

CITY COUNCIL CONFERENCE MINUTES

March 10, 2020

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:00 p.m. in the Municipal Building Council Chambers on the 10th day of March, 2020, and notice and agenda of the meeting were posted at the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Bierman, Carter, Hall, Holman, Petrone, Scanlon, Scott, Wilson, Mayor Clark

ABSENT: None

Item 1, being:

DISCUSSION REGARDING AN UPDATE ON NORMAN FORWARD PROJECTS AND OTHER MUNICIPAL FACILITIES NEEDS.

Mayor Clark said presentations illustrating a need for additional funding for a number of NORMAN FORWARD and Municipal Complex projects were presented to Council on February 25th and March 3rd. She said tonight's meeting is being held to answer Council questions submitted after the March 3rd meeting.

Ms. Kathryn Walker, City Attorney, said there are several sections of the Oklahoma Constitution by which the City may issue General Obligation (G.O.) Bonds as well as special requirements for their issuance. She said Article 10, Section 35, of the Oklahoma Constitution limits bonds for "economic development" or "community development" purposes to five mils on the dollar. Article 10, Section 27, gives cities broad authority to call an election for the purpose of purchasing, constructing, or repairing public utilities. She said the wrinkle here is that the land has to be exclusively owned by the City and has to be for a "public utility" project. If it is not a public utility (a term the courts have defined pretty broadly), the requirement for 60% voter approval and other limitations kicks in under Article 10, Section 26. She said bonds for public utilities can be approved upon an affirmative vote of a majority of the voters (50%) and public utilities have been broadly construed to include most types of municipal projects provided that the facilities are exclusively owned by the City. Each category or group of projects must be presented as separate propositions and bond proceeds can only be used for the purpose approved by the voters. At least 70% of the total amount of the bonds must specify projects and dollar amounts, but Norman's practice for many years has been to identify 100% of the projects to which the proceeds will be allocated. Once approved by the voters, the Attorney General (AG) must review and approve the ballot questions to ensure compliance with state law. If the AG invalidates a proposition, then it cannot go forward even though the voters have approved it.

Ms. Walker said Article 5, Section 57, of the Oklahoma Constitution, and cases interpreting it, provide that every legislative act be limited to one subject known as the “single subject rule.” She said Norman’s Charter contains a similar requirement in Article XII, Section 2, that states, “every ordinance adopted by the Council shall embrace but one subject.” The purposes of the rule are to ensure that voters are adequately notified of the potential effect of the legislation and to prevent logrolling (essentially assuring the passage of a law by creating one choice in which a voter is forced to assent to an unfavorable proposition to secure passage of a favorable proposition). She said Courts have long held that legislation must be “germane, relative, and cognate to one another” to satisfy the single subject rule.

Ms. Walker highlighted possible projects for G.O. Bond propositions that include NORMAN FORWARD (NF), Municipal Service Facilities, bridges, stormwater, and homeless initiatives. She said the projects have to be germane, relative, and cognate to one another so based on feedback from Bond Counsel, it was determined a building refurbishment or building construction to be used as a homeless facility could be coupled with NF Projects in one ballot proposition. She said the NF Projects and the homeless facilities would be facilities used by the public and are quality of life facilities as opposed to the Municipal Facilities Projects, which would mainly be used for City services.

Bond Counsel advised that a stormwater facility and related capital improvement projects would have to be a separate ballot proposition at least as they relate to financing some of the capital projects identified in the 2009 Stormwater Master Plan (SMP). Since most of these projects would be constructed on private property (creeks and streams that would be accessed through public easements, but located on private properties), G.O. Bonds would have to be issued under the Economic Development G.O. Bond Section of the Oklahoma Constitution and would be limited to a five mil property tax.

Bond Counsel recommended bridge projects be a separate proposition because unlike the other proposals for buildings, a street or bridge project would probably be considered as a distinct project category from buildings. Bridge projects would qualify as a public utility, however, and as such would only require a simple majority vote for approval. Ms. Walker said Council may consider the possibility of using the ongoing Street Maintenance G.O. Bond Program (to be considered for renewal in 2021) as a potential source of funding bridge projects.

