

COUNCIL CONFERENCE MINUTES

November 23, 2010

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:30 p.m. in the Municipal Building Conference Room on the 23rd day of November, 2010, 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 Atkins, Dillingham, Ezzell,
Griffith, Kovach, Quinn, Mayor Rosenthal

ABSENT: Councilmembers Butler & Cubberley

UPDATE ON THE UNIVERSITY NORTH PARK TAX INCREMENT FINANCE DISTRICT.

Mr. Jeff Bryant, City Attorney, provided an update on the University North Park Tax Increment Finance (UNP TIF) District and said the sales tax revenues from sales within the UNP TIF District, after transfer adjustments to the General Fund, 40% goes to the General Fund and 60% to the TIF. He said the ad valorem revenues for properties in the TIF District are a 50/50 split to both the Taxing Entities and the TIF.

The sales tax generated in the TIF from October 2006, through September 2010, was \$14,626,522. Mr. Bryant said \$3,987,620 of that amount was transfer adjustments to the General Fund leaving a net amount of \$10,638,902 TIF generated sales tax. The net amount was then divided using the 60/40 split; \$6,279,794 of the TIF share went to project plan components and \$4,359,108 went to the General Fund.

The UNP TIF ad valorem revenue cumulative through 2010 was \$1,059,496, which accounts for properties built by December 31, 2008, assessed in 2009, and taxes payable in 2010. Mr. Bryant said there is approximately a two year lag on property collections so the ad valorem collections only represents everything built up to December 2008. He said since that time a few more properties have been added and eventually the Norman Economic Development Coalition (NEDC) land will be added to the tax rolls as well. The following is an itemization of the total ad valorem revenues through December 2008, and its distribution to the taxing entities:

The Project Plan Components include:

- Conference Center/Cultural Facilities (Rock Creek Road Overpass)
- Traffic and Roadway Improvements
 - ✓ I-35 and Robinson Street improvements – East and West
 - ✓ 24th Avenue N.W. improvements i.e., Robinson Street and 24th Avenue N.W., signals, intersections, etc.
 - ✓ I-35 Frontage Road
 - ✓ Tecumseh Road Improvements
- Legacy Park
- Lifestyle Center
- Economic Development

Mr. Bryant highlighted the initial and updated allocations and actual expenditures for the Conference Center and Cultural Facilities and said originally the project plan allocated \$15 million to the Conference Center. John Q. Hammons released the City from its obligation to purchase the Conference Center and supported using \$7,750,000 of those funds towards the Rock Creek bridge. Actual expenditures for the bridge total \$5,894,910 (36% of the funds originally allocated for the Conference Center and Cultural Facilities) so 64% of the allocation remains, which could be used towards cultural facilities.

Mr. Bryant said \$11.5 million was allocated for the traffic and roadway improvements and the budget and expenditures were fairly close and reflect approximately \$170,000 reduction of reimbursement to the Developer

for his actual costs. He reminded Council that figure was due to some of the improvements being done before the TIF was completed. i.e., Robinson and 24th Avenue N.W.

Mr. Bryant said the primary focus of the Development Agreement No. 5 is the priority of the remaining roadway improvements and from previous Council discussions Staff felt the following to be appropriate:

First Priority:

✓ Robinson Street/East Interstate Drive (northbound on-ramp)	\$ 2,500,000
✓ Frontage Road Extension (1.1 additional miles of roadway)	\$ 1,525,000
✓ Design of Robinson Street/West Interstate Drive and Crossroads Boulevard	\$ 200,000
Subtotal	\$ 4,225,000

Second Priority:

✓ Tecumseh Road/Flood Avenue and Tecumseh Road 24 th Avenue Intersection*	\$ 846,712
✓ Tecumseh Road/East I-35*	\$ 946,723
✓ Tecumseh Road/West I-35*	\$ 650,000
✓ Robinson/West Interstate Drive and Crossroads Boulevard	\$ 1,110,583
✓ Remaining Intersections (2)	\$ 400,000
Subtotal	\$ 3,954,018

* A portion of these improvements funded through other mechanisms.

Mr. Bryant said the costs for the first priority projects were included in the Traffic Impact Analysis (TIA) completed in 2009 and also noted a portion of the improvements for three of the Second Priority Projects have been funded through other mechanisms. He said those particular projects were originally contemplated as TIF projects but have been completed using other funding sources; either by Norman Regional Hospital when doing their expansion on Tecumseh Road or with Association of Central Oklahoma Governments (ACOG) funds.

