

**MINUTES OF THE REGULAR MEETING
OF THE CITY COUNCIL
OF THE CITY OF FAIRWAY, KANSAS**

The Council of the City of Fairway, Kansas, held their regular meeting at 6:30 P.M. at 5240 Belinder Road, Fairway, Kansas, on Monday, March 14, 2022.

Present: Council Members Jenna Brofsky, David Watkins, Kelly-Ann Buszek, Jason Rogers, Dan Bailey, Joe Levin, Tanya Keys and Jonalan Smith (via video conference).

Absent: None.

Presiding: Mayor Melanie Hepperly.

Staff Present: Nathan Nogelmeier, City Administrator; Richard Cook, City Attorney; J.P. Thurlo, Police Chief; Kim Young, City Clerk; Brice Soeken, Director of Parks and Recreation; Bill Stogsdill, Director of Public Works.

Visitors: Kevin Wempe, Gilmore and Bell, 4618 W 62nd Terrace; David Arteberry, Stifel Nicolaus and Company, 4801 Main Street, Kansas City, Missouri; Austin Bradley, EPC Real Estate Group, 8001 Metcalf Avenue, Overland Park; Bob Johnson, 5332 Falmouth Road; Julie Peterson, 4831 Belinder Court, Westwood, Kansas; Kathy Gates, 5406 Mission Road; Skip Hensler, 5657 State Park Road; Joe Alburty, 5905 Fontana; Steve Platt, 5348 Chadwick; Jim Poplinger, 5300 Aberdeen.

CALL TO ORDER AND ANNOUNCEMENTS

Mayor Hepperly called the meeting to order.

PLEDGE OF ALLEGIANCE

Mayor Hepperly led the Council in the Pledge of Allegiance.

SWEARING IN CEREMONY OF NEWLY SELECTED GOVERNING BODY MEMBER

Mayor Hepperly announced that Jonalan Smith was selected by a vote of the Council at the February Council meeting to fill the vacancy resulting from the resignation of Tom Cotter. She welcomed him to the Council.

City Clerk Young performed the swearing in ceremony for Jonalan Smith.

MONTHLY REPORTS OF STANDING COMMITTEES

CONSOLIDATED FIRE DISTRICT NO. 2, CHIEF CHICK

Mayor Hepperly explained that Chief Chick was not present at the meeting and referred the Council to the report in the packet.

ADMINISTRATION COMMITTEE, MR. NOGELMEIER

Monthly Report

City Administrator Nogelmeier referred the Council to the report in the packet, subject to questions.

POLICE COMMITTEE, CHIEF THURLO

Monthly Report

Chief Thurlo referred to the report in the packet, subject to questions. He noted that the Department is in the process of hiring a new police officer. He hopes to be able to extend an offer within the next week.

PUBLIC WORKS COMMITTEE, MR. STOGSDILL

Monthly Report

Director Stogsdill referred to the report as submitted, subject to questions. He stated that staff did a tremendous job in clearing the streets during and after the recent snow storms.

Mayor Hepperly thanked Director Stogsdill and his staff for their work.

PARKS AND RECREATION COMMITTEE, MR. SOEKEN

Monthly Report

Director Soeken referred to the report in the packet, subject to questions. He stated that the Committee discussed the new restroom at Peterson Park and the RFP is online with bids due April 1, 2022. He hopes that the new restroom will be completed by the end of October.

FINANCE COMMITTEE, MR. NOGELMEIER

Monthly Report

City Administrator Nogelmeier referred to the report in the packet subject to questions. The Committee met on February 23, 2022. Sales tax collections continue to trend high. The Committee discussed the Committee structure and a consensus was reached to combine the Administration and Finance Committee and move that to a Committee of the whole. The revised guidelines are included on the Consent Agenda and if approved, the combined Administration and Finance Committee will meet on the last Wednesday of the month at 6:30 P.M.

MONTHLY REPORTS OF SPECIAL COMMITTEES

Tree Board

No report.

APPROVAL OF CONSENT AGENDA

Mayor Hepperly outlined the five items on the Consent Agenda. The Consent Agenda items include the following: (A) Minutes of Previous Regular City Council Meeting; (B) Claims and Appropriations – Ordinance #1759 – February 2022; (C) Agreement with Johnson County for Stormwater Best Management Practices Cost Sharing Program; (D) Revised Committee Guidelines; (E) Mayoral Appointments.

Mayor Hepperly announced that she has appointed Rorric Pfalzgraf, a resident of Ward 4, to the Planning Commission to replace Jonalan Smith, who has been appointed to the City Council. She interviewed Mr. Pfalzgraf some time ago and he was still interested in serving on the Commission. He is a mechanical engineer at Burns and McDonnell.

Mayor Hepperly asked for public comment on the Consent Agenda items. Hearing none, she asked for discussion from the Council.

Responding to Councilwoman Brofsky's question, Director Stogsdill explained the Stormwater Best Management Practices Cost Sharing Program.

Councilwoman Brofsky encouraged residents who want to get a rain barrel or need a tree or pollinator to visit the City's website and complete the application.

Mayor Hepperly asked for additional discussion. Hearing none, she asked for a motion.

Councilwoman Keys moved that the Council approve the items A through E on the Consent Agenda. Councilman Levin seconded the motion and the motion carried unanimously.

