

August 23, 2011

Proceedings of the City Council of University Heights, Iowa, held at the St. Andrew Presbyterian Church, 1300 Melrose Ave., subject to approval by the Council at a subsequent meeting. ALL VOTES ARE UNANIMOUS UNLESS OTHERWISE STATED.

WORK SESSION MEETING

Mayor From called the August 23, 2011 work session meeting of the University Heights City Council to order at 7:09 p.m. Mayor From thanked the St. Andrew Presbyterian Church for allowing the meeting to be held at the church.

Present: Mayor From. Council Members Mike Haverkamp, Rosanne Hopson, Stan Laverman, Brennan McGrath, and Pat Yeggy. Staff present: Attorney Ballard and Clerk Anderson. Also present were Ron Amelon, Pat Bauer, Carolyn Brown, Dennis Craven, John Danos (via phone), Ann Dudler, Andy Dudler, Linda Fincham, Tom Gelman, Ann Grossheim, Alice Haugen, Eunice Hunzelman, Russ Hunzelman, Catherine Lane, Jim Lane, Chris Luzzie, Jeff Maxwell, Kevin Monson, Scott Pantel, Kent Ralston, Dell Richard, Mary Schmidt, Rich Schmidt, Jane Swails, Jinx Tracy, Larry Wilson, Amanda Whitmer, John Yapp, Adam Zimmerman, and Jerry Zimmerman.

Maxwell Revised TIF Proposal: Dennis Craven, financial advisor for the Maxwell development, distributed revised TIF project reports to the council. Since the Johnson County Board of Supervisors declined to participate in TIF, scope modifications have been made to the project. Both building's footprints have been reduced by 30 feet; the east side of the north building and west side of the south building. The number of units is reduced from 79 to 69. The developers still anticipate that owners will buy several units to combine into one unit. They propose not realigning the Melrose/Sunset intersection.

The previous TIF proposal was for \$8 million but now the proposal is for \$6.5 million. A 10% allocation of incremental taxes will flow to the city. The size of the community center square footage is reduced from 4,000 square feet to 2,500 square feet, and the community center will be built out at no cost to the city. The incentive for a market space or grocery store has been removed but the developer will still actively seek some type of grocery store for the site.

Annual property tax collection for the city is reduced as a result of the decrease in condo units and smaller commercial space. Projected annual tax revenue, after the TIF period, has decrease from \$288,000 to \$256,000 for the city. Council member Haverkamp inquired what the TIF period would be under the revised proposal; Craven stated he estimates it would be slightly over 10 "collection" years.

Council member McGrath asked what the changes were to the finish, quality or design in the revised proposal. Kevin Monson, of Neumann Monson Architects, stated that take a slice out of the buildings "is a major structural change"; he also anticipates that the same finishes will be used on the outside of both buildings. With no alignment change to Melrose/Sunset, they propose installing a wider sidewalk used only for fire and emergency vehicles.

McGrath asked if it was ever considered reducing the heights of the two buildings; Monson stated the development has been reduced from the original proposal and by taking "slices" out of the building; this makes the units and parking proportional. It is anticipated that the number of units will be reduced by 12 due to combining smaller units into a larger condo. McGrath commented that the developer heard the message about the need to reduce the density but he had hoped for a further reduced in the heights of the buildings. Monson stated that based on the model, the development "nestles very well" between the trees and the ravine.

John Danos (on speakerphone), the city's TIF advisor, asked for clarification on the 80% reaffirmation annually from the city. Craven replied that the concept was inspired by Danos, and that the city would reaffirm a rolling commitment of 80% towards the project as incremental taxes increased over the course of the TIF. Craven stated he was unsure how this would be handled procedurally.

Council member Yeggy asked Hopson what she would value the church property at since she disagrees with the developer's purchase price. Hopson replied that she agrees with the appraised value of \$2.2 million. Yeggy disagreed and felt that Maxwell was paying appropriately for the land. Yeggy cited the \$5.7 million paid by the University of Iowa for the Athletic Club on Melrose Avenue.