In August 2010, Staff from the Public Works Department submitted applications in order to receive ACOG funds to complete the northeast quadrant of the Robinson Street/I-35 interchange, a First Priority Project. Mr. Bryant said in November 2009, the TIA estimate was projected at \$2.5 million, but the updated costs are now estimated at \$2,763,875. He said the project is eligible for approximately \$1,016,834 in ACOG funding, requiring a local match of approximately \$1.75 million. He said the funding source for the local match will be through the UNP TIF, as the project is identified in the UNP TIF Project Plan.

Mr. Bryant said there are several funding options for Council to consider include:

Financing Option – Modify Existing Debt:

Consider modifying the existing \$14.56 million debt authorization which included \$8.4 million initial funding for Rock Creek Road Bridge, Legacy Park Design, Rock Creek Road/24th Avenue NW design and construction, and Legacy Park/24th Avenue NW intersection design. Authorized future funding in the amount of \$6,160,000 was set aside for the Legacy Park construction and Legacy Park/24th Avenue N.W. construction but was contingent on TIF Development Agreement No. 5. Mr. Bryant said the estimated money to be spent is estimated to be around \$6,551,054 leaving approximately \$1.8 million remaining. He said in order to tap into the money; Council must consider and approve whether or not to ask the lender to agree the project can be added to the current financing. He said the loan amount will not be amended; stating only the loan documents will be modified to reflect the construction of Legacy Park and Legacy Park/24th Avenue NW as eligible project(s) under the initial funding. Mr. Bryant said it is good that there is actually money available within the existing loan/financing structure without the City doing a new debt issuance and incurring new costs.

Mr. Bryant briefly highlighted the terms of the existing financing stating the University of Oklahoma (OU) Foundation is the lender and Bank of Oklahoma is the Trustee Bank. He said the rate is Treasury (T) bill plus

1.25% through August 31, 2012, then 2%, 3%, 4% plus T-bill in subsequent years. He said there is a floor of 3.75% and a ceiling of 14% which is statutory for a public trust. Mr. Bryant said the Reserve Requirement is \$1.5 million and the City paid \$750,000 in to the reserve in September 2010, with an additional \$750,000 due September, 2011. The Pledged Revenues are 50% of UNP TIF sales tax increment and 50% of UNP ad valorem increment, except for the NEDC land and there is approximately \$1 million excess currently in Trustee Bank. Mr. Bryant clarified the City will still need to accumulate \$750,000 between now and September 2011, in order to meet the reserve requirement; accumulated interest costs for the year; and the first principal payment of \$400,000 which is also due September 2011. He said the current monthly revenues are approximately \$160,000 and said if the trend continues for the next ten months there should be enough money to cover those payments without any growth or new stores. He said the \$1 million may indeed be excess but the lender agreement will not allow the money to be released under the loan documents until the City fully funds the reserve and is current on payments.

Financing Option – Refinance:

If the City chose to refinance the existing debt, the potential terms could include:

- Non-Taxable Variable Rate: 1.75% versus the current rate of 3.75%.
- Reserve Requirement: \$750,000 instead of \$1.5 million.
- Coverage: 1.65 based on no growth and no new stores which is acceptable in today's market.
- Possible projects include: Amount estimated to be spent, initial funding - \$6.55 million; Legacy Park/24th Avenue N.W. and Legacy Park Construction - \$6.16 million; and Robinson Street and East I-35 - \$1.75 million for a subtotal of \$14,458,095.
- Other First Priority Road Projects include: Design of Robinson Street/West Interstate Drive and Crossroads Boulevard - \$200,000 and completion of frontage road - \$1.5 million for a new total of \$16,183,095.

Councilmember Kovach asked if there were other flexibilities should the City decide to refinance and Mr. Bryant said if park land is not donated, then the financing for that portion could be eliminated. He said some of the restrictions on the road improvements were part of the original indenture and could not be eliminated.

Outstanding issues for UNP TIF Development Agreement No. 5 include:

- Developer has not donated land for Legacy Park
- A \$5.9 million penalty can be assessed to Developer if 250,000 square feet of the Lifestyle Center is not built by January 1, 2016
- Lifestyle Center not likely to occur as presented in 2006.
- Alternative Lifestyle Center concepts requested from Developer, first in summer of 2009 and more recently the summer of 2010. No alternative concepts received to date.