NEW BUSINESS

- A. Public Hearing: TIF Project Plan.
- B. Consider Ordinance #1760 – An Ordinance of the Governing Body of the City of Fairway, Kansas Making Findings, Adopting a Redevelopment Project Plan Pursuant to K.S.A. 12-1770 et seq., and Amendments Thereto, and Approving a Redevelopment Agreement.
Mayor Hepperly opened the Public Hearing, indicating that it is being continued from the February meeting.

She asked for presentations from City Attorney Cook, City Administrator Nogelmeier, Bond Counsel Kevin Wempe, and the City's Financial Consultant, Dave Arteberry.

City Attorney Cook stated that he has been working on Development Agreements for his entire legal career and this is one of the strongest agreements he has seen. A good Development Agreement does three things: (a) ensures that a quality project is built and is fully realized; (b) protects the City's financial interests; and (c) protects the City's and the broader community's policy interests. He believes the proposed Development Agreement does all of those things.

The agreement includes a development schedule and other provisions that ensure that the project remains what it has been described to be – an active adult project. The language in the Agreement requires that the project be completed as intended.

The Agreement also protects the City's bottom line through administrative fees, the public safety fee and other additional special provisions that are included in Article 7 of the Agreement.

The City and broader community's policy interests are protected because the Agreement addresses every point of the City's Public Incentive Policy related to sustainability, diversity, and community partnership.

City Attorney Cook explained that no Development Agreement is perfect and neither the City nor the developer got everything they asked for. He considers the Agreement to be a compromise and a win/win for protecting the City's and broader community's interests.

City Administrator Nogelmeier presented financial information showing the expected property tax revenues for all taxing jurisdictions that would be affected by the project if the TIF were in place and also without the TIF. He noted that the School District will see a bigger income over the 20 years that the TIF is in place because according to TIF rules, School District mils are exempt from being collected through TIF funding.

In addition to the developer expenses that are reimbursed from the TIF fund, the developer has agreed to pay additional administrative fees to the City, as well as a fee to the Shawnee Indian Mission Foundation and to Consolidated Fire District No. 2. Over the 20-year period with no TIF, the City's property taxes would be about \$430,000 (assuming the site stayed the same as today), but with the TIF, there will be a slight increase in property taxes as well as the fees, resulting in an increase of \$3.3 million.

Responding to Councilwoman Brofsky's question, City Administrator Nogelmeier confirmed that the anticipated revenues being discussed are specific to the current project and do not take into consideration some other type of project.

Mayor Hepperly stated that the information presented is critical to understanding the benefits to the City with the TIF funding. When the project first came to the Council last April, she was generally not in favor of TIFs or educated in the TIF process, but she kept an open mind. As she learned more, she has become more comfortable with it. The expected revenues clearly show that the City will be made whole and then some and will be financially protected.

Responding to Councilwoman Keys question, City Administrator Nogelmeier confirmed that the chart shows the expected payments from the developer over 20 years and payments will be made annually. The effective date of the agreement is January 2024 and the first year's payment will one year later.

City Administrator Nogelmeier next presented a chart of the net estimated benefit to each jurisdiction over the life of the TIF, based on the anticipated increase in assessed property value.

Councilwoman Brofsky asked if there would be more monies collected if a project went forward without a TIF.

City Administrator Nogelmeier responded that, potentially, there could be more benefit to the jurisdictions if a project went forward without TIF financing; however, that would depend on the assessed value of the project. The anticipated appraised value of the site after completion is over \$60 million. If a project was built with an appraised value of only \$4 million, those taxing jurisdictions would collect significantly less because the value of the property is significantly less.

Responding to Councilwoman Brofsky questions regarding how a different project would affect the value of the property, Mayor Hepperly said that the City has no way to determine how various other projects might affect the value of the property. The City has done its due diligence on the project presented.

Kevin Wempe, Gilmore and Bell, 4618 W 62nd Terrace, Fairway, stated that he is the City's Bond Counsel. He recalled that in late 2021 the Council created the TIF District which froze the assessed value of the site and established the geographic area for the district. The Council has repeated essentially the same process here, calling the Public Hearing that was opened last month and continued to tonight's meeting. Upon conclusion of the Public Hearing, the Council will consider an Ordinance that approves the TIF project plan and also the Development Agreement. The 20-year TIF clock will commence in January 2024 during which the increment can be spent to reimburse eligible TIF costs. Approval of the Ordinance requires a 2/3rd super majority vote of the Council.

Mayor Hepperly pointed out that Mr. Arteberry was not available for the February Council meeting and asked that he specifically respond to Councilwoman Brofsky's question concerning whether the project had an acceptable rate of return.

David Arteberry, Stifel Nicolaus and Company, 4801 Main Street, Kansas City, Missouri, explained the background of TIF financing, stating that it was first developed in the 1950's or 1960's in California for the express purpose of providing incentives to help redevelop blighted property or property that in some way was hindered from being redeveloped primarily due to old, dangerous or obsolete structures. He believes the subject property coincides with the original intent of TIF financing. He also explained that many of the TIFs occurring have one common feature – a parking structure that is needed in order to accommodate the density of the development.

As for the rate of return, Mr. Arteberry researched online to establish what would be considered an acceptable rate of return for investors for multifamily developments. He concluded that an acceptable rate of return would be in the mid-teens, from 13 to 18 percent. He believes the Development Agreement mentions a rate of return of 15 percent, which seems very reasonable to him.

