

CITY COUNCIL STUDY SESSION MINUTES

November 6, 2018

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a study session at 5:30 p.m. in the Municipal Building Conference Room on the 6th day of November, 2018, 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 Bierman, Carter, Castleberry, Clark, Holman, Scott, Wilson, Mayor Miller

ABSENT:

Councilmember Hickman

Item 1, being:

CONTINUED DISCUSSION REGARDING RE-APPORTIONMENT OF UNIVERSITY NORTH PARK TAX INCREMENT FINANCE DISTRICT SALES TAX OPTIONS.

Mr. Anthony Francisco, Director of Finance, there was discussion during the Council Finance Committee meeting on August 16, 2018, related to possible changes of the sales tax apportionment rate for the University North Park Tax Increment Finance (UNPTIF) District. The current methods of apportionment of sales and property taxes to the UNPTIF Fund were established in the UNPTIF Project Plan in Ordinance O-0506-66 adopted on May 23, 2006. By this methodology, 60% of the general purpose sales tax generated within the UNP development is deposited to the UNPTIF Fund and 40% is deposited to the General Fund (GF) and Capital Fund (CF). This amount is adjusted by transfer adjustments and by the Average Annualized Growth Rate Factor. After these adjustments, \$4,000,783 was apportioned to the UNPTIF Fund in FYE 2018 and approximately \$25,081,627 in authorized project costs remains outstanding.

Mr. Francisco highlighted authorizations versus expenditures as follows:

CATEGORY OF AUTHORIZATION	AMOUNT OF AUTHORIZATION	EXPENDITURE TO DATE	REMAINING AUTHORIZATION
Traffic/Roadway	\$11,550,000	\$11,120,848	\$ 429,152
Rock Creek Overpass*	\$ 5,212,000	\$ 5,142,323	\$ 69,677
Legacy Park/Art/Landscape*	\$10,963,000	\$ 8,155,849	\$ 2,807,151
Initial Project Activities	\$ 1,750,000	\$ 1,050,287	\$ 699,713
Cultural Facility	\$ 8,750,000	\$ 0	\$ 8,750,000
Lifestyle Center Costs	\$ 8,250,000	\$ 0	\$ 8,250,000
Economic Development Costs	\$ 8,250,000	\$ 4,174,066	\$ 4,075,934
TOTAL	\$54,725,000	\$29,643,373	\$25,081,627

* At the time the Rock Creek Overpass was completed, most of the remaining authorized funds were transferred to the Legacy Park Construction Project.

Mr. Jeff Bryant, City Attorney, said Council requested information on what steps needed to be taken to terminate the UNPTIF. He said under the Local Development Act (LDA) the UNPTIF Project

Plan is a document of the City enacted by ordinance making it a clearly legislative act under State Statute and the City can repeal, modify, or amend the Project Plan by subsequent Council action through the legislative process.

Mr. Bryant said no TIF ordinances can be repealed or modified as long as there is outstanding debt, but the UNPTIF debt was paid off in September 2018. He said once a TIF is terminated or modified the Cleveland County Assessor's method of providing incremental revenues from property tax assessment will cease and those revenues will flow to the City under the Project Plan.

Another question that came up regarding the Statutory Review Committee and whether that is necessary in this process. Mr. Bryant said Council can amend the Project Plan if it is a minor change and a minor amendment is an amendment that does change the purpose or character of the Project Plan, does not add more than 5% to the district's area, and does not add more than 5% to the public cost of the Project Plan to be financed by apportioned tax revenues. If there is a major amendment, such as adding 5% to project costs, changing funding allocation, or reducing Project Plan components, Council should seek recommendation from the Statutory Review Committee. He said there is a gray area if Council is not adding any project costs, but changes the character or purpose of the Project Plan. If Council agrees with the Statutory Review Committee recommendations, the ordinance can be amended by a majority vote; however, if Council desires to modify the Statutory Review Committee recommendation, it would require a two-thirds majority vote (six votes).

Mayor Miller thought if the allocation amount is changed for the City's portion only, it would lengthen the TIF, but would not require a Statutory Review Committee recommendation. Mr. Bryant said the argument would come back to the language of whether that proposal changes the character and purpose of the Project Plan. He said if the City reduces the amount of incremental allocation through the Project Plan that will lengthen the time all of the incremental revenues are accumulated to pay for the entire authorized project costs, it could have a detrimental impact on the ad valorem taxing jurisdictions. He said if Council opted to not go back to the Statutory Review Committee and there was an objection, the focus would probably be on whether or not it was a good idea to skip the Statutory Review Committee process. He said if the character or purpose of the Project Plan changed and the Statutory Review Committee was not asked to review that change it would be in violation of the State Statute. He would advise Council to ask the Statutory Review Committee for their review to avoid potential litigation and give ad valorem taxing partners an opportunity to make a recommendation.

