

## CITY COUNCIL CONFERENCE MINUTES

April 10, 2012

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:35 p.m. in the Municipal Building Conference Room on the 10th day of April, 2012, and notice and agenda of the meeting were posted at the Municipal Building at 201 West Gray, and the Norman Public Library at 225 North Webster 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Dillingham, Ezzell, Gallagher, Griffith, Kovach, Quinn, Lockett, Spaulding  
Mayor Rosenthal

ABSENT: None

Item 1, being:

### DISCUSSION REGARDING DEVELOPMENT AGREEMENT NO. FIVE FOR THE UNIVERSITY NORTH PARK TAX INCREMENT FINANCE DISTRICT.

Mr. Jeff Bryant, City Attorney, said the University North Park Tax Increment Finance District (UNPTIF) Development Agreement No. 5 was tied to the first finance agreement in 2009. He said loan documents required the approval of Development Agreement No. 5 before release of funding for Legacy Park construction. He said one of the primary goals of Development Agreement No. 5 was to establish priorities for future roadway improvements in the UNPTIF in the amount of \$11.55 million. He said prioritization of remaining traffic and roadway improvements include the following:

#### First Priority Projects

- Robinson/East Interstate Drive (northbound on-ramp)
- Frontage Road Extension (1.1 miles)
- Design of Robinson/West Interstate Drive and Crossroads

#### Second Priority Projects

- Tecumseh/Flood and Tecumseh/24th Intersections
- Tecumseh/East I-35
- Tecumseh/West I-35
- Robinson/West Interstate Drive and Crossroads Boulevard
- Remaining intersections (2)

Mr. Bryant said the first priority projects have not changed and are in progress or moving forward. He said Development Agreement No. 5 formalized those priorities for remaining traffic and roadway improvements in the UNPTIF and provides funding for Legacy Park improvements and intersection improvements at 24th Avenue N.W. and Legacy Park Drive.

Mr. Bryant said Legacy Park was part of the UNPTIF funded with \$8.25 million to include enhanced landscaping; Legacy Trail; public art; park construction; and final design, which was completed in the fall of 2009. He said when Council approved Development Agreement No. 3 in 2007, it flipped the sequencing of the park and the Lifestyle Center. The original project had the Lifestyle Center construction first and funding for the park construction was not to occur until 250,000 square feet of retail space and the Lifestyle Center had been completed. He said, as a safeguard, penalties written into Development Agreement No. 3 stated if the Lifestyle Center was not completed by 2016, at the level originally contemplated, the developer would have to pay back some of the investment made. One of those was the construction costs anticipated for the park in the amount of \$5.9 million and construction of the frontage road in the amount of \$2.4 million. He said under Development Agreement No. 3, University Town Center was to donate the park land to the City and the City would be

responsible for the construction with UNPTIF revenues as they became available. The preliminary budget outlined in Development Agreement No. 3 consisted of the following:



Mr. Bryant said the Development Assistance piece in Development Agreement No. 3 is being provided as a payment to the developer to help establish a park maintenance fund.

Mr. Bryant said the Legacy Park Project was bid in 2009, with a budget of \$5.1 million; however, the engineer's estimate was \$5.8 million so there was a problem with funding. He said the issue on moving forward with Legacy Park was a delay in the donation of the park land. He said one of the reasons cited by the developer for not moving forward were concerns about not being able to achieve the requirements for 250,000 square feet of retail space and Lifestyle Center by 2016. He said there were also issues with parking around the park, maintenance of the park, and construction funding.

Mr. Bryant said, on the transfer of the park land, the current term sheet for Development Agreement No. 5 provides that the land be donated by Special Warranty Deed to the City and has a reversion clause, which states if the City decides not to use that land for a park, the land reverts back to the owner. The escrow agreement will go to an Escrow Agent within 30 days pending approval of Development Agreement No. 5 to be held until the final plat for the park is approved by City Council. Mr. Bryant said the Lifestyle Center was originally scheduled for construction first, which would have provided additional parking that could be shared by users of Legacy Park. When the sequence was flipped and Legacy Park became first, parking then became an issue. He said the parking issue primarily focuses around the restaurants that were supposed to be built around the lake in the park. He said there had been a previous suggestion that the City create a service lot off of Interstate Drive of approximately 20 spaces that had not been well received by the UNPTIF Oversight Committee or City Council because it encroached on the park area proper. He said a suggestion in the term sheet for Development Agreement No. 5 would allow the construction of a 20 space surface lot on a detention area immediately west of Academy Sports. He said the developer would grant easements for the lot and the cost would be approximately \$175,000, which would be available through accumulated UNPTIF revenues.

