Memo from city manager to the director of community development

MEMORANDUM

TO: Richard Wollangk, City Manager
Common Council
City of Oshkosh Redevelopment Authority

FROM: Jackson Kinney
Director of Community Development

DATE: October 6, 2005

RE: Term Sheet/Five Rivers Project

The City of Oshkosh Redevelopment Authority (RDA) and City Council will be asked to approve Resolutions on October 25th (in separate meetings) to authorize the City to enter into a Development Agreement with Five Rivers LLC relative to the condo-hotel project proposed in the Marion Road/Pearl Redevelopment Area. The Development Agreement is to be based on a Term Sheet that will be attached to the Resolutions (a copy of which is attached to this Memorandum).

Implementation of the project will depend on both the City and Five Rivers carrying out various responsibilities as set forth in the Term Sheet (and the detailed Development Agreement that will follow at a later date).

Key provisions include:

- The need for the City to create a new Tax Incremental Financing District on the south side of Marion Road, which is to serve as the primary financing source for addressing costs the City would incur in implementing the project, such as property acquisition & related expenses, for public improvements (e.g., riverwalks, sea walls, etc.), for other project expenses, and for any Development Assistance Grant (DAG) that may be provided.
- The need for the RDA to acquire the Mercury Marine Plant 24 property
- The need for Five Rivers to secure construction and permanent financing and equity necessary to complete the Phase 1 project, and to provide to the City/RDA conditional commitments for such funding by no later than January 16, 2006.
- Providing the development sites to Five Rivers through lease or sale on a land write down basis as part of the developer incentive package for initiating the projects.
- Providing a possible Development Assistance Grant (DAG) to Five Rivers. Five Rivers' development budget has identified a possible $6.4 million DAG. The actual amount of the DAG would be based on a number of factors set forth below.

Project Background/Description

The Department of Community Development has been working with Five Rivers on a possible development project on the Fox River in the Marion Road/Pearl Avenue Redevelopment Area since Spring 2004. In January of this year Five Rivers made a formal presentation to the RDA on a proposed condominium-hotel resort project, and the RDA then asked the Department to continue to work with Five Rivers on firming up aspects of the project, including the financial planning for the development.

Five Rivers is proposing to undertake a three phase project on 15.31 acres of land in the Marion Road/Pearl Avenue Redevelopment Project Area situated on the north and south sides of Marion Road west of Jackson Street, and adjacent to the Fox River (see attached map).

The Phase 1 Project would entail construction of the primary condominium-hotel resort complex. It is to include approximately 312 condominium units (which would provide an approximate 312 key hotel facility), an approximate 58,764 square foot conference center, an indoor/outdoor water feature with approximately 15,289 square feet of indoor space, food and beverage facilities totaling approximately 16,710 square feet, a commercial marina with approximately 100 slips and an associated yacht club, an approximate 100-space parking area within the main structure, and a 350-400 space surface parking area on the north side of Marion Road. The overall facility would encompass approximately 436,356 square feet of building space in a 10 story plus structure.

The Phase 2 Project would entail construction of approximately 180 additional condominium-hotel units that would be located on the west side of the Plant 24 property adjacent to the Fox River, as well as expansion of the commercial marina facility. This phase may also, include construction of an exhibit hall and parking deck on the north side of Marion Road (where the Phase 1 surface parking is proposed).

The Phase 3 Project would entail construction of a commercial building or buildings on the west side of Jackson Street between Marion Road and Pearl Avenue. The size of the commercial development will be addressed in the Development Agreement.

Proposed Mercury Marine Acquisition

The City has been in discussions with Mercury Marine over the course of the past year relative to the acquisition of Mercury Marine's Plant 24 property, and it is anticipated Resolutions will be brought before the RDA in the very near term to move the acquisition process forward. The Mercury Marine Plant 24 property was added to the Marion Road/Pearl Avenue Redevelopment Area earlier this year.

It should be noted that while the acquisition of the Mercury Marine Plant 24 property is integral to the Five Rivers project, the incorporation of the property into the redevelopment district and its acquisition has been seen as an appropriate step in achieving redevelopment objectives in the Marion Road area generally.

Mercury Marine owns two parcels of land along the Fox River south of Marion Road. The Plant 24 parcel is located east of the former railroad right-of-way while the Plant 33 parcel is located west of the former railroad right-of-way.