Ms. Walker said other possible sources of funding include a Business Improvement District (BID)/Sports Improvement District, Tourism Marketing District, hotel/motel tax, or gas tax. She said BID’s can be used to fund acquisition, construction, installation, or maintenance of capital improvements with a useful life of five years or more, provided that total cost of the improvement is funded in one year’s assessment. The improvements must confer a special benefit upon property within the district. Generally, a petition must be filed with the City setting forth proposed improvements to be assessed against the property benefitted by the improvements, the estimated costs, the area of the assessment district, method of assessment, and proposed apportionment of cost between the City and the district, if any. She said economic impact analyses of the sort provided by Visit Norman present estimates of revenue to the City and local businesses from tourism, based on the “multiplier effect” of the estimated number of “room nights” that could be generated from various facilities or events. While the science behind these estimates is sound, the

revenues to the City would be reflected in increased sales tax and room tax revenues that would not be separated from the overall tax revenue generated citywide. It would be very difficult to securitize a revenue bond based on this uncertain revenue stream and it would be even more difficult to securitize a revenue bond with estimated revenues from the Sports Improvement District, except in the case of a relatively small capital project to support a particular sports facility. In short, an “Economic Impact Revenue Bond” or Sports Improvement District could not generate enough revenue to pay for these NF Facilities on a comprehensive basis.

A Tourist Marketing District (TMD) can be created in a similar manner as a BID, but the district would be comprised of an area within Norman and limited to hotels or motels with 50 or more rooms. The TMD fee would likely be tacked onto the room fee in addition to the hotel/motel tax and the TMD’s sole purpose must be to provide marketing services for private or public events reasonably calculated to increase occupancy and room rates for such properties as a class.

The hotel/motel tax was adopted by the voters in 1980, for “promoting convention and tourism in Norman.” The tax is currently allocated by contracts with Visit Norman and Norman Arts Council (NAC) so any change to the purpose of the tax (currently 5%) would have to be approved by the voters.

The City has discussed a gas tax over the years and there is not any legislation prohibiting cities from adopting a gas tax, but it would require a vote of the people and some changes to how the Oklahoma Tax Commission (OTC) collects information and taxes from gas stations. Ms. Walker said to her knowledge no other city in Oklahoma has adopted its own gas tax.

Mr. Anthony Francisco, Director of Finance, said questions related to financial options previously presented to Council include the status of outstanding bonds for NF, ability to refinance outstanding bonds, and the ability to increase G.O. Bond such that the proceeds could be used to pay off NF debt and end NF sales tax early. He said the 2015B Notes (\$43,160,000 face value with all of the proceeds having been spent already) have a maturity date of January 1, 2029, and a fixed interest rate of 2.98%. There is a complicated “Yield Maintenance Fee” attached to the Terms of Redemption of the Notes, which basically means that upon pre-payment, the Norman Municipal Authority (NMA) would have to pay a penalty of the present value of the remaining interest that would be due at the time of pre-payment, less the interest payments that would have been due. In other words, the interest savings would be minimal.

The 2017 Notes (\$30,950,000 face value with about \$8,000,000 in remaining proceeds available to spend on authorized projects) have a maturity date of July 1, 2030, and a fixed interest rate of 2.4%. There is a similarly complicated “Breakage Fee” attached to the Terms of Redemption of the Notes, which basically means that upon pre-payment, the NMA would have to liquidate damages consisting of the difference between the remaining scheduled interest payments at the time of pre-payment and the discounted Replacement Swap Rate. In other words, the interest in saving would be minimal.

Mr. Francisco said use of G.O. Bonds to pay debt can only be used to pay for public utilities, not for repayment of debt secured by another funding source. He said even if Council wanted to end the NF sales tax early, the debt would need to be paid off prior to cutting off the funding source pledged to such debt and there are rather significant financial penalties for pre-payment.