Mr. Bryant said the maintenance has been a huge issue and the term sheet for Development Agreement No. 5 establishes a Business Improvement District (BID), which will encompass the area from Robinson Street to Tecumseh Road. He said maintenance focuses on taking \$900,000 of the Development Assistance in Development Agreement No. 3 and redirecting that money in such a way that it would encourage additional business development within the district and encourage a matching portion from the BID over time so it generates \$200,000 per year over a nine year period for a total of \$1.8 million. To ensure that \$200,000 is obtained each year, the BID property owners would pay assessments based on the value of developed properties within the UNPTIF. He said the purpose is to encourage and allow substantial additional development within the district and minimize impact on the property owners within the district. Councilmember Kovach said there had been some dispute as to who would be in the Assessment District and asked Mr. Bryant to detail that. Mr. Bryant said the City has always discussed the district running from Robinson Street to Tecumseh Road to encompass the entire UNPTIF area east of I-35. He said there had been some questions about whether it would include developed properties, platted properties, or just owners of properties. He said the way the Assessment District has been drafted, it focuses on developed properties, which are properties that are platted and moving forward with construction of a structure. If they are not developed, they will not be part of the assessment.

Mr. Bryant said the BID Assessment Funds would be used for Legacy Park and Legacy Trail maintenance and enhanced landscaping only; however, the BID Development Assistance allocation could be used for other things besides maintenance if there were funds left over in any given year that were not required for maintenance. He said the BID must be renewed every 10 years.

Mr. Bryant discussed the financing for Development Agreement No. 5. He said the initial funding in 2009, of \$8.4 million focused on the construction of Rock Creek Bridge, the Legacy Park design, Rock Creek Road and 24th Avenue intersection, and the design of the Legacy Park and 24th Avenue intersection. He said \$5.6 million has been spent and there is approximately \$1.83 million left over from that debt authorization. He said part of that was savings from obtaining additional federal funding from the Association of Central Oklahoma Governments (ACOG) and part from a favorable bidding environment. The second authorization for debt was focused on Legacy Park and 24th Avenue Intersection construction in the amount of \$6.16 million. He said the University of Oklahoma (OU) Foundation was encouraged to allow savings from the first debt authorization to be applied to the second debt authorization and they have agreed. The 2009 funding had a \$1,500,000 reserve requirement and the City has requested that be reduced by \$450,000. The City has also requested the Foundation release collateral accumulated in the Bank of Oklahoma to be used to move forward with the Robinson/I-35 Project; Master Lighting Plan/Master Landscaping Plan/Decorative Entrance; Legacy Park parking solution; and loan restructuring fee of \$250,000.

Mr. Bryant said issues moving forward with Development Agreement No. 5 include the donation of the park land by deed and final plat; addressing the parking problems around the park; maintenance of the park; and construction funding.

Mr. Bryant said there are also issues with the Lifestyle Center included in Development Agreement No. 5. The developer is still committed to construction of the 250,000 square feet of retail space in the Lifestyle Center with concept modifications. He said there is a Crest Store interested in coming into the UNPTIF and last year the Foundation had asked for an incentive of \$2.5 million, but that is no longer part of the agreement. The Foundation is now asking for credit for the Crest retail space against the claw backs. The Foundation had also agreed to donate additional land to the City for a potential Cultural Facility with credit from the claw backs for the land valued at \$5 per square foot.

Mr. Bryant said modified concepts include parking along the fronts of the stores; wider medians to accommodate activity; continuing to use best efforts to recruit a quality retail anchor for the Town Center area; reaffirming the UNPTIF Authority's commitment to incentives of \$8.25 million to help lure an anchor; and the donation of additional land. The additional donated land would consist of two acres located southeast of the Conference Center. If additional land is needed for the Cultural Facility, the Foundation would be open to the City purchasing additional land for \$5 per square foot. Mr. Bryant said if that location does not work for a Cultural Center, the Foundation would be willing to trade other acceptable land. Councilmember Gallagher said if the City bought land at \$5 per square foot what would that correlate into per acre and Mr. Bryant said approximately \$217,000. Mayor Rosenthal asked how much of the donated land would be located in the detention facility and Mr. Bryant said that would have to be reviewed. Councilmember Kovach said when the Foundation stated they might be willing to trade for a different location, what area are they open to trading and Mr. Bryant said they discussed any area that is not already committed. He said there is a sunset provision in the term sheet of June 30, 2015, that would give the City three years to make a determination on the type of Cultural Facility they want.

Mayor Rosenthal said she was concerned about the might's and maybe's from the Foundation regarding the Cultural Facility and trading land. Mr. Bryant said specific language is in the term sheet for Development Agreement No. 5 in Section F, Lifestyle Center. He said the goal is to try to finalize the language on the term sheet as the basis for finalizing Development Agreement No. 5 and have it on City Council's agenda of April 24, 2012. Councilmember Kovach said if Council were to identify something now, before Development Agreement No. 5 is approved, would the Foundation put that in the agreement. Councilmember Dillingham said the City

should identify, specifically, which two acres are being discussed and include a map. She said Council is not ready, at this time, to decide what the best type of Cultural Facility would be and Mr. Bryant said the term sheet requires the property be identified specifically.