Council member Laverman inquired of the council if “they were comfortable” with the new proposal. Hopson stated that if the height was further lowered that would be good.

Laverman commented that not having the Sunset intersection realigned was an issue and he is concerned about the traffic flow on Melrose Avenue. Council member Haverkamp commented that both Hopson and McGrath had previously stated that the intersection was not an important factor for them; he also asked where the compromise on their part was for the developer. Haverkamp stated “a true compromise is where both sides give something”.

Haverkamp asked John Yapp, Executive Director of MPOJC, given the proposal change, how would that affect the number of cars entering and exiting the development. Yapp commented that there are two peak hours of traffic each day, accounting for 25% of the total traffic. 75% of the traffic is spread out over the course of the day. Yapp did comment that with the removal of the second exit, there will be higher density at one exit and there will be congestion for vehicles wanting to turn left onto Melrose Avenue. One possibility is to restrict left turns onto Melrose Avenue.

Council member Laverman stated that the project has lost value for the community without the realignment of Melrose/Sunset. Laverman also has concerns of traffic using Grand Avenue as a cut-through and that a median would have helped address that concern. Haverkamp stated he too liked the redesigned Sunset Street intersection and felt it was designed very well. Council member Yeggy also was very reluctant to “give up” the redesigned intersection in the new proposal.

Laverman said that his support is contingent on the realignment of Sunset Street. Hopson stated that she does not like two sets of traffic lights so close together on Melrose Avenue but does not want traffic cutting through on Grand Avenue either. McGrath would like to see additional traffic information from MPOJC before making any type of decision. He stated he favors the realignment but not the development.

Council member Haverkamp said, for the sake of compromise, would the council agree to the terms of a \$6.5 million TIF but include the realignment of Sunset Street. Council members Yeggy and Laverman agreed that would be acceptable to them. Attorney Gelman, in consultation with the developer and his team, agreed to the council’s proposal to include the realignment of the intersection. He asked the council ask John Danos to prepare the TIF documents. The council directed Mr. Danos to begin drafting a TIF proposal for their September meeting.

Council member Hopson asked what the ramifications would be if future city councils did not approve TIF appropriations to the developer. Craven replied that he hoped future councils would act on good faith. Danos stated that the city would not be in breach of the contract; contracts usually have language included that it is the intention that payments will occur but not paying would not constitute a legal default for the city.

Discussion of the Development Agreement: Tom Gelman lead the discussion with council of the 34 points of the development agreement. (see attached)

The meeting was adjourned by **unanimous consent at 12:36 p.m.**

Attest: Christine M. Anderson, City Clerk

Approved: Louise From, Mayor

At its work session August 23, 2011, the University Heights City Council considered each of 34 separately numbered points from the City Attorney's prior memorandum. A draft development agreement had been circulated previously. Council's discussion of and consensus about the following points is shown in **bold**.

1. Parties to Agreement. The Council should consider whether St. Andrew Presbyterian Church should be a party to the Development Agreement. Mr. Maxwell, as owner of a portion of the property proposed for development and as the proposed developer presently is a party in the draft version. The Council may desire that the church also undertake the commitments set forth in the Agreement.

Consensus: Leave draft as is; do not require church to be a party.

2. Light Restrictions. The Council should consider the particulars of the light restrictions and provisions to avoid light "spillage" from the development and whether these provisions are sufficient.

Consensus: Leave draft as is; item is adequately addressed.

3. Exterior Amenities. The Council may desire that certain exterior amenities, perhaps including benches, book drop, and bicycle racks be shown and specified in site or building plans.

Consensus: Require approval of landscaping plan as part of development agreement and address particular amenities when that plan is presented and approved.