Mr. Francisco said the Citizens Financial Oversight Board (CFOB) has consistently stated that Council needs to keep in mind the projected shortfalls from sales tax and the City's ability to meet all the projects anticipated in NF. He said the City may or may not increase the amount of G.O. Bonds to the extent that the City was able to get other funding sources outside of what is currently anticipated. He said if the City has savings in individual NF Projects then those funds might be better used towards paying for other NF Projects.

Councilmember Holman said if the City is going to be asking voters for a large package anyway, the City should keep in mind what can change over the next ten years to include estimated inflation costs. He does not want future Council to have to ask voters for more money in five years because of underestimated costs.

Councilmember Bierman asked if any of the projects are going to be pay-as-you-go (PayGo) in lieu of issuing Notes and Mr. Francisco said many of the NF Projects are PayGo, such as the Neighborhood Park Projects, James Garner Avenue Improvement Project, Trails Projects, etc., so there is a mix of debt financed project and Paygo projects in NF. He said the City is also anticipating federal matching funds for the James Garner project, but as a precaution, the City has budgeted what is thought to be the full cost of that project so any unused funds (if federal funds are obtained) could be used for other NF Projects.

Councilmember Bierman asked what assurances will be given taxpayers that any private funding used on the projects will be used to offset taxpayer money and not be used in addition to taxpayer money. Mr. Francisco suggested Council write language in the ordinance that all monies would be limited to NF Projects.

Councilmember Carter asked what projects towards the end of NF will need funding and Mr. Francisco said the Ruby Grant Project, Saxon Park Project, ten Neighborhood Projects, and the Trails Projects. Councilmember Carter said the Canadian Trails Project is a great tool for the environment by protecting the stream and lake ecosystems. He said if there is not enough money toward the end of NF for these project, they could be in jeopardy and Mr. Francisco said Staff has made every effort to ensure that over the life of the NF Program all projects could be funded to at least their budgeted levels; however, there is the risk that the last projects to be funded could be in jeopardy of not being done. Councilmember Carter asked if the G.O. Bond funding would give the public more confidence these end of the list projects will be funded as budgeted and Mr. Francisco said Norman has always identified 100% percent of the projects that will be voted on, which ties the City's hands to get these projects done.

Mr. Jud Foster, Director of Parks and Recreation, updated Council on the status of several NF Projects. He said the Multi-Sport/Indoor Aquatic Facility land acquisition funding at University North Park (UNP) was approved through the 2019 Amended and Restated Project Plan. He said no construction manager or contractor had been selected for the project and the operator is unknown as this project is currently in the conceptual design phase. He said once a design has been identified the City will proceed with a construction manager and in turn they will bid out contractors and construction can begin. He said annual contributions have always been anticipated from Norman Public Schools (NPS), Sooner Swim Club, and Norman Regional Hospital (NRH) to offset operating expense for the facility and the TIF Project Plan Agreement will provide \$350,000 annually. The revised budget for the project is \$58.8 million that includes site improvements, parking, etc.

The Youth Baseball and Softball Project in Reaves Park did not require land acquisition because the City owns the land. He said Flintco Construction (Flintco) will be the construction manager and will bid out the different contractors for the projects; however, there are certain things that have to occur before construction can begin, such as moving the Park Maintenance Facility out of Reaves Park. He said the City has a contract with Baseball Clubs of Norman to operate the facility and the revised budget for the project is \$15.3 million that includes site improvements, parking, etc.

The Ruby Grant Park Project does not require land acquisition as the City owns the land. Mr. Foster said Crossland Construction (Crossland) has been selected as the construction manager and construction has begun; however, Staff needs direction from Council on whether or not to reinstate eliminated project components due to budget concerns. He said the City of Norman will be the operator of the facility. The revised budget is \$8.1 million that includes site improvements, parking, etc.