The Phase 1 site will include a portion of the Plant 24 parcel and a parcel to its immediate east that the City already owns.

Possible DAG/Payment Alternatives

As part of the developer incentive package, the City/RDA may provide a DAG to Five Rivers to assist with development of the project. The DAG would be provided through either a "Direct Pay Method" or a "Pay-As- You-Go Method." **While Five Rivers' development budget has identified a possible $6.4 million DAG, the amount of a DAG will be determined by the City/RDA based on the following factors:**

- The projected value of the Phase 1 development and the anticipated tax increment generated, which will provide a basis for calculating a potential overall borrowing capacity.
- The amount the City/RDA will need to bond for to cover costs of land acquisition and related expenses, public improvements/activities/expenses, capitalized interest, a debt service reserve (if required), and for the cost of 0, issuance on the borrowing.
- The remaining borrowing capacity would show a potential amount the City/RDA could bond for to cover costs of a Direct Pay DAG, including the cost of capitalized interest, debt service reserve (if required), and the cost of "' issuance of borrowing, or the amount of the Pay-As-You-Go Alternative.
- The combination and proportion of direct developer equity, financing, and City participation.
- An overall economic feasibility/financial gap analysis that shows and justifies the need for the Development Assistance Grant.
- The payment method used (i.e., Direct Pay or Pay-As-You-Go).
- The "Security and Guarantee" measures to be utilized, which serve as the City/RDA's risk mitigation measures;

<u>Borrowing Capacity.</u> Based on current value projections, and the use of various assumptions in such calculations, it is estimated the City/RDA could potentially borrow approximately twelve to thirteen million dollars in support of all project and borrowing costs of the Phase 1 project. Determining borrowing capacity is an important step in identifying the City/RDA's capabilities in addressing project needs. It does not, however, automatically translate into the amount of the possible DAG.

It should be noted that the City's financial advisor is recommending that the City/RDA pursue Lease Revenue Bonds (LRB's) for the project, since LRB's would not be subject to the City's overall debt limit.

<u>Value Determination.</u> The current projected value estimate is based on numbers provided by Five Rivers. Five Rivers' projected revenue stream from operations is a key number in the calculation of taxable value, which in turn generates the tax increment (i.e., the new taxable value minus the existing tax base in the area). If the actual operating revenues are less than projected, the taxable value and resultant increment would be less, and that would impact the actual borrowing capacity for the TIF District, based on future taxes collected.

The projected value for the Phase 1 project also relies on Five Rivers' estimated condominium unit sales price and absorption rate as benchmarks for the value of the condominium component. While actual sale prices may meet or exceed Five Rivers' projections, if units were to sell for something less than the projected amount, that would also impact the actual borrowing capacity for the TIF District, based on future taxes collected.

Prior to any borrowing, the City/RDA will do additional analyses and determinations relative to identifying a projected value for the development.

Capitalizing the Interest on Borrowing. Funds derived from City/RDA bonding would need to include not only the dollars needed to deal with direct project expenses (i.e., land acquisition & related, various public improvement costs/activities and expenses, as well as a possible DAG), but with costs of meeting debt service obligations before tax increments are actually generated by the project. The need to cover the debt service obligations before tax increments are received is referred to as "capitalizing the interest on borrowing." It typically takes about two years for the City to realize tax increments from project improvements. This is due to the fact that as project components are completed, the value the City Assessor places on those components takes effect on the following January 1st, and actual taxes are not collected until the next year.

Debt Service Reserve Fund. It may be necessary to provide for a debt service reserve fund from bond proceeds in order to effectively market the bonds. A reserve fund would provide a backup to the Security/Guarantee measures discussed below.

Bond Issuance Costs/Expenses. There are other costs that apply to the issuance of bonds and the associated borrowing, and these also need to be accounted for in the calculations that are made regarding borrowing capacity.

DAG Funding Methods. The Term Sheet lists two alternative funding approaches that can be considered relative to the provision of a DAG. The funding alternatives include a "Direct Pay Method" and a "Pay-As-You-Go Method."