4. Boring Plans. The Council should consider whether to require boring plans showing that all utilities or other implements to be constructed on the property shall be bored-in and not placed by way of open excavation or otherwise.

Consensus: Confirm that boring specifications and regulations are adequately addressed in PUD Plan Application documents; Development Agreement does not need to address separately.

Also, though not part of the City Attorney's memo, confirm that PUD Plan Application provides that additional manhole(s) will be craned in.

5. Fill Material. The Council should consider whether to require that all fill on the project be observed by an independent monitor who shall have authority to order stoppage of work without notice if work is not proceeding in accordance with the monitor's direction. The Council

could request that all costs associated with such monitoring be the sole and exclusive responsibility of developer.

Consensus: Follow Mike Haverkamp's suggestion. Require developer to retain geotechnical consultant and require consultant to file regular reports with City Engineer. Provide that City also may retain a geotechnical consultant to oversee project and that work may be halted if standards are not met.

6. Changes to Condominium Documents. The Council should consider whether to require that any substantive changes to the condominium documents that will be drafted must be approved by the Council to be effective. The Council particularly may wish to have such a requirement concerning changes to the rules and regulations governing the development.

Consensus: Draft Agreement provides that many provisions of condominium documents may not be changed without Council approval. Council should consult para. 3(a) – 3(o). Address such things as noise limits and LED lights in signs by ordinance, which could control entire City, not just development.

7. Rental/Leasing of Residential Units. The Council should decide whether it is agreeable to permitting some or all of the residential units in the development to be rented or leased. The Council may propose that no units be leased; or that only units in one building may be leased; or that no more than a specified number of units may be leased; or some other description of limits on leasing.

Consensus: Add provision that no more than 25% of residential units may be rented.

8. Traffic Considerations. The Council should consider whether to prohibit left turns from the property onto Sunset Street.

Consensus: Leave draft as is; confirm that PUD Plan Application adequately addresses this item.

9. Law Enforcement on Property. The Council should consider requesting that the developer and those coming after the developer (owners of condominium units) agree that the University Heights Police Department may come upon the property in perpetuity to enforce all traffic signage and regulations on the property.

Consensus: City Attorney to confirm signage on private property regulating traffic entry onto city streets may be enforced by police department.

10. LEED Certification. The Council should consider whether to require that the development's plans, specifications, and construction meet or exceed the design and build elements necessary for the entirety of the project to be qualified as Certified/Silver/Gold/Platinum according to the Leadership in Energy & Environmental Design 2009 scale. The Development Agreement could provide that no building or occupancy permit shall be issued until such certification is documented to the satisfaction of the Council.

Consensus: Require submission of LEED Score Card at Construction Document Phase of project showing developer's intent to pursue particular LEED certification.

11. Maintenance of Public Space. The Council should consider whether to require the developer to maintain any public space (fountain, atrium, etc.) even if the space is open and available for public use and even if the Council sets restrictions concerning hours and uses of such space.

Consensus: Leave draft as is; item is adequately addressed.

12. Snow Removal. The Council should consider whether to require the developer to be responsible in perpetuity for the removal of snow and ice on certain City sidewalks, including those on the north and south sides of Melrose Avenue beginning at Sunset Street and proceeding west to a specified distance. The sidewalk on the south of Melrose Avenue will be closer to the street, from what I understand of the plans, which may lead to additional deposits of snow and ice from plows clearing the street.

Consensus: Follow Mike Haverkamp's suggestion. Developer will remove snow from sidewalks on north side of Melrose from intersection of Melrose and Sunset west to property line. Developer will remove snow from sidewalks on south side of Melrose from intersection of Melrose and Sunset west to a point south of Birkdale Court, where the Melrose pavement tapers.

13. Restrictions on Commercial Uses/Hours of Operation. The Council should consider the types of businesses that are or are not permitted in the commercial portion of the development. Ordinance 79(6)(f)(2)(b) provides a broad list of permitted uses. The Council may wish to further refine or define those uses and further address hours of operation.