The Adult Softball and Youth Football Project at Franklin Road and 12th Avenue N.W. is owned by the Norman Utilities Authority (NUA) and the City would purchase the land from the NUA and that purchase price is part of the project costs. Mr. Foster said original site purchase price was basically insufficient as the City has \$2.5 million for the project in the NF budget. He said the project is currently in conceptual design so a contractor has not been selected, but the operators will be the Norman Adult Sports Association and Optimist Club (current operators). The revised budget for the project is \$11.5 million that includes site improvements, parking, etc.

The Griffin Park Soccer Project includes lease of land from the Department of Mental Health and Substance Abuse, which is included in the NF sales tax. Mr. Foster said Flintco has been chosen as the contractor and construction is moving forward in phases. He said Norman Youth Soccer Association (NYSA) will be the operator of the facility. The revised budget for the project is \$32.8 million that includes site improvements, parking, etc.

Mr. Foster said the Senior Wellness Center Project will be located at NRH Porter Campus or Reaves Park and land acquisition for either site will not be needed. The original location was to be Reaves Park, but there has been ongoing discussion from senior groups who want to be included in Inspire Health project at NRH Porter Campus. The City is waiting for final design, site selection, and funding. The operator is unknown at this time, but a Request for Proposal (RFP) has been

issued and three proposals are being reviewed. The revised budget for the project is \$12.4 million that includes site improvements, parking, etc.

Mr. Foster said the Parks Maintenance Facility is proposed to be relocated from Reaves Park to the North Base Complex where the City owns the land. The City is awaiting final design, site selection, and funding. He said the project is currently in conceptual design so a contractor has not been selected and the City will operate the facility. The revised budget for the project is \$6.2 million that includes site improvements, parking, etc.

Mr. Foster said in terms of sensitivity and timing of the need to move forward, Ruby Grant Park construction is underway; design for the Senior Wellness Facility and Indoor Aquatic/Multi-Sports Facility are awaiting funding determination; and Reaves Park projects cannot move forward until funding is identified for the Parks Maintenance Facility and Adult Softball/Flag Football. He said in regards to Municipal Services Facilities, the lease with the University of Oklahoma (OU) bus maintenance facility ends June 30, 2020, and the Emergency Operations Center (EOC) is ready to bid.

Ms. Walker said Staff has developed a recommendation based on feedback from Bond Counsel and Council. She said NF shortfalls need to be addressed for projects waiting for funding. She understands there has been community support for some funding for a homeless initiative in the amount of \$5 million. She said the homeless initiative funding can be grouped with the NF Projects as a public utility, a project that is open to the public, is as a quality of life project. She said Staff will bring forward a budget proposal for an FYE 21 comprehensive homeless/housing study to be done prior to spending the \$5 million. She said because the funding would be from G.O. Bonds, the City would have to own the land any facility is constructed upon and the project would have to be a capital project. She said the proposition will also include 1% for public art as well as bond issuance costs. The proposal will also include Municipal Services Facilities and Municipal Complex improvements.

Ms. Walker said the City can explore other funding sources for bridges, such as the Five-Year Transportation Maintenance Bonds proposed for renewal in 2021. In regards to stormwater, the City can explore a future stormwater initiative or a few stormwater projects can be identified and included as a separate ballot proposition.

Ms. Jessica Moore, Chair of Continuum of Care (CoC), said CoC has been reviewing preliminary plans for creating a permanent day shelter that would incorporate many resources in one location to possibly include a seasonal overnight shelter. She said a lot of shelters do not provide housing solutions or help connect people appropriately. She said the CoC hopes to establish something that would be able to provide all of that to the homeless community.

Councilmember Holman said the original proposal for the Indoor Aquatic Center was to connect the facility to the YMCA and asked what the YMCA involvement will be now that the facility will be located in UNP. Mr. Foster said the operating agreement for the Indoor Aquatic Center/Multi-Sports Facility is in the RFP phase and he anticipates the YMCA would be a proposer. Councilmember Holman suggested Staff reach out to the City of Moore and City of Noble to see if they would be interested in helping fund operations since they may be interested in using the

facility for their high schools. Mr. Foster said he would be happy to reach out to these cities, but the City of Norman needs to be careful not to overcommit water time to accommodate other high schools.