Councilmember Wilson asked if Council sends the proposal to the Statutory Review Committee, can the Statutory Review Committee send back a different proposal to Council. Mr. Bryant said yes, the City cannot restrict what the Committee reviews, but their recommendations have to be pertinent to the Project Plan similar to what they reviewed for adding the Senior Center to the Project Plan area. He said the Statute protects the City in the sense that whatever recommendation they make, if Council does not want to follow that recommendation then the Council can override that recommendation with a super majority vote. If Council follows the recommendation, it will take a simple majority vote of Council, but the final decision is Council's.

Mayor Miller asked if there are other traffic improvement projects on Tecumseh Road at Flood Avenue that Council has discussed doing with TIF revenues and Mr. Francisco said based on the traffic impact analysis in the UNP, there are other projects that need to be done, but the amount of

money the UNPTIF is obligated or authorized to pay for transportation projects has been met. He said there may be \$6,000 to \$7,000 in authorizations remaining for road and traffic improvements.

Mayor Miller asked if the developer has obligations for road and traffic improvements as well and Mr. Francisco said yes. Mr. Bryant said there is a cap on the amount the City had to contribute for road and traffic improvements, which was \$11.55 million and any road and traffic costs identified in Development Agreement No. One that goes over that amount is the responsibility of the developer. He said it is correct that the City has spent close to the \$11.55 million if Council considers what has already been set aside for the Robinson Street/Crossroads Boulevard Improvement Project (\$1 million). Councilmember Castleberry said, just to be clear, no matter what is done with the TIF, the money for the Robinson Street/Crossroads Boulevard improvements is already set aside and earmarked and Mr. Francisco said that money is currently in the budget for that project and Councilmember Castleberry said if Council terminated the UNPTIF, would that money still be in the budget for that purpose? Mr. Francisco said yes, it is part of the \$11.55 million from Development Agreement No. One so unless Council withdraws that money for another purpose, the money will be there for that particular project. Councilmember Castleberry said he wants to make sure that money is not spent on any other project.

Councilmember Holman clarified that merely ending the TIF does not change the Robinson Street/Crossroads Boulevard improvements appropriation unless Council decides to spend it on another project and Mr. Francisco said that is correct. Mr. Francisco said ending the tax apportionment and ending the TIF are two different things and Council can end the tax apportionment and the authorized projects will still be enforced until that money is spent *or* Council could reduce the number of projects and basically unwind everything.

Councilmember Castleberry asked if a development agreement would still be in place even if there is no TIF mechanism in place and Mr. Bryant said the City has met all the obligations for Development Agreement No. One so the developer would need to meet their obligations. Mr. Bryant said the Robinson Street/Crossroads Boulevard project was originally identified as a traffic and roadway improvement, he would not recommend that Council delete that project. He would be very careful about changing any obligation in any of the development agreements.

Mayor Miller said if Council chooses Option Two to reduce the sales tax apportionment from 60% to 5%, then approximately \$300,000 of TIF funds would go to the GF. She asked if the TIF Oversight Committee would need to review that and Mr. Francisco said if Council had a specific proposal in mind the TIF Oversight Committee would have to review that proposal and could make a different recommendation. Mayor Miller asked if that proposal or recommendation from the TIF Oversight Committee would need to go to the Statutory Review Committee next and Mr. Francisco yes.

Councilmember Holman asked what the impact would be if Council decided to end the tax apportionment and not proceed with the Cultural Facility or Lifestyle Center and Mr. Francisco said if Council takes away the authorization for the Lifestyle Center, there are some contractual obligations related to that that would have to be renegotiated. Councilmember Holman thought the Lifestyle Center property might be more beneficial if it were privately developed as something else. He said the tax apportionment, Cultural Facility, and Lifestyle Center seem to be the sticking points in discussions regarding ending the TIF.

Councilmember Carter said he is interested in seeing a resolution that would be worthy of a vote of Council to change the character and purpose of the Project Plan. The resolution would direct the Statutory Review Committee to review what Council would like to propose, which is ending the TIF without getting into the details of that today because there is obviously a lot of nuances to that. In addition, he is personally interested in seeing the property tax apportionment end as well although he understands there is a detrimental side effect to Norman Public Schools (NPS) so to mitigate that damage for the length of time this agreement was set to run (2 1/2 years) the City could fully fund the School Resource Officer (SRO) Program.

Councilmember Wilson said Council is hearing that the appetite from the public is not there for a Cultural Facility or Lifestyle Center, but would like to do what is needed to save the Robinson Street/Crossroads Boulevard project. She also agrees with Councilmember Carter regarding ending the TIF and fully funding the SRO Program for 2 1/2 years.

