

## 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, October 5, 2020. Mayor Peggy Dunn presided.

**Councilmembers Present:** Julie Cain, James Azeltine, Chuck Sipple and Mary Larson

**Councilmembers Present via Zoom:** Lisa Harrison, Debra Filla, Jim Rawlings and Andrew Osman

**Councilmembers Absent:** None

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

**Staff Present via Zoom:** None

**Others Present via Zoom:** John Petersen, Polsinelli PC; Mark Simpson, Fontana Land Company LLC; and Ben Thompson, Gilmore Bell

## **Review CID Policy in Response to Developer's Request**

Mayor Dunn opened the work session.

John Petersen, speaking on behalf of the Fontana Land Company, thanked the Council for agreeing to a work session. He also thanked the City Administrator and staff for working with him and the Developers. Mr. Petersen began his review with an outline of the amount of taxes due, Transportation Development District (TDD) bonds in default, and the balance of the General Obligation (GO) Special Benefit District (SBD) bonds, all totaling over \$4.3M. He stated the Developer's proposed financial solution is to immediately pay off the outstanding property taxes and TDD bonds, and reimburse the City for the bond principal payments that have been made to date. Mr. Petersen stated after recently working with the City Administrator and the City's bond counsel, they discovered this initial financial structure is not legal. For a newly modified structure, Mr. Petersen stated their next option is to defease the outstanding SBD bonds, offset expenditures through a new assessment-based bond issuance, and use SBD or CID (Community Improvement District) GO bonds to allow a portion of costs to be financed.

Mr. Petersen shared an updated SBD Estimated Project Costs spreadsheet with the Council. He pointed out the one item on the cost sheet in disagreement was the perimeter retaining wall, of which the City would not support its financing. He stated this modified option would cost the developer more, so they proposed utilization of a CID to issue bonds to allow them more flexibility of financing certain costs. Mr. Petersen stated that through much discussion with staff and bond counsel that the City's current

policy does not allow the issuance of bonds. He cited certain sections of the City's current CID policy from Sections 2 (Scope), 4 (Criteria), and 5 (Project Eligibility).

Mayor Dunn asked if there are any other items other than the perimeter retaining wall on their list of costs that SBD GO bonds could not fund. Mr. Petersen stated the wall was the biggest item that causes a problem. Mayor Dunn asked if bond counsel was comfortable with the costs list that was provided by Mr. Peterson. Ben Thompson, Gilmore Bell, stated he had a conversation with representatives at Polsinelli and he is comfortable with it. Mayor Dunn stated the Council approved a retaining wall for Town Center Crossing using TDD financing and asked if TDD could be used in this case. Mr. Thompson stated he would need to review the statute to be sure, but the way the wall is presented in this project, they did not come to the conclusion that it fits within the language of the statute for SBD purposes.

Councilmember Sipple asked if there are any precedents in the Metro area that are similar to what the Developer is proposing here. Mr. Petersen stated there are many CIDs in the area but this is unique, because it is a property with a lot of debt. Councilmember Sipple remarked since the CID debt would not be paid back with sales tax, it would be based on assessments on each lot as they are sold. Mr. Petersen confirmed assessments would be used, as allowed by the state statute. Councilmember Sipple asked how many lots are proposed in the development. Mr. Peterson stated 63. Councilmember Sipple asked where the perimeter wall is planned. Mr. Petersen explained its location and that it is considered a retaining wall of approximately 4-6 feet in height. Councilmember Sipple asked if the people who buy the lots will agree to guarantee the payment as long as they own the property. Mr. Petersen confirmed yes; they would sign an agreement.

Councilmember Rawlings asked if the retaining wall is necessary. Mr. Lambers stated a portion of the wall, approximately 2 feet, is necessary for retainage, the remaining 4 feet is considered a screening wall. Mr. Lambers stated this is why there is difficulty in financing. Councilmember Rawlings asked if the entire wall is likely to be approved by the Planning Commission. Mr. Lambers stated the Council should try to avoid questions with the planning stage.

Councilmember Harrison asked if the assessments will be a one-time assessment at the time of the purchase of the home or rather an ongoing annual assessment, and how much it would be. Mr. Petersen stated it will be an ongoing assessment applied to the annual tax bills from the county and will equal approximately \$441.00 every 6 months, or \$800-\$900/yearly. Mr. Lambers and Mr. Petersen stated the length of years is still being discussed.