Responding to Mayor Hepperly's question, Mr. Arteberry explained that he met with Councilman Levin and City Administrator Nogelmeier and reviewed the developer's projections. Both Councilman Levin and Mr. Arteberry prepared their own projections and then met with the developer to discuss each set of projections and resolved differences between the projections. He acknowledged there are a lot of assumptions made in the projections and once they understood the assumptions being made, both he and Councilman Levin felt comfortable that the projections represent a realistic view of the developer's rate of return.

Councilwoman Brofsky asked if Mr. Arteberry could turn that 15 percent rate of return into actual income for the developer.

Mr. Arteberry responded that he understands that when the project is fully leased, the projections show around \$1 million per year in net income.

Mayor Hepperly pointed out that the return would be on the total value of the project at \$60 million.

Councilman Watkins recalled that during the negotiations with the developer, Mr. Arteberry said he did not think the project would go forward without a TIF component because the developer would not be able to attract investors.

Mr. Arteberry agreed, stating that without the incentive, the rate of return would be somewhere around 6 percent and his research showed that investors expect rates of return being in the mid-teens, he does not think investors would be interested and therefore the developer would not move forward with the project.

Councilman Watkins further recalled that Mr. Arteberry believed that no matter the project, it would probably require some financial assistance from the City to move forward.

Mr. Arteberry agreed, indicating that based on the size of the property, any sort of high-density use, i.e., multi-family or an office building, would require some sort of incentive because of the existing structure and cost of demolition.

Councilman Watkins understands that the Development Agreement states that the rate of return is capped at 15 percent. Therefore, if it turns out that the project becomes more profitable for the developer, the amount of the TIF would be reduced.

Mr. Arteberry and City Attorney Cook agreed.

Responding to Councilwoman Brofsky's question, Mr. Arteberry stated that his assigned role is as an advisor to the City to analyze the financial viability of the project. He agreed that determining whether another project that did not use TIF could be viable was outside the scope of his role for the City.

Mayor Hepperly pointed out that Mr. Arteberry has worked with the City for over 15 years and is very familiar with the financials of the City and how it approaches decisions from a financial perspective. She has a lot of confidence in him and the work he has done over the years.

Austin Bradley, EPC Real Estate Group, 8001 Metcalf Avenue, Overland Park, Kansas thanked the Mayor, Council and staff for their time going through the process. He explained that over the last 60 to 90 days they have gone through a series of approvals and have confidence to make commitments to their team. They have engaged an active adult consultant, Gray Star, from Dallas, who has had experience with active adult communities over the last 10 years. They conducted a comprehensive market study and have been working on programming, unit design and layout. They are continuing to work on the final plans and with Council approval this evening, they are prepared to move full steam ahead with demolition in the third quarter and construction commencing by the end of the year. They are extremely excited to bring the project to Fairway.

Bob Johnson, Polsinelli Law Firm, 5332 Falmouth Road, Fairway, also thanked the Mayor, Councilmembers, consultants and staff for the highly professional and constructive process. He believes this type of housing diversity and the option for people in the community to age in place and stay in the community is important and asked the Council to approve the Ordinance.

Responding to Councilman Watkins' question, Mr. Johnson confirmed that the project would not move forward if the Ordinance was not approved.

Mayor Hepperly asked for discussion from the Council. Hearing none, she asked for public comment on this item.

Julie Peterson, 4831 Belinder Court, Westwood, Kansas, stated that she is Director of the US Green Building Council (USGBC) Central Plains Chapter, which covers Kansas and Missouri. She explained that LEED is the world's most

widely used and robust green building system with more than 100,000 buildings participating today. LEED certified buildings are proven to save money, improve efficiency, lower carbon emissions and create healthier places for people. She understands that the rating system being proposed for the project does not provide any specific data on environmental or economic benefits of certification. Conversely, the performance for LEED certified buildings is tracked and reported and shows reduced water and energy consumption, reduced CO2 emissions and increased levels of occupant health and satisfaction. She encouraged the Council to revise the language in the Development Agreement to reflect a requirement for LEED certification.

Kathy Gates, 5406 Mission Road, thanked the Council for exploring this opportunity for residents and others as she agrees it will be an asset to the community. As Chair of the Shawnee Indian Mission Foundation, she appreciates the contributions being made by the developer. She thinks that the sustainability requirement in the Agreement falls short of the standard she believes Fairway intended to set. She pointed out that not all green certifications are the same and she encouraged the Council to revise the language in the Agreement to reflect a requirement for LEED certification rather than Green Globes. She noted that Westwood View Elementary is going for LEED gold certification with construction of the new school. She knows extra work is involved but with all the measurables that the City could tout and feel good about, she thinks it is the right thing to do.

Joe Alburty, 5905 Fontana, discussed his concerns about building a large active adult project off of Shawnee Mission Parkway, mostly because of the resulting sudden population density it would create in terms of increased traffic and noise levels. He also thinks there are unanswered questions concerning how the property will be managed and how it would compare to other senior assisted living facilities. In addition, he thinks the time allowed for the Council to collect public comments has been compressed because of the pandemic.

Mr. Alburty does not agree the area is depressed and is concerned about more TIF applications coming in. While the City may benefit from having a good quality and affordable retirement community option, he thinks this one could be done without TIF financing. He is concerned that the motive of future developers would be simply to take advantage of TIF, using it to build oversized projects and maximizing profits for outside investors. He asked that the Council deny the Ordinance being requested.

