



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: GID-1920-49

File ID: GID-1920-49	Type: Public Hearing	Status: Non-Consent Items
Version: 1	Reference: Item 62	In Control: City Council
Department: Legal Department	Cost:	File Created: 10/04/2019
File Name: UNPTIF 1ST Public Hearing	Final Action:	

Title: THE FIRST PUBLIC HEARING (OF TWO PUBLIC HEARINGS) REGARDING THE PROPOSED AMENDMENTS TO THE NORMAN UNIVERSITY NORTH PARK PROJECT AND PROJECT PLAN AS MORE PARTICULARLY DESCRIBED IN ORDINANCE O-1920-24, SAID FIRST PUBLIC HEARING TO BE HELD ON OCTOBER 22, 2019 AT 6:30 PM FOR THE PURPOSE OF PROVIDING INFORMATION AND ANSWERING QUESTIONS REGARDING THE PROPOSED AMENDED AND RESTATED NORMAN UNIVERSITY NORTH PARK PROJECT AND PROJECT PLAN, WITH THE SECOND PUBLIC HEARING TO BE HELD ON NOVEMBER 5, 2019 AT 5:30 PM FOR THE PURPOSE OF GIVING MEMBERS OF THE PUBLIC AN OPPORTUNITY TO BE HEARD PRIOR TO ANY VOTE ON THE PROPOSED AMENDED AND RESTATED NORMAN UNIVERSITY NORHT PARK PROJECT AND PROJECT PLAN.

Notes: ACTION NEEDED: Motion to conduct a public hearing.

ACTION TAKEN: _____

ACTION NEEDED: Motion to close a public hearing.

ACTION TAKEN: _____

Agenda Date: 10/22/2019

Agenda Number: 62

Attachments: Staff Report, O-1920-24, August 27 Statutory Review Minutes, August 28 Statutory Review Minutes, Final Amended Project Plan (002)

Project Manager: Kathryn Walker, Interim City Attorney

Entered by: ellen.usry@normanok.gov

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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Text of Legislative File GID-1920-49

Body

BACKGROUND: City Council approved the University North Park (UNP) Tax Increment Finance District (TIF) Project Plan (Ordinance O-0506-66) on May 23, 2006. The Project Plan authorized public improvements within the TIF up to \$54.725 million, including Traffic and Roadway Improvements, a Hotel Conference Center and Cultural Facilities, Legacy Park, Lifestyle Center and an Economic Development component.

Since the creation of the UNP TIF, a series of development agreements have been approved by Council and the Norman Tax Increment Finance Authority (NTIFA) to further the components of the Project Plan. To date, approximately \$29.6 million of the tax increment generated within University North Park ("UNP") has been expended on Initial Project Activities, Traffic and Roadway improvements, Legacy Park improvements, and Economic Development. Since 2006, more than \$40 million in sales and ad valorem tax increments have been apportioned each to project costs and to the City's General Fund and Capital Fund pursuant to the Project Plan.

In recent months, and after several years of declines in the rate of growth in the City's overall sales tax, Council directed staff to develop options for reducing or eliminating the tax increment associated with the UNP TIF to help to address General Fund issues. Council looked at 10 options:

1. Do Nothing - Maintain remaining project authorizations and tax apportionment methods;
2. Maintain remaining project authorizations, but reduce sales tax apportionment rate to five percent (5%);
3. Maintain remaining project authorizations, but reduce sales tax apportionment rate to ten percent (10%);
4. Maintain remaining project authorizations, but reduce sales tax apportionments to a fixed dollar amount;
5. Eliminate authorization for the Lifestyle Center Costs project;
6. Eliminate authorization for the Cultural Center Costs project;
7. Eliminate authorization for both the Cultural Center and Lifestyle Center Cost projects;
8. End the UNP TIF by elimination of project authorizations to an amount less than the apportioned tax funds on hand;
9. Proceed with Council recommendation to utilize authorized Cultural Center funding for a Senior Center within the UNP Project Area;
10. Expand UNP TIF Project Authorization by adding an additional project for a Senior Citizen's Center.