Councilmember Filla asked what is the amount that is eligible under an SBD versus the revised CID amount that Mr. Petersen is proposing. Mr. Petersen stated the SBD amount would be \$2,393,500.00 minus the cost of the retaining wall of \$418,500.00. He stated what would be eligible under the CID policy is approximately \$3M. Councilmember Filla commented that the CID funds would be going towards things that are not residential and that the property owners will pay it instead of sales tax. Mr. Petersen stated the statute allows for either an add-on sales tax or assessments.

Mr. Lambers stated that if a City approves SBD financing and issues bonds, it can be done for either commercial or residential projects. He stated the issue comes if there are foreclosures, especially on residential properties, if payments are not made on the improvements. He explained that an SBD finances basic infrastructure. A CID, Mr. Lambers stated, is more liberal on what it can finance, but in this case there would be 63 chances of people not paying their mortgages or property taxes. The City

would then have to collect payments from property owners individually. He stated he is in favor of the \$1.8 for the SBD but it is his opinion that it weakens the City's position for basic infrastructure financing to extend a CID to items that are not eligible. He stated he is opposed to CID bonds issuance because it is a departure from the City's current policy. Mr. Lambers stated he is willing to consider CID as a pay-as-you-go reimbursement finance option, if the Council would be interested in it.

Councilmember Filla stated her concerns of setting a precedent and expressed why she feels uncomfortable using private ownership as equity. Mr. Petersen emphasized that the circumstances are unique and further stated that the City would be receiving money upfront to help pay off the current debt. He stated the financing is to help off-set some of the costs. Councilmember Filla stated it appears that the City would be extending the amount of time of the debt and does not feel it is fair to the homeowners.

Mr. Lambers asked if the Council supports his recommendation for the eligible projects under the SBD. If so, assuming the plan is approved the conversation can then move to the CID. He stated if the Council wanted to move forward in that direction then the consensus of the SBD would go away.

Councilmember Sipple asked what happens to the City's obligation if all the lots are not sold. Mr. Petersen stated the developer still owns the property and would make the payments. Mark Simpson, Fontana Land Company, stated there are builders who have already signed contracts and made deposits to start building on 32 lots as soon as permits are approved.

Councilmember Azeltine stated if the Council does not move forward in some fashion, it will stay in foreclosure and there will be no tax revenue. He felt the offer to defease the current bonds is generous. He stated the two issues with the CID appear to be 1. using an assessment instead of a sales tax and 2. the issuance of bonds. He stated the City has been saddled with this for a long time and it calls for some creative financing. He is in favor of using CID bonds with assessments.

Mayor Dunn asked if there would be consensus with utilization of SBD GO bonds. Mr. Lambers stated the length of time, 15-20 years, is yet to be decided in the development agreement. Councilmembers Larson, Sipple, Cain, Azeltine, Filla, Osman, Rawlings and Harrison and Mayor Dunn stated they are in agreement. Mayor Dunn asked if there would be consensus with utilization of CID for \$3M. Councilmembers Larson, Sipple, Azeltine, Osman, and Rawlings are in favor of approving it. Councilmember Cain stated she would be in favor if there were no other options. Mayor Dunn, Councilmembers Filla and Harrison were not in favor. Mayor Dunn stated the City's CID policy has worked well, and recommended Mr. Thompson to review the TDD option.

Mr. Lambers stated the reference to the \$3M CID GO bonds will be included in the development agreement language for the Special Call on Monday, October 12<sup>th</sup>.

Mr. Thompson explained General Obligation bonds are full faith in credit of the City and are similar to SBD bonds. The SBDs are backed by special assessment, but if not paid, the City pays the bonds from its general revenue. Special Obligation bonds are backed only by special assessments. If a bond goes into default, the City is not on the hook for payments. Mr. Thompson confirmed a full faith in credit can be done under a CID.

Councilmember Cain cautions Mr. Petersen that any stipulations that the Developers agree to must be met through the planning process. Mr. Petersen stated with their proposed develop agreement, the

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Developers will pay off the outstanding property taxes within 30 days of signing the approved agreement.

The meeting adjourned at 7:18 p.m.

/s/ Stacie Stromberg  
Assistant City Clerk