Councilmember Clark is curious to know how much NPS is netting with the TIF, what they would be netting over the next 2 1/2 years, what the SRO Program costs the City, and if it is feasible for the City to make a commitment to fully fund the SRO Program for 2 1/2 years or commit to funding the SRO Program beyond the 2 1/2 years. When Council's proposal is sent to the Statutory Review Committee, she would like to know their thoughts on whether or not the City should keep the Cultural Facility and Lifestyle Center and what the vision of those projects are if Council is going to continue to support those projects. She supports sending a proposal to reallocate the tax to the Statutory Review Committee for immediate relief to the GF. Mr. Francisco said NPS is contributing their property tax money to the TIF and if the property tax apportionment goes away they will get that money back instead of contributing it to the TIF. He said NPS would also lose money they receive from the State Equalization Formula so he estimates NPS would lose around \$250,000 to \$300,000 annually. Mr. Francisco said this year NPS is paying approximately \$750,000 for their half of the SRO Program. He said if Council's action is to fund the gap it would cost \$250,000 to \$300,000.

Councilmember Holman said he would be okay with funding the gap temporarily, but he has always had reservations about the SRO Program. He said Norman's officers have been really great and the kids love them, but it has not been great nationwide where police are in schools and he does not like the idea of the City completely paying for the public school system's security force. Mr. Francisco said it is his understanding that Council's direction would be just for the gap period of 2 to 2-1/2 years for the time the TIF would have been fully funded if no changes were made to the apportionment calculations. Councilmember Holman said the SRO Program funding would come from the GF because the Public Safety Sales Tax (PSST) does not have the funds to pay for that. Mayor said whether Council likes the SRO Program or not, it was voted on by the public and Councilmember Holman said that is true, but voters also approved the program under the premise that NPS was paying half the cost.

Councilmember Scott asked about the Business Improvement District (BID) and Mr. Bryant said he would recommend the City honor that particular provision of the development agreement. He said during discussions on Development Agreement No. Three, there was an idea of funding an endowment that would be used to maintain Legacy Park once it was constructed. He said the City was proposing to contribute \$900,000 to that endowment and the developer was to contribute a

matching amount. As that discussion progressed, some people questioned whether or not using TIF funds for the endowment was a valid expenditure.

Mr. Bryant said in Development Agreement No. Five, the City and the developer came up with the idea of leveraging that \$900,000 by creating the BID where the businesses, through self-assessment, would pay a portion into a maintenance fund set up for a ten-year period. He said a total of \$200,000 annually would be deposited into the maintenance fund and the City using their \$900,000 would pay \$200,000 the first year with the BID District paying zero. The next year the City's contribution would be reduced by \$25,000 and \$25,000 would be assessed to the businesses. In FYE 2018 the City contributed \$75,000 and \$125,000 was assessed to the businesses and the City's amount will continue to lower so in FYE 2019, the City will pay \$50,000 and businesses will be assessed \$175,000. The last two years of the ten year period, businesses will be assessed \$200,000 and once that ten year period has ended, Staff is hopeful businesses will want to continue contributing to the BID to be re-evaluated every ten years.

Councilmember Bierman supports a resolution to the Statutory Review Committee to end the TIF while maintaining commitments, such as the Robinson Street/Brookhaven Boulevard improvements. She is somewhat agnostic as to how the City would replace the money to NPS whether that is the SRO Program, waiving their contribution to a Stormwater Utility (SWU), or whatever option would be best for both parties. She is not thrilled about SRO Programs as a concept although she agrees the program has worked out well for Norman and she is not opposed to funding the gap if that is the will of Council although she is willing to consider other methods. She is concerned about bringing the City's sales tax apportionment to zero and, in effect, extending the life of the TIF due to the impact to the other taxing jurisdictions. She would like to see what the Statutory Review Committee thinks of this proposal and Council can go from there. She said the Statutory Review Committee has proven themselves more than capable of coming up with creative alternatives to what Council sends to them. She would like to move forward with ending the TIF as opposed to extending its life by reducing the sales tax increment.

Councilmember Carter said NPS desires some planning time to prepare an exit strategy and this proposal would accomplish that. When the property tax apportionment is ended, the taxing jurisdiction partners will see increased revenue.