> Direct Pay: In this alternative, portions of the project would be funded through the RDA's issuance of Lease Revenue Bonds (LRB's). Bond proceeds would be used to fund discrete portions of the project, such as land, parking, the conference center and/or marina. Funded components would be owned by the RDA and leased to the City as security for the bonds. The leased components would then be subleased to the developer on an absolute net lease basis. The lease and sublease costs would be identical to the principal and interest due on the bonds. Five Rivers would receive a credit against its lease payment in the amount of the tax increment received by the City from the development, after the City has covered its debt service obligations on the bonds that were issued to pay for land acquisition and related expenses, and for other public improvements/activities and expenses.
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> Pay-As-You-Go: In this alternative the City/RDA would issue a TIF Revenue Bond to Five Rivers in the amount of the DAG. No funds would actually be disbursed to the developer with issuance of the bond document. With issuance of the TIF Revenue Bond, the City is to appropriate funds to pay the principal and interest due on the bonds from funds that become available in the City's TIF increment account (which occurs when tax payments are made on completed components of the project). Five Rivers would be able to pledge the bond document as additional collateral to facilitate receiving a construction loan and long term financing for the project through the private marketplace.

In the Pay-As-You-Go method the City/RDA retains a first claim on tax increments received in order to cover its debt service obligations on bonds issued to pay for land acquisition and related expenses, and for other public improvements/activities and expenses. After those debt service obligations are covered, Five Rivers would receive payment on the TIF Revenue Bond. Since Five Rivers only receives the DAG funding support at a point when tax increments are actually realized, and only after the City/RDA has covered its obligations from increments received, this method is referred to as "Pay-As-You-Go," and is the most secure approach for the City/RDA.

There are possible advantages to Five Rivers in pursuing the Pay-As-You-Go method. In addition to utilizing the bond as additional collateral in seeking financing support for the project, Five Rivers could potentially realize a greater level of development assistance over time than through the Direct Pay method, since the City/RDA will be agreeing to pay interest, as well as principal, on the bond that would be issued to Five Rivers. Also, in this method, Five Rivers could be conveyed the development site(s) through an outright sale on a land write down basis, rather than operating under a lease through the Direct Pay alternative. Another advantage would relate to the fact that less Security/Guarantee measures would be required than in the Direct Pay method.

From the City/RDA's perspective, the Pay-As- You-Go method is attractive, since it would be less complicated than the Lease Revenue Bond approach, and the City/RDA's risk is minimized due to the fact that the DAG assistance is only provided to the extent tax increments are available after the City/RDA has covered its bonding obligations.

While the Term Sheet lists the two alternative methods for provision of a DAG, it is anticipated a decision will need to be made by the City and Five Rivers as soon as possible regarding the funding method to be considered, since the funding method will need to be factored into Five Rivers' efforts in pursuing lender and equity commitments for the project.

Risk Mitigation Measures

From the Department's perspective, the Five Rivers project would help the community achieve its objectives in the Marion Road/Pearl Avenue Redevelopment Area, and we believe the project can be successful based on the nature and scope of the physical development plan for the site and the operational plans for the facility.

While we believe in the project and what it can achieve, and the role it can playas a catalyst for the community's continuing redevelopment efforts in the downtown and central city area, we also recognize that the City and the RDA must be cognizant of its responsibilities in ensuring that the public's interest is effectively protected in the approach taken in support of the project.

The time it has taken to bring the project forward for public action reflects the fact that the City/ RDA has been very careful and deliberate in evaluating the project, and the Term Sheet that has been prepared includes a number of Security/Guarantee provisions that will serve as additional risk mitigation measures for this project. These measures may include:

Guarantee of Development Costs. In the Term Sheet a provision is included at stipulates the development costs for Phase 1 will not be less than $52,411,822. This provision helps ensure the project will achieve the size and scope of development proposed by Five Rivers. It also helps reinforce the value of the development, which is important in achieving tax increment needs.

Guarantee of Assessed Value. This provision provides a guarantee that the Phase I project will maintain a given equalized assessed value for real estate tax purposes, or Five Rivers will make a payment-in-lieu-of-taxes equal to the difference between the amount of taxes that would have been collected for the given equalized assessed value and the actual amount of taxes levied.

Guarantee of Tax Revenue Stream. This provision would ensure the City/RDA's debt service obligations associated with the bonds issued in support of the project would be covered through an annual revenue stream payment by Five Rivers, if TIF increments were not sufficient to cover those obligations.