Mayor Hepperly asked for additional public comment. Hearing none, she closed public comment on this item.

Mayor Hepperly asked for discussion from the Council.

Councilman Bailey asked if the developers could explain the Project Green Globes 2 certification and why LEED certification is not planned for the project.

Mr. Bradley explained that Sara Greenwood with Greenwood Consulting was engaged about 6 months ago to conduct a full project review. Ms. Greenwood is a widely known and respected expert in the field and the developers used her recommendation for the Green Globes certification. They do not want to dismiss LEED certification, but Green Globes was her recommended certification. Ms. Greenwood has attended previous Council meetings and explained the certification. There were no questions regarding her recommendations at that time they did not ask her to attend this meeting. He said she is the best person to address the question.

Councilman Bailey agreed that the issue was previously discussed but he does not remember the details. He understood that the Council had gotten to a point where everyone was comfortable with the Green Globes certification. He also pointed out that the project is not a government or municipal project like a school.

Councilwoman Brofsky said that the Council did propose LEED certification initially and then through negotiations, agreed to Green Globes as a compromise. She also recalled that there was some pushback concerning LEED certification based on increased cost.

Mr. Bradley is not sure if there is a cost difference. He explained that the residential unit component makes it more challenging versus a government building or a school. Ms. Greenwood reviewed the specific residential product type and her recommendation was tailored to the site and the product type, taking into account the City's policy related to sustainability.

Mr. Johnson explained it is not a one size fits all approach and LEED is not better than Green Globes or vice versa. They are both highly respected sustainability certifications. He discussed the Brookridge project, which is considered a standard bearer project for sustainability, and the recommendation was for LEED certification for the office building and Green Globes certification for the residential component. Ms. Greenwood analyzed the proposed project and determined that Green Globes was the best fit for the project.

Responding to Councilman Bailey's question, Mr. Johnson stated that the developer would be open to having a good faith conversation with someone about an alternative program. He pointed out that the project is in the final development design stages using the Green Globes certification so a shift would add time and increase costs.

Councilman Watkins addressed Mr. Alburty's concerns about population density. He understands that if the current office building was fully leased that there would be more occupants in the office building than the proposed apartments.

Mr. Johnson confirmed that both the occupancy and traffic trips would be less with the proposed apartments than a fully leased office building.

Mayor Hepperly asked Mr. Bradley to discuss the management of the property.

Mr. Bradley stated that EPC manages all of its own properties but would not be opposed to stepping aside and bringing in Gray Star to manage the facility. He confirmed that no one currently involved in the management of the Office Park would be involved.

Responding to Councilwoman Brofsky's question, Mr. Bradley stated that there will be between 10 and 15 new employment opportunities for the project, which will include maintenance and leasing staff.

Mayor Hepperly asked if there were further questions for staff or the applicants. Hearing none, she asked for discussion from the Council.

Councilman Smith stated that based on his involvement with the Planning Commission and his attendance at the last two Council meetings, it is hard to imagine a proposed solution that is better than the one in front of the Council. He thinks the risks of not moving forward far outweigh any risks of moving forward, especially the risk of not getting an alternative project of this size and the dilapidated state of the current building. He did suggest with the anticipated increase of residents that the Council may consider restricting the Wards structure to ensure the Wards continue to be evenly represented and distributed.

Mayor Hepperly addressed comments made during public comment. Regarding the comment that the Public Hearings were condensed and rushed, Mayor Hepperly thinks that statement could not be further from the truth. The Public Hearing this evening was continued from February, so it spanned two Council meetings which is unusual. The Public Hearing from several months ago concerning establishment of the TIF District spanned three Council meetings and again, that is unusual. The City emailed three or four Constant Contact notifications with the date and time of the Public Hearing and she has written about it several times in the Fairway newsletter. She believes that adequate opportunity was given to residents to comment on this project.

She next responded to comments stating that approval of this project would start other large projects coming to Fairway. She does not agree. Fairway is a single-family residential community of one square mile. The Comprehensive Plan gives the Council the opportunity to consider growth and changes in the community. She questioned the reasonableness of allowing the Office Park to remain for 20 to 30 years based on the existing office situation and pandemic's possible impact to office leasing. This opportunity will give residents an opportunity to remain in the community where they currently live.

Mayor Hepperly lastly addressed comments about the blighted building as a factor in qualifying the property for TIF Funding. TIF funding is available for this project because it meets the requirements that the building be 35 years old. She agrees that the current building is in disrepair and the City is not happy about that and has discussed the matter with the property owner on multiple occasions.

Even though that has happened, blight is not the reason that TIF funding is available for the project.

Councilwoman Brofsky stated that she has been consistently skeptical of the TIF and she remains so. She thinks that many, if not all, developers will ask for a TIF because it is money. The \$10 million that the City is reimbursing the developer is money that would otherwise be tax dollars. She agrees that the City has done a good job of negotiating the Agreement and Fairway will do well. However, residents are also members of the County, they go to the library and to the Community College and those entities will lose out on money. This is a prime location and she is not convinced that a TIF is necessary. This is the first and only project before the Council and she thinks it is important to consider what other projects could be available. While she understands that the project is available for TIF financing based on conservation, Mr. Arteberry discussed that historically, TIF financing was to get rid of blight and overcome barriers to developers. She is skeptical of the true need for TIF financing and thinks the City should focus on what makes sense for Fairway residents and their tax dollars.