Councilmember Castleberry said he does not care if the City ends the TIF or not as long as Robinson Street/Crossroads Boulevard improvements are protected and NPS is made whole. He is concerned about how to legally fund NPS and said the SRO Program was approved by a vote of the people, not Council action, so the City cannot do away with that program. He said the SRO Program is still four officers short so Council needs to take that into consideration. He said the UNPTIF has \$8.2 million budgeted for the Lifestyle Center and the City has a contractual obligation so if a developer comes to Council with a project that meets the criteria for a Lifestyle Center, Council would have to consider that and if it met all the criteria it would be arbitrary and capricious of Council not to approve the project. Mr. Bryant said the City would have to figure out a way to fund that since it is a contractual obligation or litigate with the developer. Councilmember Castleberry said the reverse side of that is the clawback, what if the developer did not meet the agreement, will the City get that money back? Mr. Bryant recommends the City take the position that the agreements are still in place so as long as the City meets its obligations under the agreement, the developer should meet theirs. He said even if the City does not want to utilize the TIF funding source, if the developer meets the requirements

within the timeframe the City would make available what is in the agreement from whatever funding source Council chooses. If the developer does not perform their obligations under the agreement they have an obligation to pay the City back.

Councilmember Wilson asked the timeframe for what is being discussed regarding clawbacks and obligations and Mr. Bryant said 2023, unless the design is walkable then it can be extended another three years. Councilmember Wilson asked who decides whether or not it is walkable and Mr. Bryant said Council. Councilmember Wilson said there are no parameters of what the Lifestyle Center will look like and Mr. Bryant said in the most recent development agreement the City increased the performance criteria so it currently varies from \$300 to \$400 per square foot. He said the retail business has to be a regional draw type store, cannot be within a 21 mile radius of the same business, or located from outside of Norman.

Councilmember Carter asked if it is true that if the City ends the TIF now, the contractual agreements stay in place and in 2023, if a developer miraculously decides to build the Lifestyle Center and the City needs to come up with \$8.5 million the City can literally create a new TIF at that time to fund the Lifestyle Center. Mr. Bryant said if it was undeveloped land it is a lot easier because the base is set a lot lower and TIFs have to have a base first. He said there is a risk of generating a higher tax base with increment revenues being a significantly lower rate.

Councilmember Castleberry said the Lifestyle Center is more financially performance based than what it looks like. He said the criteria for the incentive are to produce stores that generate a certain dollar amount of sales per square foot, correct? Mr. Bryant said the carrot part of the development agreement was the \$8.25 million, which is the incentive money so if the Lifestyle Center is built then the developer could potentially receive the \$8.25 million as the carrot. The sticky part is the penalties because the Lifestyle Center has to meet a certain level of retail to avoid paying the penalties tied to the frontage road extension in the amount of \$2.4 million and Legacy Park construction in the amount of \$5.9 million. The developer only has to pay the penalty if they do not achieve at least 250,000 square feet of retail space in the Lifestyle Center area before the TIF ends. He believes the performance level was for shell completion of retail space in that area.

Councilmember Wilson asked if it is fair to say this is a pretty safe gamble with the shift in shopping structures. She said there will probably never be this holy grail of a Lifestyle Center the way it might have been envisioned in 2008. She said if the City gets pinched for \$8.5 million between now and 2023, Council has some options to get creative and fund the Lifestyle Center if it actually develops.

Councilmember Bierman said Council voted to extend the deadline for the clawback in the incentives so if Council moved that deadline out could Council move it back? Mr. Bryant said anything is negotiable, but it takes two sides to agree. Does the City really want the developer to build 144,000 square feet of retail space to shell completion and have empty units out there because that is not what the City was trying to accomplish with the Project Plan. The City is trying to add some unique retailers that would end up being a draw to the community and it was very specific to not hurt existing retailers by adding retail that is not currently located in Norman.

Mayor Miller said there seems to be consensus to prepare a resolution to end the TIF for Council's review on November 13th to send to the Statutory Review Committee. She is not convinced that

ending the TIF right now is the wisest decision long term for the City, but she agrees the Statutory Review Committee should review the proposal and the City needs to help NPS.

Councilmember Castleberry asked Mr. Francisco to prepare a plan on the best way to keep NPS whole keeping in mind the City has annual budgets. He said there is some way the City can make a three year commitment to NPS, he would like to look at that.

Mayor Miller is concerned about whether there will be enough money for the public art (\$1.5 million) and other projects the City are contractually obligated to do. Does the City currently have the money to complete the obligated projects? Mr. Bryant said the City is pretty close to having enough money to meet the obligations except for the Cultural Facility and Lifestyle Center if that is what Council is cutting. Also, there is about \$4 million per year of sales tax from the TIF currently going into the GF and about \$2 million a year in property tax. He said it is a smart move to have the Statutory Review Committee review the proposal because they may have more creative options.

Items submitted for the record

1. Memorandum dated August 30, 2018, from Anthony Francisco, Norman Tax Increment Finance Authority (NTIFA) Treasurer/Finance Director, to Honorable Trustees of the Norman Tax Increment Finance Authority and Honorable Mayor and City Councilmembers
2. Summary of Re-Appportionment Sales Tax Options for the University North Park Tax Increment Finance District

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The meeting was adjourned at 6:39 p.m.

ATTEST:

City Clerk

Mayor