Legacy Park Land Options:

Option 1: If the City chose to move forward now with the land donation for Legacy Park:

Penalty would be waived and in exchange the option to finalize Business Improvement District (BID) for park maintenance could be negotiated, which would provide for long term maintenance and enhanced landscaping with \$900,000 match for BID. Mr. Bryant said this requirement was also included in Development Agreement No. 3 and felt this is why the Developer has been hesitant to donate the park land. An alternative discussed with Council in the spring of 2010, would be to assess the properties in entire TIF District an annual fee using a mechanism that would use the enhanced landscaping money from the TIF at \$200,000 per year on a graduated basis. At the same time the BID would gradually go up until it got to the point the TIF money contribution was zero and the annual BID contribution was \$200,000. The \$900,000 for enhanced landscaping would be doubled by way of assessments through the BID. Mr. Bryant felt the Developer would be open to this concept if the City waived the penalty.

Option 2: City could sue for Specific Performance under TIF Development Agreement No. 3, but due to litigation, the City could not include Legacy Park in refinancing. Mr. Bryant said if the City chose to litigate it would be a minimum two year construction delay before the issue was resolved in District Court. He said other issues include the cost of litigation and the uncertainty of the outcome. He said the City could not pursue the penalty until 2016 and will need to show actual damages. Mr. Bryant said even if the City was awarded the land for the park, expert testimony would be needed to quantify revenue loss from not having a Lifestyle Center.

Councilmember Kovach asked why the City would need to quantify damages if the requirement to have the Lifestyle Center built by 2016 is already in the contract and Mr. Bryant said Oklahoma Law states liquidated damages clause provisions are normally born out of recognition by the parties that quantifying damages is a difficult thing to do. He said in those cases, the parties come up with a liquidated damage clause, which is suppose to "help along" the issue of quantifying those damages, however, Oklahoma Courts usually rule that before a party can collect on a liquidated damages clause, the party must prove "actual" damage(s). Mr. Bryant said if the City chose to argue having to build Legacy Park is the "actual" damage, yet the park land was donated, the park was built, and the park is a City asset, the question then could be "what is the City's damage/loss?" He said the courts could rule in favor of the City for the \$5.9 million, if the City would deed the park back to the Developer. Councilmember Kovach asked if the City could argue that the Lifestyle Center was suppose to be part of the original contract in the first place, as well as, the City distributed millions of dollars for improvements to the TIF, therefore, since the contract was not fulfilled, that is the City's damage. Mr. Bryant said litigation and determining damages would require a mathematical calculation(s) requiring expert testimony and the courts would probably compare the actual figures versus the initial TIF revenue projections, which are pretty much right on target. He said the City could claim a spike in revenue projections is recognized in 2016 because of the construction of the Lifestyle Center and that spike has not yet occurred, but Councilmember Dillingham said the Developer could then maintain the City has the benefit of the TIF infrastructure. Mr. Bryant agreed and said the point he is trying to make is not necessarily *how* the City will argue the quantifying damage(s), but that the pursuing the penalty is not an issue until 2016.

Option 3: Consider delaying action on Legacy Park in favor of first priority road improvements. Mr. Bryant said if the City can get cooperation with the lender to amend the loan document so that the first priority road improvements can be funded with the first financing, then the City could agree to not demand donation of Legacy Park for a year, or two, etc. He said this would give the Developer more time to work on alternative(s) to the Lifestyle Center and would give the local and national economies time to rebound. Mr. Bryant said the original Project Plan did not have Legacy Park coming on line until 2016 and in November 2007, during a more robust economy, Development Agreement No. 3, switching priorities was developed. He said when the economy dropped a couple years later it slowed everything down. Councilmember Kovach felt this option would give the Developer everything they requested in Development Agreement No. 5 and the City would not get anything in return and Mr. Bryant agreed stating Council will need to discuss and debate the value of all the options to determine the direction the City should go. Mayor Rosenthal said this option would not drop the Lifestyle Center and Mr. Bryant concurred. Councilmember Ezzell felt the Developer is an expert at what they do, was very well represented, and took calculated business risks and he is un-inclined to let this go. He said the Developer negotiated hard for the deal and need to live with their decisions and felt the City should strongly consider suing the developer for Specific Performance on the park land dedication. He understood the process would delay construction for two years but said the park land donation would not be received anytime soon under the Developer's proposal. Councilmember Kovach agreed with Councilmember Ezzell and disagreed with the Developer's notion that Lifestyle Centers are no longer being built.

Councilmember Griffith asked if litigation would delay funding for the road improvements and Mr. Bryant said the lender must agree. Councilmember Ezzell stated he would support the refinancing option and delaying action on the park land if the first priority road improvements were made. Mayor Rosenthal felt the first option of

waiving the penalty is unacceptable and said the City should consider the possibility of moving the first priority road improvements forward ahead of the park land. She said while that may not have been the City's first preference the reality of the need for the road improvements are critical and Council agreed. Mr. Bryant said if the City moves forward with the refinancing option and not securing the park land dedication, the refinancing will not include funding for Legacy Park. Mayor Rosenthal said in the interest of obtaining closure on the refinance option, she asked Council for any comments on extending the current terms and draw note to the current road improvements or to refinance at the lower interest rate. Council discussed and felt going forward with refinancing at the lower interest rate would be the best option and Mr. Bryant said the refinancing could be done within the next 60 to 90 days.