Mayor Hepperly explained that the Council was elected to be visionaries and to look to the future and the Comprehensive Plan provides that guidance. While she was initially opposed to TIFs, the project intrigued her, and she thought it was a interesting concept for Fairway. After learning more about TIF, she is in favor of the project. She thinks the Agreement protects the City both financially and in other areas. She asked Councilmembers to think about the future and what the project would mean for the City from a visionary point of view.

Councilman Bailey agrees the project will be an asset to the citizens of Fairway. He has been skeptical of a lot of things during the process. There have also been multiple questions from citizens. Those questions were answered and those residents have not returned to voice any concerns. If there were 40, or even 5, residents lined up against the proposal he would not be in favor of it. Residents are not indicating that they are against the proposal. The project is \$60 million and \$10 million will be given to the developer and the citizens seem to be alright with that. For that reason, he is in favor of approving the Ordinance.

Councilman Rogers referred to the property tax comparison, which assumes a 2 percent annual growth. He thinks that based on the improvements that is an incredibly conservative number. He asked if the annual growth turns out to be 4 or 6 percent, what affect that would have on the parties involved.

City Administrator Nogelmeier explained that any difference in the project's annual growth would get the developer to the \$10 million cap quicker, essentially shortening the time of the TIF.

Discussion follows regarding how the TIF financing affects the School District. Mr. Wempe stated that the 29 1/2 mils levied by the State for the School District are off-limits for TIF financing.

Councilman Watkins thinks that the City has done a tremendous job of taking care of residents in the Development Agreement. The City will be bringing in a lot more money with the project and while there may be increased expenses, many of those are covered in extra fee payments from the developer. The School District is getting \$3.8M through the project during the TIF period, which he views as a tremendous win for the School District.

As for his final assessment, Councilman Watkins stated that no one else has come forward indicating interest and the developers have stated that without TIF, they will not move forward with the project. He agrees this is a great diversification for the community and provides a great option for residents to stay in the community. He considers this a win/win opportunity.

Mayor Hepperly asked for additional discussion from the Council. Hearing none, she asked for a motion.

Councilman Levin moved that the Council approve Ordinance #1760 – an Ordinance of the Governing Body of the City of Fairway, Kansas Making Findings, Adopting a Redevelopment Project Plan Pursuant to K.S.A. 12-1770 et seq., and Amendments Thereto, and Approving a Redevelopment Agreement. Councilwoman Keys seconded the motion.

Mayor Hepperly requested a roll call vote.

Councilwoman Keys voted yes.
Councilman Levin voted yes.
Councilman Bailey voted yes.
Councilman Rogers voted yes.
Councilwoman Buszek voted no.
Councilman Watkins voted yes.
Councilwoman Brofsky voted no.
Councilman Smith voted yes.

Motion carried 6 to 2 by the required 2/3rds majority.

- C. Consider Resolution #2022-B – A Resolution Determining the Intent of the City of Fairway, Kansas to issue its Industrial Revenue Bonds in the Amount Not to Exceed \$27,000,000 to Finance the Costs of Acquiring, constructing and Equipment a Commercial Project for the Benefit of Fairway AA, LLC. And its Successors and Assigns (Sales Tax Exemption Only).

Kevin Wempe explained that the Industrial Revenue Bonds (IRB) are being used as a vehicle for granting an incentive for sales tax exemption on construction materials and furniture, fixtures and equipment for the project. As the developer spends money on materials for the project, the sales tax would be forgiven on those items. The company purchases its own bond. The City is not liable for repayment of that bond, and the City's credit rating is not affected. Issuance of the IRBs is a two-step process. Step one is the consideration of a Resolution of

intent and step two would come closer to final construction or completion of the project when the Council would consider an Ordinance authorizing the issuance of the IRBs to reimburse or pay for project costs. The legal effect of approving the Resolution tonight is that the developer can access its sales tax exemption certificate and move forward with purchasing materials on an exempt basis.

Responding to Councilman Bailey's question, Mr. Wempe explained that the developer is projecting \$60 million of overall project costs. Pursuant to State Statute, labor is an exempt cost, so the developer estimates \$27 million in actual materials, furniture, fixtures and equipment purchased. There are three entities foregoing sales tax on the \$27 million and those include 6 ½ percent for the State, the County at just under 2 percent and the City around 1 percent. He would estimate the tax savings to the developer would be just under \$3 million.

Councilwoman Brofsky asked if the Council has given the impression that they would approve the Resolution concerning issuance of the IRBs by passing the Development Agreement earlier in the meeting. Mr. Wempe agrees that the Council has given that impression. He added that issuance of the bonds is within the purview of the Council but the language in the Development Agreement would not necessarily bind the Council so a Resolution is required.

Mayor Hepperly asked for additional discussion from the Council. Hearing none, she asked for public comment on this item.

Skip Hensler, 5657 State Park Road, asked if residents would own or rent the luxury apartments.

Mayor Hepperly responded that the apartments would be rental only.

Mr. Hensler asked if the economy were to change negatively, whether the City would be affected.