Ultimately, Council directed Staff to proceed with Option 8 - End the UNP TIF by eliminating or reducing the project authorizations to an amount less than the apportioned tax funds on hand. After being advised of possible litigation related to unilaterally reducing project authorizations and potentially impacting adopted development agreements, Council adopted Resolution R-1819-37 on March 26, 2019 that set forth the following:

- That, the City desires to enter into binding, mutually acceptable agreements by June 30, 2019 providing for early termination of the UNP increment allocation.
- That, the City Manager shall direct City Staff to negotiate with UNP development partners, the Norman Economic Development Coalition (NEDC), and other community partners to reach a mutually agreeable resolution of all other outstanding matters related to the UNP TIF by June 30, 2019.
- That, the City Manager is directed to prepare the City's budget for the fiscal year ending June 30, 2020 (FYE 20) on the aforementioned goal of ending the UNP TIF sales tax increment allocation by June 30, 2019, and outlining where said funds are budgeted.

The same evening, Council approved a Memorandum of Understanding ("MOU") to provide a framework within which the parties could work together to determine how best to address the outstanding authorizations in the Project Plan and related agreements. The MOU contained an aggressive schedule in recognition of Council's desire to address the increment allocation by the end of the then-current fiscal year. Although the negotiations have taken longer than anticipated, the parties have all remained committed to negotiating Project Plan amendments and a final development agreement that would end the sales tax increment, effective June 30, 2019.

City Council was kept apprised of the negotiations through public meetings on May 14, May 28 and June 18. Executive sessions were held on June 11 and June 18 to discuss possible claims and defenses related to threatened litigation regarding the UNP. Based on Council feedback, staff prepared Resolution R-1819-124. This Resolution formally directed staff to draft Project Plan amendments consistent with the term sheet attached to the Resolution and asked that the Statutory TIF Committee be convened for the purpose of consideration of such Project Plan amendments. A memorandum submitted to Council at the time of adoption of R-1819-124 is attached. The Project Plan amendments presented to Council are consistent with the terms considered by Council in June.

DISCUSSION: The Oklahoma Local Development Act sets forth the procedure for amending the Project Plan. As was the case with the original Project Plan, consideration and approval by the Statutory TIF Committee and consideration by the Planning Commission is required prior to Council consideration of adopting the amendments to the Project Plan. As is consistent with the charge of the Planning Commission, the Local Development Act requires a finding that the Project Plan is feasible and conforms to the master plan of the City. *Id.* at §858(B).

It was anticipated that around \$17 million would be available for remaining project costs. This includes the allocation of the 2019 ad valorem assessments which will be payable in FYE 20. The proposed amendments would allocate those funds into authorized project cost categories as explained in more detail below.

Traffic and Roadway: The remaining traffic projects contemplated by Development Agreement No. 1 in 2006 include the following:

- Robinson at Interstate Drive West/Crossroads Boulevard;
- Tecumseh Road and Flood at 24th Avenue N.W.;
- Tecumseh Road and Interstate Drive East;
- Tecumseh Road and Interstate Drive West

Based on anticipated federal matching funds, \$5,024,394 is estimated to be sufficient to cover the City's local share for those projects. A previous development agreement examined the Traffic Impact Analysis for University North Park, which both affirmed the need for the specific traffic projects in the Project Area, and confirmed that if the development went forward as planned, those specific improvements should be sufficient to handle the traffic at a Service Level of "D". If the development plan changes, as new lots come forward in UNP for final platting, the developer of each lot will be treated like other developers in regards to traffic improvements.

Cultural Facility/Recreational Facility: When the Project Plan was initially adopted, "Cultural Facility" funds were combined with the Conference Center category for a total project allocation of \$16.5 million. Under Development Agreement No. 2, the City was to purchase the conference center upon completion for \$15 million, leaving \$1.5 million for cultural facilities. UTC, LLC ("UTC", the developer of the portions of University North Park south of Rock Creek Road) donated 11.25 acres to the City (valued at \$4 million) for the Conference Center, which the City deeded to the hotel operator, because the operator was to finance and construct the conference center and then sell it to the City. A year or so later, Development Agreement No. 4 released the City from the conference center purchase obligation and a portion of the Hotel/Conference Center and Cultural Facility funds were reallocated to a new Rock Creek Overpass project. The Project Plan was amended in 2008 (following the same statutory process being followed for these amendments) and \$8.75 million remains authorized in the Conference Center/Cultural Facilities category.