Consensus: Leave draft as is regarding hours of operation. Follow Mike Haverkamp's suggestion to prohibit music through exterior speakers after 9:00 p.m. Sundays-Thursdays and after 10:00 p.m. Fridays-Saturdays. Address other, broader noise issues by ordinance, which could control entire City, not just development.

14. Outdoor Game Day Sales. The Council may wish to prohibit any outdoor sales on Hawkeye home game days.

Consensus: Leave draft as is; item is adequately addressed by existing ordinances.

15. Timing of Construction. The Council may wish to provide that construction on the proposed development must commence by a certain date and be completed by a certain date.

Consensus: Leave draft as is; consider penalty if construction deadlines are not met.

16. Grocery Store/Market. The Council should consider whether it desires to require that a portion of the commercial space be used for a grocery store/market.

Consensus: Leave draft as is.

17. Parking. The Council should consider whether the proposed parking is sufficient for the development and the types of commercial uses contemplated.

Consensus: Leave draft as is.

18. Limit Liquor Licenses. The Council may wish to consider limiting the number of liquor licenses or beer permits that may be issued for businesses located at the development. Doing so may be another measure useful to restricting permitted uses. The point may be that one restaurant would be great but 3 is too many.

Consensus: Leave draft as is; regulate by ordinance, which could control entire City, not just development

19. "Land Banking" Green Space. MPO-JC has raised the possibility of the Council requiring that certain green space be kept available for conversion into surface parking if some specified triggering event occurs in the future. The triggering event might be something like (i) a future finding and Resolution by the Council that parking is inadequate

or (ii) the establishment of a certain number of a certain types of businesses at the proposed development (e.g., if there's 3 restaurants, the green space becomes or may become parking).

Consensus: Remove draft para. 3(o), giving Association the right to convert green space to parking if approved by Council and consistent with zoning ordinance.

20. TIF. Does the Council desire to condition approval of the PUD Plan Application on establishing the requested TIF? Are there other TIF points the Council would like to address in the Development Agreement?

Consensus: Leave draft as is; address TIF issues in TIF agreement.

21. Conditioning PUD Approval on Land Sale Timely Construction. The Council may wish to consider provisions that the PUD Plan Application approval terminates if St. Andrew Presbyterian Church votes not to sell the property or if the project is not completed in a given time. This issue also may be addressed separately in a provision that requires commencement and completion by certain dates.

Consensus: Add provision that construction will begin within 10 years of PUD approval or such approval is automatically revoked.

22. Additional Traffic Signal on Melrose Avenue. The Council may wish to consider requiring that an additional traffic signal be installed on Melrose Avenue at the developer's expense. The Council may wish to say that such a light would be required only if and when some future event occurs (like traffic times are decreased or car counts increase to specified levels or once the second building is built). MPO-JC has provided information concerning traffic patterns and the effects of an additional signal.

Consensus: Add provision that need for traffic signal will be evaluated by MPO-JC once project is fully occupied. If additional signal is needed, developer or association will pay the initial cost.

Not part of City Attorney's memo, but City Engineer recommends addressing whether developer will be required to pay construction and street striping costs associated with realignment of Melrose-Sunset intersection.

23. Limited Traffic Signal Operation. The Council may wish to consider whether to only operate an additional traffic signal on Melrose Avenue at specific times (e.g., 6:00 a.m. – 9:00 a.m. and 4:00 p.m. – 7:00

p.m.). If there is interest in pursuing that notion, I suggest that MPO-JC be asked to evaluate this item from a traffic flow and safety standpoint.

Consensus: Leave draft as is; do not need to address.

24. Design of Sunset Street Exit to Protect Ravine. The Council may wish to request a design of the Sunset Street exit that impacts the ravine to the least extent possible.

Consensus: Leave draft as is; address concerns through PUD Plan Application approval.