Councilmember Gallagher said, as far as Crest Foods, the Foundation knew the store would be located outside the Lifestyle Center but they want to slip them inside. He said the Foundation had agreed to the original location and he did not want to give them leeway on that. He said the City should pay \$4 per square foot instead of \$5 because the Foundation needs to give the City something if they want to persuade the City to allow Crest Foods inside the Lifestyle Center. Councilmember Kovach said credit could not be allowed toward the Lifestyle Center/Town Center for Crest Foods because that is not what the City and developer told the public. He said the City is giving the Foundation something by pushing the deadline for the Lifestyle Center back two years and the Foundation had already promised to donate land for Legacy Park in Development Agreement No. 3.

Councilmember Kovach asked what would happen if an agreement cannot be reached and Mr. Bryant said one alternative is to sue them on Development Agreement No. 3, which is a long process that will delay movement for three to five years. Councilmember Kovach asked what happens to the accumulated UNPTIF revenue and Mr. Bryant said all the revenue was pledged as security for the note so that is collateral for the note and cannot be touched until the note is paid off. Councilmember Kovach said if the note is paid off, can the City use the UNPTIF revenues for the purchase of revenue bonds to fund projects and Mr. Bryant said he would have to review the Project Plan. He said he did not think the revenue could be used for anything other than UNPTIF projects, but he would have to review the indenture documents because there may be a provision in the first financing that certain provisions would survive even after paying off the note and those provisions may require the completion of road improvements.

Mayor Rosenthal said she wanted to see tighter language in Section F, Lifestyle Center, which states the developer will remain "committed" to and is "required" to develop the 250,000 square feet by the extended date of 2018. Councilmember Dillingham felt it was critical to provide what the public was promised, which was 250,000 square feet of retail space that, if not spectacular, is as close to it as possible. She said the City needs to keep in mind that the developers are very astute and take risks all the time. She is not against credits against claw backs as long as the Foundation is still required to provide the 250,000 square feet of retail space. Councilmember Kovach said if the City does that, he would like to see some incremental percentages that the Lifestyle Center is certain to be built. Councilmember Kovach said, as far as the Cultural Facility, he supports the idea of an Aquatic Center and if the City is negotiating for additional land, he would like to make sure there is enough land for that. Councilmember Gallagher felt that five acres would be the minimum for a top notch facility. Councilmember Dillingham was concerned an Aquatic Facility would not fit, there would not be adequate parking, cause traffic problems, and wondered if it could really be considered a Cultural Facility. Councilmember Kovach asked if an Aquatic Center fit the definition of a Cultural Center and Mr. Bryant said the definition is pretty broad and would have to be reviewed. Councilmember Spaulding said he has concerns about an Aquatic Center, although it is a great idea, he questions whether the UNPTIF is the appropriate place for that type of facility. He asked if the City is looking for a regional draw or something the community could use as a whole. He felt that a swimming facility would not appeal to a large portion of the population and it needed to be part of a sports complex elsewhere. Mayor Rosenthal said there may never be a consensus on the type of facility and it is Council's job to decide what meets the definition and aspects of a regional draw as well a community destination.

Councilmember Gallagher said the Cultural Facility is the icing on the cake for everyone, but Council needs to gather three or four more ideas and have another meeting to review those ideas. Mayor Rosenthal said there had been discussion regarding a weather museum. Councilmember Griffith felt construction of the park would be the tipping point for future development in the UNPTIF to progress. He felt a concession of \$400,000 to the claw back is not unreasonable. He said the guarantee for him would be to tighten the language to make sure that the 250,000 square foot Lifestyle Center is built. He said he would like to move forward as quickly as possible to

construct the park. Councilmember Spaulding said he agreed and felt a museum would be a facility everyone could take part in. Mayor Rosenthal liked Councilmember Gallagher's suggestion of looking at some of the options, which would influence how much property would be needed. Councilmember Dillingham said there needs to be public discussion as well. She said she has heard ideas consisting of an art museum, weather museum, small theatre, swimming facility, etc. Councilmember Kovach agreed and wanted to discuss this as soon as possible to allow it to be part of the agreement and suggested placing public discussion on the next Study Session agenda.

Mr. Bryant reviewed the summary of terms as follows:

- Formalize priority of traffic and roadway improvements;
- Provide funding under 2009 UNPTIF note for the construction costs of Legacy Park and 24th Avenue and Legacy Park Drive intersection;
- Allow release of accumulated collateral;
- Recommit to the 250,000 square foot Lifestyle Center;
- Modify potential Lifestyle Center penalties from Development Agreement No. 3 dealing with Legacy Park; and
- Provide two acres for potential Cultural Facility with option for City of buy additional land at \$5 per square foot and/or trade property.

Mayor Rosenthal said she would like to know how much of the two acres is in the detention area.

Items submitted for the record

1. PowerPoint presentation entitled, "University North Park Tax Increment Finance District Development Agreement No. 5," Council Conference, April 10, 2012
2. Term Sheet – Development Agreement No. 5

The meeting adjourned at 6:25 p.m.

ATTEST:

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City Clerk

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Mayor