In Development Agreement Number 5 ("DA5"), UTC agreed to donate two acres for a cultural facility (valued at approximately \$ 695,000 - \$871,000) and to sell additional adjacent land at \$5.00 a square foot. Although the obligation to do so under DA5 expired June 30, 2015, UTC agreed in 2016 in the Amendment to DA5 to donate two acres and sell up to 1.5 acres at \$5.00 per square foot, and reserve an additional 16.87 acres for sale to the City at \$5.50 per square foot for a "regional draw" entertainment venue. Under the Amendment, the obligation to reserve additional land expired October 27, 2018. The land is valued in the \$8 - \$10 per square foot range.

Under the terms of the proposed Project Plan amendment and accompanying development agreement, UTC will stand on its previous obligation to donate 2 acres, and will sell an additional 10 acres to the City for \$2,069,971 (a combined price of \$4.75 per square foot).

The currently-proposed Project Plan amendment includes funding authorization in a renamed "Recreation Facility" category, up to \$5,154,762. The Recreation Facility component will consist of a Multi-Sport Facility and an Indoor Aquatic Center. The Multi-Sport and Indoor Aquatic facilities are projects funded by the dedicated NORMAN FORWARD Sales Tax (NFST), and

have a combined NFST budget of \$22.5 million. The projects are in preliminary architectural/engineering design phases, under Contract K-1920-40 with Frankfort-Short-Bruza Associates (approved by Council on August 27, 2019). The Recreation Facilities will be located south of Rock Creek Road, between Westheimer/OU Airport and 24th Avenue N.W., with the final location and site configuration to be determined as the project's architectural design progresses. The amended UNP TIF Project Plan provides \$2,069,971 for the purchase of the land, \$350,000 to offset some of the anticipated annual contributions by Norman Public Schools to the operation of the Indoor Aquatic Facility, and \$2,734,791 as a construction supplement for the Recreation Facility component.

Legacy Park: In the Master Operating Agreement, Legacy Park was planned to be constructed after the construction of 250,000 square feet of space within the Lifestyle Center. The sequencing changed in 2007 with Development Agreement Number 3 ("DA3"), when Council opted to move the Park ahead of the Lifestyle Center. The Developer was required in the Agreement to donate the park area to the City (valued at \$3 million). Because of the change in sequencing, the City included language in DA3 that imposed significant liquidated damages related to Legacy Park costs if the Lifestyle Center construction did not meet certain deadlines.

DA3 also implemented a University North Park Business Improvement District (UNP BID), primarily for the purpose of maintaining Legacy Park at a higher level than other City-owned parks. DA3 allocated \$900,000 in UNP TIF Legacy Park category funds to be contributed to the UNP BID, to be made in annual installments. As of June 30, 2019, \$825,000 of these installment contributions had been made, and \$75,000 remained to be contributed. Additionally, \$175,000 was authorized in DA3 a previous development agreement for surface parking at Legacy Park. The Legacy Park parking lot is under construction, under contract K-1920-12 with Silver Star Construction (approved by Council on August 27, 2019).

The proposed amended UNP TIF Project Plan reduces authorized Legacy Park category funding to \$250,000, for the parking lot construction (\$175,000) and remaining BID contribution costs (\$75,000).

Lifestyle Center: The Project Plan defined "Lifestyle Center Costs" as costs of infrastructure and other improvements designed to foster the quality of development at University North Park by facilitating the creation of a retail environment that will be a "regional draw" of retail customers to Norman. The Project Plan stated that in order for costs to qualify for Lifestyle Center funding, the costs must be related to retail stores that purchase property in the Increment District or sign leases for space in the Increment District for at least 3 years and meet two of the following criteria:

- (a) The retail store must not already exist within a 21-mile radius of the Increment District;
- (b) The retail store must be able to demonstrate an anticipated minimum sales volume of not less than \$175 per square foot (for stores larger than 10,000 square feet) or not less than \$275 per square foot (for stores 10,000 square feet or less); or
- (c) The retail store shall be relocated from outside the city limits of Norman.