Norman Economic Development Coalition Update:

The City closed on the 30 acres for six buildings in the business park on October 15, 2010, using 10% of the TIF Sales Tax, approximately \$390,626.76, for cash at the closing to the trustee, Republic Bank. Additional 10%, up to \$800,000, TIF Sales Tax monies over the next few months until June 2011 will also be paid to Republic Bank as security for the land purchase. NEDC has a commitment for one lot sale in December 2010, and the City received notice that the shared services project, i.e., Petco, announced they were locating in San Antonio instead of Norman, but other prospects are being pursued.

Mr. Bryant said the UNP TIF quality jobs based incentives are jobs that would qualify under the Quality Jobs Act and such additional employment as determined by the City to qualify for economic development incentives. He said State based quality jobs give quarterly cash rebates of up to 5% of newly created taxable payroll for ten years and qualifications include:

- Basic Industry: the activities/functions of new direct jobs must be within a qualifying basic industry;
- New Payroll Threshold: \$2.5 million in annualized payroll for new full-time employees, during any four consecutive quarters within the first 12 quarters of the program. Three years to ramp up to \$2.5 million threshold;
- Health Insurance Coverage: Must provide basic health insurance coverage to all employees working 30 hours per week or more, whose pay is included in the payroll figures for qualification with employees paying no more 50% of the premium cost; and
- Minimum Wage Requirement: based on Average County Wage, (Cleveland County is \$32,506), but maximum required in any county regardless of the average county wage is \$29,409. Eighty percent of employees included in the new payroll must work at least 30 hours per week.

Mr. Bryant said the City can also have UNP TIF quality job incentives and can decide the criteria that would be appropriate to extend additional incentives to a potential employer. He said two approaches to UNP TIF quality job incentives are to develop pre-set qualifications determined by salary, benefits, number of new jobs, etc., and would provide clarity to NEDC and potential employers. He said the next approach would be to allow criteria to develop on a case by case basis as part of individual economic develop agreements, providing flexibility to tailor incentives to employer offerings. Mr. Bryant said the Petco project was a prime example, stating what the City thought the company might want as far as incentives was not really what they desired after discussions began. He said Mr. Don Woods, NEDC Executive Director, will be meeting with the Petco relocation group in the next few days for a debriefing to gather information on what it was about Norman's offer that was not quite as attractive as San Antonio's offer.

The next steps are the first priority road improvements, securing funding for Robinson Street/East I-35 project, and/or other first priority road improvements. Council will need to decide whether the City should waive, sue, or delay action concerning Legacy Park. Mr. Bryant said today's discussions were pretty clear that Council did not wish to waive any penalties at this time. He said the Staff, along with NEDC, will schedule a future Study

Session to discuss UNP TIF quality jobs criteria and Councilmember Dillingham said she would like to have that discussion as soon as possible.

Mayor Rosenthal requested the City Manager and City Clerk schedule an Executive Session in order for Council to discuss litigation options on Legacy Park. She felt Council were in agreement on refinancing the TIF District to include all of the first priority road improvements and obtaining lender agreement for park land dedication for Legacy Park. She also agreed it would be very helpful to discuss the UNP TIF quality jobs incentive guidelines as soon as possible.

Mr. Anthony Francisco, Finance Director, asked for clarification regarding the Council *not* wanting to include the possibility of drawing funds for Legacy Park in the refinancing option and Mr. Bryant said if the lender is in agreement for the donation of park land for Legacy Park, the funding for Legacy Park will be included in the refinancing. He said if the lender is *not* in agreement for the park land donation, the Legacy Park funding will *not* be included in the refinancing. Mr. Bryant said Staff will continue to work with Mr. Rick Smith with Municipal Finance Services, Inc., and he said Mr. Smith was optimistic that if the park land donation for Legacy Park did not occur within a fairly short time period, he would *not* recommend the Legacy Park funding be included in the refinancing.

Councilmember Kovach asked Staff about the status of Councilmember Cubberley's suggestion of an Overlay District for the TIF District and Mr. Steve Lewis, City Manager, said Staff would give a report in 60 to 90 days.

Items submitted for the record

1. PowerPoint presentation entitled, "University North Park TIF Update," City Council Conference dated November 23, 2010

The meeting adjourned at 6:21 p.m.

ATTEST:

City Clerk

Mayor