

**City of Westwood, Kansas**  
**Regular City Council Meeting**  
**4700 Rainbow Boulevard**  
**December 12, 2019 – 7:00 p.m.**

Council Present: John M. Yé, Mayor  
Jason Hannaman, Council President  
Lisa Cummins, Councilmember  
Paul Day, Councilmember  
Jeff Harris, Councilmember  
David Waters, Councilmember

Council Absent: None

Staff Present: Fred Sherman, CAO/City Clerk  
Greg O'Halloran, Chief of Police  
John Sullivan, Director of Public Works  
Charles Mills, City Treasurer  
Ryan Denk, City Attorney

**Call to Order**

Mayor John M. Yé called the meeting to order at 7:00 p.m. on December 12, 2019. The City Clerk called the roll. A quorum was present.

**Comment on Non-Agenda Items**

No comments were made

**Approval of Meeting Minutes**

Motion by Councilmember Day to approve the November 14, 2019 Council Meeting Minutes to add the Public Works Director as present at the meeting. Second by Councilmember Waters. Motion carried by a 5-0 voice vote.

**City Treasurer's Report**

**Approval of Financial Statement – November 2019**

Mr. Mills referred to the Treasurer's Report and offered to answer any questions. November 2019 revenues for the general fund were in the amount of \$159,680 and expenses for the month were in the amount of \$184,498 with a decrease of \$24,818.66 in the fund balance for the month of November 2019.

Motion by Councilmember Waters to approve the November 2019 financial reports as submitted. Second by councilmember Cummins. Motion carried by a 5-0 voice vote.

**Appropriation Ordinance 709**

Motion by Councilmember Day to approve appropriation ordinance #709 in the amount of \$193,614.95. Second by Councilmember Waters. Motion carried by a 5-0 voice vote.

## **City Attorney Report**

### **A. Industrial Revenue Bonds (IRB) for Woodside Village North project**

Ordinance No. 951 was approved at the August 14, 2014 Westwood City Council meeting to authorize the issuance of Industrial Revenue Bonds in an aggregate principal amount not to exceed \$9,000,000, to provide funds for the purpose of constructing and equipping the Woodside Village North project. The bonds were originally issued with a final maturity date of not later than December 31, 2016.

Ordinance 976 was approved at the December 8, 2016 Westwood City Council meeting to extend the final maturity date to July 1, 2017. Ordinance 985 was approved at the October 12, 2017 Westwood City Council meeting to extend the final maturity date to April 1, 2018.

Ordinance 989 was approved at the April 12, 2018 Westwood City Council meeting to extend the final maturity date to February 1, 2019, and Ordinance 998 was approved at the December 13, 2018 meeting to extend the final maturity date to September 1, 2019.

The construction activity that continued through 2019 on the Woodside Village North structure to address water intrusion matters is mostly completed. A request was made to the city in October of 2019 to further extend the term of the bond to capture all final costs, and to increase the principal amount of the bond to \$20M, to cover all costs for the north project phase.

When the original Resolution of Intent was passed (Res 43-2013), it was for \$73 million for both north and south phases combined. Bonds however, are issued reflecting generally only in the amount of the construction materials and FF&E (furniture, fixtures, and equipment). The \$9,000,000 bond amount issued in 2014 represented the then estimated cost of construction materials and FF&E (plus a cushion) for the north phase, and was then about 50% of the total construction budget for the north phase.

Given the request an increase in the total bond amount, new bonds need to be issued. The purpose of this IRB structure is to extend the sales tax exemption on construction materials for the project. This has no effect on tax revenues received by the City or on the financial agreements for the Woodside Village Development project and the expansion of the Woodside Club facility.

The proposed ordinance will authorize the issuance of (new) taxable Industrial Revenue Bonds in an aggregate principal amount not to exceed \$11,000,000 with a final maturity date of not later than July 31, 2020, to acquire, construct and equip the first phase of the Woodside Village project.

The passage of the ordinance also authorizes the mayor to sign and the city to enter into the following documents:

- Fifth Supplemental Bond Trust Indenture (the "Fifth Supplemental Indenture"), which supplements and amends the Bond Trust Indenture dated as of September 1, 2014, as amended (collectively, the "Indenture"), each between the Issuer and UMB Bank, N.A. (the "Trustee");
- Fifth Amendment of Base Lease Agreement which supplements and amends the Base Lease Agreement dated as of September 1, 2014, as amended, each between the Company, as lessor, and the Issuer, as lessee;
- Fifth Amendment of Lease Agreement which supplements and amends the Lease Agreement dated as of September 1, 2014, as amended (collectively, the "Lease Agreement"), each between the Issuer, as lessor, and the Company, as lessee; and a Bond Purchase Agreement with respect to the Bonds, among the Issuer, the Company, and the Company in its capacity as purchaser.

