

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, December 15, 2008. Mayor Peggy Dunn presided.

Councilmembers present: Gary Bussing, Jim Rawlings, James Azeltine, Julie Cain, Lou Rasmussen, Gregory Peppes, Debra Filla, and Mike Gill.

Councilmembers absent: None.

Staff present: Scott Lambers, City Administrator Joe Johnson, Public Works Director
Patty Bennett, City Attorney Kathy Rogers, Finance Director
Deb Mansfield, City Clerk Pam Gregory, Deputy City Clerk
Richard Coleman, Comm.Dev.Director

Others Present: Roger Edgar, George K. Baum & Co.
Larry Winn, Polsinelli Shalton Flanigan Suelthaus, PC

Opening Remarks

Mayor Dunn called the meeting to order at 6:15 P.M. Introductions were made by those present.

Larry Winn stated this has been a collaborative effort to bury power lines along 135th street, to structure petitions so the first assessment would be in 2012. He is aware the City has other CIP projects right now, and there is no great rush to get this completed right now. The City's current policy requires the landowner to submit a Letter of Credit [LOC] for protection against a default. However, by the time the County would get around to a tax lien this could take 3 years, and the City, in the mean time could bear the cost of picking up that assessment from the non-paying petitioner. The City has indicated waiving this LOC and he has represented this to his clients. The game plan is to get the petitions in final form and have the property owners sign the petitions.

Patty Bennett stated she wants to ensure that the City Council is still agreeable to the waiving of the LOC requirement for the Special Benefit District [SBD] for the third lane, and for the burying of the power lines along 135th Street between State Line and Kenneth Road.

Larry Winn estimated there are approximately 144 acres in the SBD. The cost of the road is \$25,000 per acre. If the life of the project is 15 years and the cost is spread over the entire life of the project, including interest, the cost would be \$1,750.00 annually per acre. Comparing the last land sales [bank sales] they were over \$20.00 a square foot, which was \$871,000 per acre.

If there was just one petitioner or just one landowner for this project, securing a LOC would be the prudent thing to do, however, this project has 8-10 landowners, and the odds of all of these landowners defaulting is extreme.

Larry Winn has confirmed with the County's legal staff that the County would have to wait 3 years before they could foreclose on the SBD liens, however the City can get a judgment for that default, including all costs of recovering the foreclosure and interest.

Mr. Winn confirmed with Councilmember Gill that if a federal tax lien was placed against one of the assessed properties; unless the federal tax lien is already accrued, the lien of the SBD would be ahead of anything else.

Scott Lambers confirmed with Councilmember Gill that the bonds would be funded in 2012. Ms. Rogers stated temporary notes would only be issued on the SBD portion.

Larry Winn stated an estimated cost for the relocation of the power lines would need to be obtained from KCPL. A hard date would need to be submitted to KCPL.

Councilmember Azeltine asked if the rationale behind this SBD/TDD project could be explained. Mr. Edgar stated the TDD's were a solution to a problem because SBD financing wasn't legally an option for burying for power lines and the streets needed to be done first. The SBD would be used for the streets and the TDD would be used for the burying of the power lines.

Ms. Rogers confirmed with Councilmember Azeltine that the cost for the total project would be \$3.4 Million for the 3rd lane and \$3.4 Million for the burying of power lines. Scott Lambers stated, depending upon KCPL, it could be just under \$8 Million.

Roger Edgar stated the difference between the SBD and the TDD is that the SBD portion issues GO bonds. If there is a delinquency, the City has to have the liquidity to cover it. If you're dealing with big single tracts, the City would have a bigger liability.

Larry Winn stated the TDD's have to be privately placed, which is another challenge in today's economy. Mr. Edgar stated the City is not at risk for those bonds or the delinquency of the bonds. These would be very difficult to place in this environment, and the environment would need to improve between now and 2012. Mr. Winn stated Blue Valley Bank, a private placement entity, was being looked at as a possible good buyer for the bonds, as the assumption was, the TDD's would be a good investment.

Councilmember Azeltine asked about the sequence of events of the project. Scott Lambers stated they would have to provide evidence of financing; they would have to be lined up and ready to go. Prior to the City starting any engineering work, they would have to show a line of credit or something to where they would be good to go, and then the City would issue the temporary notes for engineering and then temporary notes for the SBD, they would finance through a private agreement with KCPL and then we would create the TDD and the SBD bonds following that.

Scott Lambers confirmed with Councilmember Rasmussen if the letter of credit [LOC] is abandoned, the element of risk to the City is not only for the first 3 years, but for the entire life.

