also like to have a development agreement outlining the financial details before the developers incur any expenses of the final plan.

Mayor Dunn asked if the developer is presenting a preliminary and final plan together to the Planning Commission. Mr. Lambers stated it is a preliminary plan and rezoning. Mayor Dunn clarified that any indication tonight with consensus is not prejudicing the Council to approve a plan that has not been

seen. Mr. Lambers replied that was the purpose of the work session to make it clear to the Council and applicant.

Councilmember Azeltine stated one of the reasons he ran for Council 14 years ago was how the Villaggio was handled. He stated he is open to moving forward with this developer.

Mayor Dunn indicated no one on the Council as giving dissent to see a preliminary plan and rezoning go before the Planning Commission. Mayor Dunn expressed her concern on the length of time regarding the SBD when a TDD under State statute is limited to 22 years. Mr. Peterson explained upon approval, the developer would retire all the assessments on the property.

Councilmember Osman expressed an opinion that he believes the development plan will be residential. He stated his concern going through the City's process if there is time to allow for any objections of a plan within a tight deadline. Mr. Peterson stated the developer has had an INTERACT meeting already but do understand the timeline. He stated the Planning Commission agreed to hold a special meeting on September 8<sup>th</sup>.

Councilmember Azeltine inquired if the developer taking responsibility for making the financing whole would be part of the development agreement. Mr. Lambers affirmed yes. Mayor Dunn asked if 3 weeks is needed between the Planning Commission and Governing Body meetings in order to allow for a protest petition. Mr. Lambers replied yes. City Attorney Patty Bennett stated the correct date of the Planning Commission meeting is September 9<sup>th</sup>.

In closing, Mr. Lambers stated he supported the request being made because, if in fact the plan does not go forward, there would at least be a financial model in place for any future developer.

Mayor Dunn indicated the length of time in the SBDs would be a future discussion point. Mr. Lambers agreed that would be a decision for the Council in a development agreement.

Mayor Dunn thanked Mr. Peterson and Mr. Simpson for their presentation.

The meeting adjourned at 7:01 p.m.

/s/ Stacie Stromberg  
Assistant City Clerk