25. Number of Residential Rentals. If residential units will be permitted to be leased, does the Council desire to limit the number?

Consensus: No more than 25% of residential units may be rented; see #7 above.

26. OUP Entrance Design Elements. The Council may wish to require approval of specific plans for the entrance to the proposed development. Different ideas have been suggested – a fountain, a community common area, a sculpture. The Council may wish to have a say in how this area is presented.

Consensus: Leave draft as is; require approval of landscaping plan as part of development agreement and address particular amenities when that plan is presented and approved; see #3 above.

27. Left Turns onto Melrose Avenue. A provision regarding traffic patterns and allowable turns may be included, consistent with the recommendations of MPO-JC and the infrastructure design that is discussed and approved as part of the overall PUD Plan Application.

Consensus: Leave draft as is; confirm that PUD Plan Application adequately addresses this item.

28. Commitment to Resolve Future Infrastructure Issues. The Council may wish to require that the developer (and the condominium owners association) be responsible for resolving any future sanitary sewer issues that arise in the future. I believe this comment emanated from a concern that the proposed sewer plan might prove to be inadequate. Perhaps the Council desires to investigate that issue further.

Consensus: Leave draft as is; require plats and easements for utilities; confirm that PUD Plan Application adequately addresses this item.

29. Restrictions on Signs. The Council may wish to consider specific limitations and restrictions on signage permitted at the development. For example, size restrictions, prohibiting flashing signs or those whose messages change, etc.

Consensus: Add provision that no signs may project out from buildings.

30. Ravine Stability During Construction. The Council may wish to require specific testing or oversight during construction to confirm that construction activity itself is not harmful to the ravine.

Consensus: Leave draft as is.

31. No Preference in Awarding Infrastructure Contracts. The Council may wish to indicate in the Development Agreement that any contracts for the construction of public infrastructure will not necessarily be awarded to Jeff Maxwell of his company just because he is the developer. It may be that the Council simply requires installation of the improvements (to city standards and specifications) and leaves it to the developer to retain appropriate contractors. In that event, the Council would not be awarding a contract and may have little input into contractor selection.

Consensus: Leave draft as is; developer will select subcontractors.

32. Restriction on Transfer to Tax-Exempt Entity. The Council may wish to prohibit any sale or transfer of all or part of the proposed development to tax-exempt entities. Some such entities (like the church, for example) do not pay property taxes. To the extent portions of the proposed development are transferred to such an entity, the TIF component, if there is one, of the development may be affected.

Consensus: Add provision that no more than 2,000 square feet of commercial feet (approximately 10% of total) may be owned or used by entity such that property taxes would not be payable.

33. Restriction on Transfer to Entities Not Owned or Controlled by Jeff Maxwell. The Council may wish to restrict the transfer or assignment of the Development Agreement to persons other than Jeff Maxwell or to entities not owned or controlled by him. Similarly, the Council may wish to condition its approval of the PUD Application on continued

ownership by Mr. Maxwell or an entity owned or controlled by him. The thought behind such restrictions and conditions is that the qualifications and identity of the person/group proposing redevelopment (here Mr. Maxwell) are important to the Council and were significant reasons for entering into the Development Agreement (if it is entered into) and for approving the PUD Application (if it is approved).

Consensus: Leave as is; no restriction on transfer.

34. Statement of Qualifications of Developer. The Council may wish to require that Jeff Maxwell provide a statement as to his qualifications and background for undertaking and completing a project such as the one proposed. This information may be important to the Council in determining whether to enter into a Development Agreement or to approve the PUD Application. The information sought could include such things as the identity of all owners and directors of any corporate or other legal entity involved in ownership or the development; financial references and background; other projects that have been developed; D/B/As or other names or entities by or through which the developer has conducted business in the past and present; and financial resources available for developer to complete financing of the proposed development. I would be happy to prepare a list of such requirements at the Council's direction.

Consensus: No consensus reached.