Rich Wood, Polsinelli, the attorney for the developer offered to answer any questions. Councilmember Harris asked Mr. Wood why the developer is not asking for an extension that expires on a date later than July 31, 2020 to give the developer more time to complete the work. Mr. Wood stated that the timeline that is being proposed will give the developer enough time to finish the remediation work and complete the commercial tenant finish. Mr. Denk noted that the expenditures for remediation efforts have already been made, and the tenant finish would be a small amount of the proposed \$11,000,000 cap.

Councilmember Harris asked if the extension would have any other implication on future construction. Councilmember Waters said this would not affect future dates for the Woodside Club renovation or Phase 2. Mr. Denk said the Club commencement date is tied to the commencement of Phase 1. Mr. Denk said that Phase 2 construction commencement is based on completion of construction of the Woodside Clubhouse.

Gina Riekoff, Gilmore and Bell and City bond council, offered to answer any questions.

Councilmember Harris pointed out that the materials subject to the IRB would not be purchased in Westwood.

Motion by Councilmember Waters to pas Ordinance No. 1006 for the issuance of Industrial Revenue bonds in an aggregate principal amount not to exceed \$11,000,000 of taxable Industrial Revenue Bonds (Woodside Village North Project), Series 2020. Second by Councilmember Hannaman. Mr. Sherman performed a roll call vote. Motion passed with a 4-1 vote with Councilmembers Hannaman, Cummins, Harris and Waters confirming and Councilmember Day dissenting. Councilmember Day stated he believed this matter should be tabled until the January 2020 meeting so the newly elected Mayor and Council can vote on it.

#### **B. Woodside Village Redevelopment agreement – 10<sup>th</sup> Amendment**

The Woodside Village Redevelopment Agreement, originally approved on January 12, 2012, sets forth those rights and obligations of the city and the developer as they relate to the redevelopment of the Woodside Village Redevelopment (TIF and CID) District area.

The Redevelopment Agreement document was amended several times in 2012 as the Woodside Village project plans progressed through the entitlement and approval processes, and modified again in 2014 with the 7th and 8th Amendments at the start of construction regarding bonding for financing, Guaranty obligations, and performance bonding of the General Contractor of the project.

The 9th Amendment to the Redevelopment Agreement was approved in October of 2016 to address the following items for the Club and South phases:

- Increases the Public Financing "Cap" for the South Phase of the project based on anticipated increases in construction costs;
- Changes the deadlines for the South Phase of the project if the Club phase and South phase are financed together;
- The creation of a new additional 0.9% Community Improvement District (CID) on the Woodside Club property only; and
- Agrees to release the South Phase land to the developer prior to completion of the Club Phase of the project if the Club phase and South phase are financed together.

The proposed 10th Amendment modifies the completion date of the North Phase noted in Section 6.7(b) of the Redevelopment Agreement to codify it with the request to extend the sales tax IRB exemption to July 31, 2020.

Motion by Councilmember Waters to authorize the Mayor to sign the Tenth Amendment to the Woodside Village Redevelopment Agreement. Second by Councilmember Hannaman. Mr. Sherman performed a roll call vote. Motion passed 4-1 with Councilmembers Hannaman, Cummins, Harris and Waters confirming and Councilmember Day dissenting.

### **C. First Amendment to the Temporary Construction Easement on Woodside Club Property**

In 2014 the City of Westwood granted, as being the property owner of record, a Temporary Construction Easement on the Woodside Club property to help facilitate the construction of Woodside Village North building and parking structure. This easement generally covers the area of the club's western-most outdoor tennis court (Court #4 North).

Shoring, or temporary concrete and steel retaining walls was utilized adjacent to the Woodside indoor bubble courts and along 47th Place during the excavation and construction of Woodside Village. This more-expensive shoring technique allowed for the construction of the eastern and southern retaining walls of the parking structure adjacent to the Woodside Club property and adjacent 47th Place, 15 feet below street surface without disturbing the street or the indoor tennis structure. The granting of a temporary construction easement on the Woodside Club property allowed for a more cost effective open trench excavation construction technique to be utilized north of the indoor tennis court bubble.