Over time, it became evident that these thresholds were too low for Lifestyle Center incentives, even after the national recession of 2007-2008. Additionally, Council wanted to take steps to ensure a “strip center” type development in the Lifestyle Center area wouldn’t qualify for incentives. In Amendment 1 to DA5, the parties agreed to raise the criteria for qualifying for Lifestyle Center incentives to the following:

- a) The retail store must not already exist in Norman; and
- b) The retail store must be able to demonstrate an anticipated minimum sales volume of no less than \$300 per square foot (for stores larger than 10,000 square feet) or not less than \$400 per square foot (for stores 10,000 square feet or less); and
- c) Parcel development plan for retail store incorporates urban design elements of walkability and connectivity.

Leaving some ability for UTC to obtain incentives has been critical to negotiating a cooperative end to the TIF increment collection, so the focus was on the qualifying criteria, reducing the amount of TIF funds available for such incentive requests, and setting an end date for incentive requests.

The Project Plan amendments provide that the Developer can access Lifestyle Center funding if all of the following criteria are met by the proposal:

- a) Costs are needed to support retail or entertainment development in the area previously designated as the “Lifestyle Center”; and
- b) Costs are needed to support a retail or entertainment user not already located in Norman; and
- c) If the costs are associated with a retail user, then anticipated retail sales of at least \$300 per square foot (for stores larger than 10,000 square feet) and \$400 per square foot (for stores 10,000 square feet or less) must be demonstrated based on past performance in communities with similar demographics to Norman; and
- d) If the costs are associated with an entertainment user, then no minimum sales per square foot standard applies; however, the user must present an entertainment option that does not already exist in Norman; and
- e) parcel development plan must incorporate urban design elements of walkability and connectivity, as determined by the UNP Planned Unit Development Architectural Review Board (which will stay in place after the end of the tax increment); and
- f) The user must either purchase land or sign a 3 year lease.

The Amendment sets a deadline to receive Lifestyle Center funds of June 30, 2026. The

associated penalties were waived under the term sheet approved by Council.

Economic Development: The Economic Development component was the most complex piece of these negotiations because of the multiple agreements between the banks participating in the NEDC loans, the possible strings attached due to the U.S. Economic Development Authority grant that helped fund infrastructure, the valuable rights UNP holds to the land in exchange for selling the land to NEDC at a reduced purchase price (\$1.25 a square foot), and the desire of NEDC to get out of their debt on this project.

To further the goal of attracting and retaining quality jobs to and within Norman, NEDC purchased approximately 60 acres of land in University North Park from UNP, LLC (“UNP”, a subsidiary of the University of Oklahoma Foundation and the owner of UNP land north of Rock Creek Road) for a Corporate Centre office park (approximately 30 acres) and Advanced Manufacturing Center (approximately 30 acres). In the Term Sheet, UNP agreed to purchase the Corporate Center office space land for a negotiated price that at a minimum would cover the outstanding NEDC debt for the Corporate Center and the Advanced Manufacturing land (around \$3.3 million). This proposal has been approved by the OU Foundation Board of Directors and the Norman Economic Development Coalition Board of Directors. Because the City would no longer need funding to pay off the NEDC loan, the amount in the Economic Development Category is reduced to \$1,425,000 under the Amendment, with the continuing objective of assisting in the attraction of quality jobs to Norman’s University North Park development.

Miscellaneous Costs. An additional \$125,000 is set aside for miscellaneous costs related to the Project plan amendments, such as costs of the special audit, cost allocations etc.

After Resolution R-1819-124 was adopted on June 25, 2019, staff began drafting Project Plan amendments consistent with Council’s charge as set forth in the Resolution. The Local Development Act requires that the Statutory TIF Committee review the amendments and make a recommendation. The Statutory TIF Committee includes representatives of all of the ad valorem (property) taxing jurisdictions, in addition to the chair of the Planning Commission and three at-large representatives. The Local Development Act (“the Act”) states that in the event of any changes in the area to be included in the district or substantial changes to the Project Plan, the review committee shall consider and may modify its findings and recommendations during its initial review of the plan [Oklahoma Statutes, Title 62, Section 855(D)]. The Statutory Review Committee met on August 27 and August 28, 2019. A summary of their meetings is provided below and the minutes of both meetings are attached to this item.

During the initial review, the Act states that the Committee shall “consider and make its findings and recommendations” to the governing body with respect to the eligibility of the district [Id. at s. 855(B)]. Additionally the Committee’s recommendations shall include the analysis used to project revenues over the life of the Project Plan, the effect on the taxing entities, and the appropriateness of the approval of the proposed plan and project. The Review Committee must also consider and determine whether the proposed plan and project will have a financial impact on any taxing jurisdiction and business activities within the proposed district and shall report its

findings. Finally, the Committee can recommend the project plan be approved, denied, or approved subject to conditions set forth by the Committee.