Councilmember Scott asked the cost of removing the red cedar trees in Ruby Grant Park and asked how the City will work to eradicate them from the area. Mr. Foster said City Staff has worked over the last two winters grinding the trees down to the ground surface so they will not regrow and Staff will continue that effort. He said not every single red cedar tree will be removed, but the vast majority will be removed. He said having Staff do the work is less costly than hiring an outside contractor.

Councilmember Hall said there seems to be considerable confusion between two senior groups regarding the Senior Wellness Center. She said there was an opinion expressed that NRH is highly motivated to have the Senior Wellness Center relocated to the Porter Campus and asked if that was accurate and Mr. Foster said yes. Councilmember Hall said there was another discussion that the hospital would be willing to fill the gap between the \$7.6 million available and the projected cost of approximately \$12.3 million because the hospital wants to get the project done and asked if that was an accurate statement. Mr. Foster said no, he spoke with representatives of NRH and they stated the NRH Board has not met about or discussed that option. He thought a board member might have been speaking to that as an individual board member, but not for the entire board. He said the only thing the NRH Board has done is authorize the negotiation of land purchase of Porter Campus property owned by the City. Councilmember Hall said that same board member also implied NRH would be interested in operating the Senior Wellness Center if it is located on the Porter Campus. Mr. Foster said City Staff has discussed this with NRH representatives and while NRH has interest in operating the facility they do not necessarily require being the operator and are interested in considering other options in terms of partnering with another operator that may have interest.

Councilmember Hall said when the location for the Senior Wellness Center was Reaves Park, there was discussion regarding NRH having a space within that facility and contributing some amount of funds towards programming and asked if that was correct. Mr. Foster said yes, their interest as part of the Healthy Village Program and Inspire Health Program is to have space within the Senior Wellness Center to provide health related programming at the facility.

Councilmember Hall said in order to build sooner than later the location at the Porter Campus would allow for the construction of the Senior Wellness Center while the hospital continues to operate through 2023, when it will be redesigned to become a Healthy Village to include a mental health facility. She asked what the costs for reconfiguring the conceptual design for the Porter Campus and Mr. Foster said the current cost estimate is for the building and site improvements and if the building is constructed on land already owned by the City at the Porter Campus so the City would have no land acquisition costs. Ms. Walker said the proposal would be for NRH to purchase all the land owned by the City and once the final site is identified NRH would quit claim that portion back to the City at no cost.

Mayor Clark said Staff would like to see this proposal on a June ballot versus an August ballot in terms of construction timing and she would like some guidance from Council on that proposal. She said First Reading would have to be March 24th with Second Reading on April 14th. She supports a June date and her only concern would be tying ballot language to specify funds related to homelessness would only be spent on needs identified in the comprehensive study that will be budgeted for in FYE 21.

Mayor Clark asked Councilmembers if they were comfortable with a June ballot and Councilmembers Bierman, Carter, Hall, and Petrone said that although they felt there is a lot of public support for the NF and Municipal Projects and were comfortable moving forward with those projects; they were concerned about rushing the other projects with little or no information and therefore preferred an August vote. Councilmembers Holman, Scanlon, Scott, and Wilson were concerned about the costs of delaying the NF projects in terms of time and community needs and favored a June ballot with language specifying funds related to homelessness would only be spent on needs identified in the comprehensive study to be done in FYE 21.

Mayor Clark said a majority of Council would like to move forward with a June ballot while continuing to discuss the proposals.

Items submitted for the record

1. PowerPoint Presentation entitled, "Continued Discussion NF Projects and Other Municipal Facilities," Council Conference dated March 10, 2020
2. Letter from NORMAN FORWARD Citizen's Financial Oversight Board Members to Honorable City Councilmembers and Honorable Trustees of the Norman Municipal Authority
3. City of Norman Aquatics/Sports Center & Senior Wellness Center Costing on Separate vs. Unified Construction dated March 10, 2020

The meeting was adjourned at 6:29 p.m.

ATTEST:

City Clerk

Mayor