The temporary construction easement allowed for the construction activity until December 31, 2018, at which time the tennis court was to be restored unless it is being relocated and replaced in conjunction with the Woodside Club expansion project.

The proposed First Amendment to the Temporary Construction Easement on Woodside Club property extends the deadline on when the tennis court is to be resorted. The proposed amendment aligns with the construction phasing deadline noted within the Woodside Village Redevelopment Agreement document. This amendment requires reconstruction on the earlier of: (1) January 12, 2022 if they fail to commence Club improvements as required by the Redevelopment Agreement; or, (2) by January 12, 2025 with the completion of the Club expansion project phase.

Councilmember Harris said he understood that remediation work caused a delay in construction on the Club, he was still concerned that construction on the club is not fully financed. Councilmember Harris said he thought it would be a waste of resources to require Woodside to install a tennis court just to take it out when construction commences. Councilmember Cummins stated she agreed with Councilmember Harris. Councilmember Cummins asked if there was an update from the developer on the status of financing for the club and Phase 2. Mayor Yé said the developer told him the club was fully financed and Phase 2 was about 90% financed. Councilmember Cummins noted that that update was provided a few months ago. Mayor Yé said he would not speak on behalf of the developer, but it was his understanding that the development team was waiting on the remediation work to be complete to present to investors.

Councilmember Day said he did not think the Council has been well informed by the developer and it was troubling. Councilmember Day encouraged the Councilmembers that were being sworn in at the January meeting to look at this matter extremely closely.

Councilmember Harris asked staff if there are other options, aside from requiring the tennis court be reinstalled, to press the developer on this point. Councilmember Day suggested that the developer provide an update to the city with a general update on financing and construction. Mayor Yé said he was under the impression there has not been an update lately because there was nothing to update the city about.

Councilmember Harris asked if construction or financial planning activity would be affected if the Council did not approve the matter that evening. Mr. Sherman said it would put the City in a position to enforce the breach of the contract.

Councilmember Water said currently he is not in favor of enforcing the breach of contract, but he had hoped that the developer would have been at the meeting to provide and update to the City that evening. Councilmember Waters said he would not vote to approve the amendment.

Councilmember Harris said the Governing Body has an obligation on behalf of the citizens to address the breach of contract. Councilmember Harris said the Governing Body could either approve the amendment, or it has an obligation to resolve the matter. Mr. Denk if the Governing Body is interested in exploring options available to them, it would be best to table the matter and work with staff to resolve the issue.

Motion by Councilmember Waters to continue this matter until the next appropriate meeting to be brought up by staff. Second by Councilmember Cummins. Motion carried by a 5-0 voice vote.

#### **Administrative Report**

Mr. Sherman had nothing to report.

#### **Public Safety Report**

Chief O'Halloran referred to the November 2019 Public Safety report and Court Report and offered to answer any questions.

#### **Public Works Report**

Mr. Sullivan referred to the November 2019 Public Works report and offered to answer any questions.

#### **Committee Reports**

##### **Administration & Compensation Committee**

Councilmember Hannaman said he is working with Mr. Sherman to implement the new accounting system.

##### **Business & Community Affairs Committee**

Councilmember Cummins thanked staff for their work on the Mayor's Holiday Tree Lighting that was held on Thursday, December 5<sup>th</sup>.

##### **Public Safety Committee**

Councilmember Day had nothing to report.

##### **Public Works Committee**

Councilmember Waters had nothing to report.

**Parks & Recreation Committee**

Councilmember Harris had nothing to report.

**Mayor's Report**

Motion by Councilmember Waters to authorize the Mayor to nominate Laura Steele for NEJC Chamber Leadership Northeast. Second by Councilmember Cummins. Motion carried by a 5-0 voice vote.

Mayor Yé provided an update on the 2020 Westwood Foundation budget.

**Adjournment**

Motion by councilmember Waters to adjourn the meeting. Second by Councilmember Harris. Motion carried by a 5-0 voice vote. The meeting adjourned at 8:19 pm.

APPROVED: \_\_\_\_\_  
John M. Yé, Mayor

ATTEST: \_\_\_\_\_  
Frederick L. Sherman, City Clerk