During its meeting on August 28, the Committee voted affirmatively on 3 motions:

1. Motion to confirm finding that no, the proposed amendments to the Project Plan do not affect the eligibility of the proposed district.
2. Motion that the record reflect the Committee's finding that the Revised Draft Project Plan dated 8-25-19 does affect the initial approval of the Project Plan and that the Committee recognizes that such amendments will result in the full ad valorem increment and sales tax increment going to the taxing jurisdictions, with the exception of the Norman Public Schools, which will be negatively impacted by the end of the increment due to the application of the State School Funding Formula.
3. Motion to approve Revised Draft Project Plan dated 8-25-19 on the condition that the parenthetical in Section X(B) be removed from the final document and that the City identify in the Plan the source of funds for any projected shortfall.

The Committee's discussion of the financial piece of the amendments centered on a couple of different issues, which reflected the differing impact to the taxing jurisdictions represented on the Committee. The property tax that has been collected thus far from the growth in the district is relatively in line with the 2006 projections. Sales tax is lagging somewhat. Obviously, one impact of ending the tax apportionment early is that most of the taxing jurisdictions, including the City, will receive 100% of the taxes that are generated from within the District once the TIF increment ends. The Committee discussed how the impact to Norman Public Schools would be different due to application of the State School Funding formula. Norman Public Schools (NPS) Superintendent Migliorino confirmed that he understood the increment would end naturally (due to full collection for 2006 project costs) in approximately 18 months and that \$350,000 (contained in the Recreation Facility component, as an offset to Indoor Aquatic Center operational contributions) represents the "loss" experienced by the NPS by ending the property tax apportionment early.

Additionally, although the Committee understood that the proposed changes to the Project Plan would've changed its initial approval, it ultimately recommended approval of the Revised Project Plan, with one condition regarding any shortfalls in funding for the proposed project costs. The Committee felt that it would be unfair for the ad valorem tax increment to continue beyond the 2019 Assessments to fund any shortfalls, as was included in a parenthetical statement in Section X(B) of an earlier draft.

During the last few weeks, we've received the 2019 Ad Valorem Tax Assessment Estimate for UNP from the Cleveland County Tax Assessor, in addition to receiving the draft report from the Special Audit approved by Council on May 14, 2019. The Special Audit calls out several adjustments related to the UNP TIF - some to the benefit of the General Fund/Capital Fund and some to the benefit of the UNP TIF Fund. The net result is a recommendation that around \$250,000 be transferred to the UNP TIF Trust Accounts. With the anticipated property tax from

the 2019 Assessments and the corrections recommended by the Special Audit, it is estimated that there will be sufficient funds for all of the projects authorized in the amended Project Plan at their full estimated costs. The attached Amended and Restated Project Plan reflects changes based on this information and to address the condition attached to the Statutory Review Committee's approval.

The Local Development Act also requires review of the Project Plan amendments by the Planning Commission prior to holding two public hearings at least 7 days apart. The Norman Planning Commission considered a resolution that would've adopted the Amended and Restated Project Plan and found it to be in conformance with the City's Master Plan. Although the land use designation for the UNP area is not being changed with the Amended and Restated Project Plan, the Planning Commission voted the resolution down by a vote of 2-5. Commissioners expressed concern over ending the TIF tax increment early.

The Amended and Restated Project Plan is attached for Council's consideration. The amendments are consistent with the Term Sheet adopted by Council. As stated previously, there will be two public hearings. The first hearing will be held on October 8. As stated in 62 O.S. § 859(A), the purpose of the first hearing will be to provide information and to answer questions. The second hearing will be held in conjunction with the Second Reading of Ordinance O-1920-24. The purpose of the second hearing is to give any interested persons the opportunity to express their views on the proposed amendments. Notice of the two hearings was published at least 14 days prior to the hearing as provided by the Local Development Act.

RECOMMENDATION: The Amended and Restated Project Plan is in conformance with Resolution R-1819-124 and the Term Sheet adopted by Council on June 25, 2019. Staff is bringing this item forward for approval as requested.