City Administrator Nogelmeier explained that the Development Agreement locks in the cap of the TIF increment and therefore, locks in the maximum amount that the City would reimburse the developer, regardless of what happens with inflation or the economy in the future. In addition, whether there is 10 percent occupancy or 100 percent occupancy is of little concern to the City from a financial perspective because the additional fees the developer has agreed to pay are not tied to the occupancy rate. If the developer is unable to lease a majority of the rental units, that could have an impact on the appraisal because part of the appraisal of commercial property is based on revenue potential. In that situation, the assessed valuation would be impacted and that would only harm the developer because it would reduce the amount of TIF money for them.

Steve Platt, 5348 Chadwick, stated he is having trouble understanding why the City has to authorize the IRBs but not have any obligation to pay them. He asked what the length of the term would be, how they would be repaid, and what draws the developer would be able to take against the bonds up front. He also asked if

there was some kind of security if the project does not come through as anticipated and whether the City would have a say in how the property is managed if it is abandoned or does not succeed.

Mr. Wempe responded that IRBs are usually outstanding a little longer than the construction period so the bond is short term. The City is not liable for repayment of the bonds. The company will purchase its own bond and make debt service payments to itself so it is not really a financing mechanism. The company will then ultimately redeem its own bond when it matures and construction is completed.

Responding to the question as to what happens if the project fails, Mr. Wempe stated that would be considered a default under the Development Agreement and the incentive structure would collapse, including the IRBs.

Mayor Hepperly asked for additional public comment. Hearing none, she closed the public comment on this item.

Mayor Hepperly asked for additional discussion. Hearing none, she asked for a motion.

Councilwoman Keys moved that the Council approve Resolution #2022-B – A Resolution Determining the Intent of the City of Fairway, Kansas to issue its Industrial Revenue Bonds in the Amount Not to Exceed \$27,000,000 to Finance the Costs of Acquiring, constructing and Equipment a Commercial Project for the Benefit of Fairway AA, LLC. and its Successors and Assigns (Sales Tax Exemption Only). Councilman Watkins seconded the motion and the motion carried 6 to 2.

D. Consider Ordinance #1758 – An Ordinance Amending the Fairway Development Ordinances Pertaining to Solar Energy Systems Amending and Repealing Existing Sections 15-235, 15-298 and 15-798 of the Fairway Development Ordinances.

City Clerk Young explained that Planning Commission recommended the draft Ordinance to the Council at the February meeting and the Council remanded it back to the Commission for further review with comments. Councilwoman Buszek emailed comments to staff that was then forwarded to the Commission. Chair Wendy Bailey also discussed the matter with Councilman Dan Bailey.

The Commission has now submitted a revised draft with comments and modifications.

First, the Commission still wants to review all solar systems and language has been added to Section 152-35 to allow for that review.

Second, the Commission reconsidered free standing solar systems, which they initially opposed. Language was added that allows ground mounted systems to be

considered based on the applicant meeting the exception criteria outlined in the Code.

Third, the Commission added language to require the site plan to identify any trees to be removed from the property for a solar system project. The City does not regulate trees on private property but Fairway is the City of Trees and takes great effort to maintain Right-of-Way trees and the Commission views private trees as an asset.

Finally, a definition has been added for solar energy systems and some additional language was cleaned up.

Councilman Smith stated that the Commission wanted to ensure property owners were not clearing their property of trees to add free standing solar panels in back yards. He recalled there was a comment at the last Council meeting that the fee application was perhaps burdensome for residents. With the rapidly evolving technology, the Commission concluded it was best to review all applications. He thinks the application fee is nominal in relation to the cost of the solar systems. The Commission hopes to create a checklist as the technology becomes more standardized.

Mayor Hepperly asked for additional discussion from the Council.

Responding to Councilwoman Buszek's question concerning how the solar system cost of \$30,000 was arrived at, City Clerk Young explained that is the average cost of the four applications she has reviewed.

Councilwoman Buszek stated that she researched the average cost of a mid-range 6-kilowatt system with 600 square feet of panels to be between \$12,000 and \$18,000. She provided information to staff concerning Sole Smart model ordinances that are designed to promote solar and simplify the cost and administrative burden of the application process. They partner with advocacy groups, including the National League of Cities, the National Association of Counties and the Great Plains Institute and have helped bring solar friendly language at no charge to over 450 communities in 41 states, including Johnson County and the City of Shawnee. In Shawnee, residential zones do not require special permits or public hearings. In addition, roof mounted systems up to 15 kilowatts (1500 square feet) and ground mounted systems up to 144 square feet and no higher than six feet are allowed. Ground mounted systems can also be placed on poles without compromising any greenspace.

Councilwoman Buszek cannot support the proposed Ordinance unless there is an accommodation for small roof systems to bypass Planning Commission review. She does not think it makes sense for a 400 square foot solar panel on a roof to require a site plan and Planning Commission hearing. This is especially true when City Clerk Young and Director Alani have over 50 years of combined experience evaluating and approving applications. Johnson County, the City of Shawnee and more than 400 other communities think their approach is balanced,

protects solar rights and community interests and she thinks that will work in Fairway as well.

Responding to Councilman Bailey's question, Councilwoman Buszek stated that the Sole Smart program she proposes requires a permit but would bypass Commission approval.