Kathy Rogers confirmed with Councilmember Rasmussen, if defaulted, the City would have to come up with approximately \$500,000.00 annually.

Scott Lambers stated if a default occurred, the City could impose a temporary mill levy increase for 3 years, and the City would get the money back when the property was sold.

Ms. Rogers stated the original intent of requiring a Letter of Credit [LOC] was because of Tomahawk Creek Parkway. When it was starting to develop, the individual property owners were not paying in a timely fashion, thus creating a lag time and causing pressure on the mill.

Mr. Winn stated the worst case scenario would be that everyone in the entire district would have to default. Very few property owners even have a mortgage on the property.

Mr. Edgar stated the City has a bond and interest fund to cover instances such as a delinquent assessment payment and the City would have to pay it. This would not be a default. These would be GO bonds, and the City would need to pay the amount.

Councilmember Azeltine asked about the TDD's. Mr. Edgar stated there is no liquidity at all. That is the reason the bonds would be difficult to place.

Councilmember Azeltine asked if the City had done this type of project before. Scott stated that even though the City had issued SBD and TDD for Villaggio and Cornerstone, this was different, in that this project was putting in public improvement for private utility for tracts of land that are not proposed for development, in order to get all the improvements completed at the same time, to accommodate the burying of power lines.

Mr. Winn stated that even though there are no tenants currently, but as the area is developed with either commercial buildings or residential condominiums, new property owners will be added to the district.

Councilmember Azeltine stated in the past, development has been more eminent; whereas this appears to be more speculative; however this is going to be more attractive for development.

Mr. Edgar stated the City has the legal ability to file tax delinquencies, however the likelihood is remote. The one concern cities need to be aware of on special assessments on undeveloped property or when the pace of development is unclear, would be when the cost of the development is worth more than the land is worth until it is developed. If that occurs, the property owner could walk away, because there would be no motivation to pay. In this situation, the worse thing that could happen, even if someone who owned that property couldn't pay the taxes someone would pay the taxes; that would be the market.

Mr. Winn stated no one with any sense would let a piece of property go on 135th Street in Leawood for a \$25,000 assessment. Someone would purchase it or pay the taxes or the assessment.

Scott Lambers confirmed with Councilmember Filla that the City would not start until the underground funding was secure. Mr. Edgar and Mr. Winn stated this would occur as close as possible to the time of development. The property owners wouldn't want to start paying on an assessment that was years down the road.

Councilmember Rasmussen asked if the LOC requirement could be pushed back until 2012 instead of requiring it when the SBD petition is created and accepted by the City.

Mr. Edgar stated it would be messy to require the LOC so far in advance when the SBD is created.

Mr. Lambers stated the LOC could be tied to the final plan submittal. Mr. Winn stated some banks would need to give a commitment letter. Mr. Lambers stated this could be a stipulation that the LOC would need to be secured upon final plan submittal.

Councilmember Bussing stated this would not address the liquidity issue that Mr. Edgar discussed earlier, which is basically in the first few years after the streets and power lines are developed. The City would be well beyond the liquidity period. The initial concern would be in the first 3-4 years following the building of the streets and power lines. He sees no benefit to having the LOC requirement years after that. Additionally, there's a public safety issue with regard to the 3rd lane and power lines with the intermodal at Richard Gebaur and out in Gardner. There will be a tremendous amount of traffic increase on 135th Street and the sooner the street can be improved the better.

Mr. Johnson confirmed with Councilmember Azeltine that there would be no effect on the cost factor if they discovered rock during the engineering process.

Mr. Winn confirmed with Mayor Dunn that he has been in contact with all of the property owners and it would be a smooth signing. One property owner has not signed, so it would be a 99% district, however, he will be assessed. Legally, the City only needs 51% for the SBD.

Mayor Dunn stated she concurs with Councilmember Bussing's assessment of the sooner the street can be improved the better, and then asked Councilmembers for any serious objections to the request. All Councilmembers agreed that the project needs to move forward.

Councilmember Rasmussen asked what the Councilmembers were agreeing to. Councilmember Rawlings asked if they were being asked to the waiving of the LOC completely, or agreeing to Councilmember Rasmussen's suggestion to include the LOC stipulation in 2012.

Mr. Lambers stated the City could tie the requirement of the LOC to a development agreement and state that the City 'may' require the LOC at the time of final plan approval, so the City would have the flexibility.

The Councilmembers were satisfied with the waiving of the LOC and/or with the LOC option included in the development agreement.

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

Pam Gregory, Recording Deputy City Clerk