Special Assessments. This provision would provide that the City could levy special assessments against the development properties to pay the cost of debt service obligations associated with the City/RDA's financial support of the project, if TIF increments were not sufficient to cover those obligations, and if other required payments stipulated in the agreement were not made.

Letter of Credit (LOC). This provision would require that Five Rivers obtain a Letter of Credit in a form and from a bank acceptable to the City in order to provide assurance that the project will be completed, and there will be a sufficient tax increment stream to cover the City/RDA's debt service obligations.

The various Security/Guarantee measures in the Term Sheet would work independently and in concert with each other to provide a significant safety net and level of protection to the City/RDA relative to the obligations it would have for the project.

The actual Security/Guarantee measures will be subject to negotiation of the Development Agreement.

Impact on Taxpayers in Community

Property taxpayers in the community will not see their tax bills increase through the City/RDA's issuance of bonds in support of the project. As in TIF projects generally, the developer, in effect, pays for the costs of undertaking the project and in the assistance that may be provided, through property taxes paid by the developer on increases in taxable value on improvements in the TIF District.

When TIF Districts are created, an existing tax base is established that reflects the taxable value of the District prior to improvements being made in the area. After improvements are made the developer pays property taxes according to the new higher taxable value. Part of the developer's tax dollar goes to cover taxes attributable to the pre-existing tax base (that are then distributed to the various taxing jurisdictions), while the remaining portion of the tax dollar attributable to the higher taxable value resulting from improvements goes to the City as the tax increment that can be used by the City to cover TIF project costs.

Through this process property taxpayers do not see a reduction in taxes previously paid in the TIF District, so they are not, in effect, asked to carry an additional tax burden. While taxpayers do not realize an immediate benefit from the higher taxes collected in the TIF District, eventually the TIF District will be closed (through mandatory expiration dates), and the higher taxes paid in the TIF District will be distributed among all taxing jurisdictions. Also, the higher taxes collected in TIF Districts from new development would not otherwise be realized, since the new development would not have occurred but for the use of TIF.

Since a project like Five Rivers will undoubtedly stimulate other investments in the area, and these investments will result in higher taxes for the affected properties, taxpayers should benefit as a result of the community realizing a greater level of overall tax collections, and this helps in efforts to manage tax rates.

In addition to property tax benefits, the Five Rivers project can also result in the creation of a significant number of new jobs - both directly through its own operations, as well as indirectly through positive spin off impacts it can have on other businesses in the community, especially in the downtown and central city area. An analysis undertaken by Economic Research Associates showed the resort facility would employ an estimated 130 people, generating approximately $3 million in wages.

Also, with an attractive resort complex and significant new conference facilities, the Five Rivers project should bring more (and larger) conventions and meetings to the City, and that in turn will bring more dollars into the community, which again will have significant spin off benefits to businesses throughout the area. In addition, since the resort complex and conference facilities will attract more visitors to the hotel facility, the community will also benefit from the generation of increased hotel-motel room taxes.

All in all, the community and its taxpayers should realize significant economic benefits and multiplier impacts through the implementation of the Five Rivers project.

Future Actions

With approval of the Resolutions on October 25th, the City/RDA will continue to work with Five Rivers on various aspects of the project, including the economic feasibility/financial gap analysis that will need to occur in order to determine the funding method and amount to be utilized in the provision of a DAG for the project. Also, the City/RDA will provide whatever assistance it can as Five Rivers pursues the needed equity/lender commitments for the project.

In addition to the Resolution approving the Term Sheet and authorizing the City to enter into a Development Agreement with Five Rivers, other Resolutions will also need to be acted upon by the City/RDA for the bonding that will be required to cover the land acquisition cost and related expenses, for public improvements/activities and expenses, and for the bonding approach that may be utilized in the possible provision of a DAG.

Five Rivers will also be submitting a request for a Conditional Use Permit/Development Plan Review, and that will go through a review and approval process with the Plan Commission and Common Council.

Finally, if there are any questions in regard to the project and Term Sheet, please do not hesitate to contact me in that regard.

Attachments

cc: Paul Steinman, Springsted Inc.
Joel Pittelman, Springsted Inc.
Atty. Henry Gempeler, Foley & Lardner

Tom Doig, Five Rivers Investment LLC
Mike Lindner, Hotel R&D Inc.
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