Councilman Smith said that the Commission has been discussing this item for several months and there was a Public Hearing that no one attended. He thinks the Commission would be the forum where the kind of information shared by Councilwoman Buszek should be shared. Obviously, the Council has the authority to approve the Ordinance, but he also does not want to circumvent the Planning Commission's role.

Councilwoman Brofsky understands the process the Commission undertook, especially since there are no regulations for solar panel installations. She thinks the role of the Council is to set policy so if the Council wants to encourage solar panels, given that sustainability is one of the City's core principals, she thinks it is good that the Council also reviews and provides perspective.

Councilman Bailey does not know anything about the Sole Smart Program but understands that it encourages solar and may relax some rules that would apply. As of now, it is the wild west for solar panels because the City has no regulations. He would rather get the proposed Ordinance approved and then further discuss and tweak the language later.

Councilman Watkins would like to see the proposed Ordinance implemented and provide the Sole Smart information to the Commission for further evaluation because he thinks that is where zoning regulations should be evaluated.

Councilman Watkins also discussed the ground mounted solar panels on Reinhardt. He estimates the solar panels are at least 16 feet x 30 feet and as close to the side and rear property lines as allowed. While the homeowners are very nice people, he has been asked by neighbors if there is anything that can be done about it. He thinks the City needs to be very careful about the size of free-standing structures.

Councilwoman Buszek asked why the Commission did not investigate Sole Smart.

City Clerk Young explained that she was not previously aware of Sole Smart. She provided Ordinance language from Mission Hills, Roeland Park, Prairie Village and Mission to the Commission to consider when drafting the Ordinance. Staff does not want the process onerous for any resident. Chapter 15 has changed numerous times over the years and she hopes that the site plan review requirement for solar panels will change at some point. She suggested to the Commission allowing staff to approve systems under a certain square footage but the Commission wanted to review the applications for the time being. Staff has

reviewed four applications in the last six months. She is optimistic once the Commission reviews several solar panel applications that the language will be revised to allow staff approval.

Councilwoman Brofsky suggested that because there are not many solar panel applications being received that this item be continued to allow time for the Commission to review and consider Sole Smart. She added that the fact that people are commenting on the look of the solar panels is concerning to her. She does not find them offensive and actually thinks it is noble that someone is trying to do something for the greater good.

Mayor Hepperly agrees, with the exception of the ground mounted solar panels at the home on Reinhardt because of what those panels have done to the enjoyment of neighboring properties.

Councilman Watkins stated that he is not opposed to solar, but thinks that roof mounted and sidewall mounted systems are adequate.

Councilman Smith explained that the Commission continues to move the Code in a forward direction on green energy. He encouraged the Council to not continue this item again. This is an evolving issue and continued improvements can be made to the Ordinance.

Councilwoman Buszek agrees that she could have attended the Commission meeting to discuss her concerns. She thinks Fairway should become a Sole Smart City and take advantage of the program because of the importance of sustainability and how Fairway feels about being green.

Councilman Bailey explained that Sole Smart may be what the City wants to do; however, this Ordinance has already been delayed and currently there is nothing in the Code that would stop someone from filling their entire back yard with solar panels tomorrow. The Ordinance can always be changed in the future. He thinks everyone on the Council is in favor of green energy, but he also thinks there has to be more discussion about filling up an entire back yard with solar panels.

Councilwoman Buszek agreed with Councilman Bailey's comments. She asked what Code regulations are currently in place if someone sought a permit for free-standing solar panels.

City Clerk Young responded that there are no regulations currently in place related to solar panels. The previous ground mounted system was approved as an accessory structure because there were no regulations. The solar panels were required to meet the side and rear setbacks and at 8 feet in height met the height requirements for an accessory structure. There are no concrete pads under the solar panels, so staff did not think they affected the greenspace requirements.

Responding to Councilwoman Brofsky's question, City Clerk Young explained that solar applications do require a permit because electrical component of the systems.

Councilman Watkins is in favor of the Ordinance because it does not prohibit free-standing structures but requires the applicant to go through the exception process. He thinks that after the Commission considers the alternative approach, changes to Chapter 15 can be made.

City Administrator Nogelmeier does not think that the application fee is cost prohibitive given the cost of the project in and of itself, even for modest systems in the \$10,000 range.

He stated that he and City Clerk Young would look into what the City of Shawnee and other cities in the area have done with respect to solar systems. He pointed out that Fairway's building codes are one of the most restrictive in Johnson County. Per capita, Fairway also has the most tear downs and rebuilds of any city in Johnson County, which indicates that while Fairway's process is restrictive, it does not discourage. Fairway has been consistent in wanting quality projects and requires permits for projects that many other cities do not require. These requirements help maintain the quality of the community and safety of residents. He is unapologetic if the process is a bit burdensome because Fairway wants to make sure that the work is done right.

Since he has been with the City, he routinely hears from residents that they want to maintain the quality and standards of the City and the Commission is on the front line of that charge. The Council gets to approve the business side of things as well but as for residential development, that is the Commission's sole purview. The Commission provided the Ordinance to the Council and then the Council asked the Commission to reconsider some things and the Commission did so. He thinks it is appropriate for the Council to approve the Ordinance and then allow the Commission to further review the Sole Smart program.

Councilwoman Buszek explained that she researched the Sole Smart program and she sent the information to staff and it was forwarded along to the Commission but she questions why the program was not even mentioned during the Commission meeting.

Councilman Smith stated that he did review the information and thinks it is something that the Commission can evaluate. He explained that the Commission looked at the Ordinances of neighboring cities and none of them mentioned the Sole Smart program. The Commission wanted to be as open as possible and not be obstructive and determined that the proposed Ordinance was the best approach. He understands there are other upcoming changes to the Code and he would expect the Council to get an updated solar energy code recommendation within the next year because of the continued evolution of the technology.

Councilwoman Buszek stated that this is a big concern for her and she thanked everyone for allowing her to speak on this issue. She agrees that some regulations need to be put in place because she doesn't want anybody to run amuck.

Mayor Hepperly asked for additional discussion from the Council. Hearing none, she asked for public comment on this item.

Steve Platt, 5348 Chadwick, agrees that the ground mounted solar panels need to be regulated because he thinks they are ugly. He suggested that the City ensure that the panels are maintained and if they are not working, that they should be removed. He further believes that the panels should be considered a reduction of greenspace because of water runoff issues. He agrees that some regulations need to be passed so the size and surrounding properties can be considered. Mr. Platt also commented that sometimes organizations present legislation or framework for legislation that may promote an industry so he suggested that Sole Smart be further evaluated.

Jim Poplinger, 5300 Aberdeen, appreciates that the Planning Commission and Council are considering passive energy. While solar is a good place to start, he also thinks the Planning Commission should be looking at wind turbines, solar shingles and battery technology.

City Clerk Young responded that the Commission discussed battery backups at its meeting. Most of these systems are no more obtrusive than an air conditioning unit and can be mounted on the exterior or in the garage. The Commission did not think it was necessary to address them. Solar shingles were also and while not an approved roofing material, an applicant can request an exception.

Councilwoman Brofsky suggested that the Planning Commission also consider solar ready homes and she offered to provide staff with a link to a website about them.

Mayor Hepperly asked for further public comment. Hearing none, she closed public comment on this item.

Mayor Hepperly asked for a motion.

Councilman Bailey moved that the Council approve Ordinance #1758 – An Ordinance Amending the Fairway Development Ordinances Pertaining to Solar Energy Systems Amending and Repealing Existing Sections 15-235, 15-298 and 15-798 of the Fairway Development Ordinances. Councilman Watkins seconded the motion and the motion carried 7 to 1 with Councilwoman Buszek voting naye.

E. Consider Building Permit Extension for Mack Colt Homes at 5823 Howe Drive.

City Clerk Young explained that the applicant is requesting an extension to March 15, 2023 due to a fire that occurred on the property when construction was almost complete.

Mayor Hepperly asked for discussion from the Council. Hearing none, she asked for public comment. Hearing none, she closed public comment on this item.

Mayor Hepperly asked for a motion.

Councilman Watkins moved that the Council approve the Building Permit Extension for Mack Colt Homes at 5823 Howe Drive to March 15, 2023. Councilman Levin seconded the motion and the motion carried unanimously.

F. Consider Agreement with Stantec for Automated Pavement Condition Assessment.

Director Stogsdill explained that the agreement is still being finalized and asked the Council to approve the agreement subject to review by City Attorney Cook. This assessment was last completed in 2015 and involves a van that drives both ways down each street in Fairway to completely scan the road and curbing to give a pavement condition index. The index is then used to guide future capital improvement projects. The City had budgeted for this work at \$15,000; however, because Westwood, Roeland Park and Fairway are getting the work done at the same time, the cost will be decreased to \$6,300.

Responding to Councilman Watkins' question, Director Stogsdill stated that Stantec recommends this work to be completed every 3 years.

Mayor Hepperly asked for additional questions or discussion from the Council. Hearing none, she asked for public comment on this item. Hearing none, she closed public comment.

Mayor Hepperly asked for a motion.

Councilman Watkins moved that the Council approve the Agreement with Stantec for Automated Pavement Condition Assessment, subject to final review by legal counsel. Councilwoman Keys seconded the motion and the motion carried unanimously.

COMMENTS BY GOVERNING BODY

Mayor Hepperly asked if there were comments from the Council on any item.

Councilwoman Brofsky announced that on September 17, 2022, Fairway is participating with all the northeast Johnson County municipalities in a Go Green Environmental Fair. They are looking for volunteers and still working out the details but she believes it will be held at Sylvester Powell. The event is family friendly and she encouraged everyone to attend to learn about how to make businesses, homes, and the community more sustainable.

Mayor Hepperly provided to each Councilmember a list of 52 Tips for Successful Public Service that was published by the League of Kansas Municipalities. She thinks it is a good refresher and encouraged everyone to review the list.

Mayor Hepperly also asked Councilmembers to calendar both the City Council meetings (held on the second Monday of the month at 6:30 P.M.) and the combined Administration/Finance Committee meetings (held on the last Wednesday of the month at 6:30 P.M.) for the this year. She would like to have good attendance at both of those meetings.

PUBLIC COMMENT

Mayor Hepperly asked if anyone in the audience would like to make public comment on any items not on the agenda.

Hearing none, she closed the public comment portion of the meeting.

ADJOURNMENT

Councilman Bailey moved to adjourn. Councilman Levin seconded the motion and the motion carried unanimously.

There being no further business to come before the Council, the meeting was adjourned at 9:19 P.M.

Mayor Melanie Hepperly

Attest:

Barb Fox, Recording Secretary