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STAFF AND CONSULTANT'S REPORT TO THE CITY COUNCIL

DATE: JULY 18, 2024

TO: CITY COUNCIL FOR THE CITY OF PLEASANT HILL
FROM: CITY STAFF AND CONSULTANTS (LAUBER MUNICIPAL LAW)
RE: THE PLEASANT HILL MARKETPLACE DEVELOPMENT INCENTIVES APPLICATION

Brief Overview

At the July 8, 2024 City Council meeting, the Council and staff were presented with preliminary details of the proposed Pleasant Hill Marketplace ("**Development Project**"), which includes formation of a Community Improvement District, approval of a Chapter 100 Plan, and approval of a Sales Tax Reimbursement Agreement. After consideration, the Council voted to direct City staff to bring forward any necessary ordinances to effectuate the details of the proposed Development Project.

This packet includes: i) a Development Project summary; ii) a summary of the Comprehensive Development Agreement; iii) a summary of the Community Improvement District, the Blight Study for the Pleasant Hill Marketplace, and the Cooperative Agreement for the Pleasant Hill Marketplace Community Improvement District; and iv) a summary of the Chapter 100 Plan. Each of these items will be presented for City Council consideration and approval at the July 22, 2024 City Council meeting.

Development Project

The City of Pleasant Hill, Missouri ("**City**"), was approached in December 2023 by Cadence Commercial Real Estate, LLC for the relocation of the Price Chopper grocery store in Pleasant Hill, currently located at 2101 MO-7 Highway ("**Development Project**"). The Applicant proposed the relocation of the current Price Chopper to approximately 20 acres of vacant land located North of 163rd Street and East of MO-7 Highway, accompanied by approximately five pad sites, which would be developed and prepared by the Applicant for future vertical development. The City and the Applicant began initial due diligence regarding the proposed Development Project, which led to the proposal of utilizing a Community Improvement District, a Chapter 100 Plan, and a sales tax revenue reimbursement to incentivize the Applicant to construct and develop the Development Project, and thereby retain a grocery store within City limits.

Applicant Information

Cadence Commercial Real Estate, LLC was formed in 2015 and is a corporation formed for the purpose of developing and leasing real and personal property that is ultimately used for retail sites and industrial properties. As is common with similar projects, Cadence Commercial Real Estate, LLC formed a special purpose entity, Pleasant Hill Marketplace, LLC ("**Applicant**"), for the development of the Pleasant Hill Marketplace. If approved, the Comprehensive Development Agreement will be executed by Pleasant Hill Marketplace, LLC.

Project Summary

In May, the City and the Applicant agreed to a Terms Sheet proposing an approximately $9.5 million incentive to construct and develop the Development Project within the City, which would retain a grocery store within City limits. The Comprehensive Development Agreement before the City Council has been submitted according to those terms.

- The Development Project consists of an approximately 20-acre site located at the North-East corner of MO-7 Highway and 163rd Street. The Pleasant Hill Marketplace will include an approximately 60,000 square foot grocery store and approximately five pad sites, which total approximately 17,650 square feet. The pad sites will be prepared for future vertical development.
- The total Development Project cost is estimated to be $25.8 million.
- The Applicant is requesting $9,562,021.00 in public assistance for the reimbursement of certain Reimbursable Project Costs. The requested amount is approximately 37% of the total Development Project costs. The public costs are distributed as follows:
    - **Community Improvement District:**
        - A CID sales and use tax in the amount of 1.0% will be levied within the CID boundaries. This means customers who shop at the proposed Pleasant Hill Marketplace will pay a 1% CID sales tax, in addition to other sales taxes.
        - The maximum amount of CID Sales Tax Revenue available to reimburse the Applicant is $5,746,600.00.
        - If approved, the CID would remain in place for the statutory maximum of 27 years, and as permitted in the CID Act, which would allow for early termination or an extension of the CID's term of existence.
        - CID Sales Tax Revenue shall be used for CID-eligible costs.
    - **City Sales Tax Revenue Reimbursement:**
        - The City will reimburse to the Applicant 50% of the City's 1.75% sales tax revenue generated by the Development Project.
        - The 1.75% City sales tax rate is comprised of the 1% general revenue sales tax and two Capital Improvements sales taxes, which total 0.75%. All other City sales taxes are not included in the Sales Tax Revenue Reimbursement.
        - The amount of City Sales Tax Revenue generated by the Development Project shall be calculated as the amount that is above the gross sales of the existing grocery store sales of $21,000,000.00.
        - The Sales Tax Revenue Reimbursement is estimated to total $2.2 million; however, this incentive will terminate after 20 years or when the incentive totals $2.2 million, whichever comes first. When the sales tax revenue reimbursement terminates, the City shall receive 100% of the sales tax revenue generated from the Development Project.
    - **Chapter 100 Industrial Revenue Bonds:**
        - Chapter 100 Industrial Revenue Bonds provide property tax abatement and sales tax exemption for construction materials.
        - Only the grocery store portion of the Development Project is subject to the Chapter 100 incentives.
        - The term of the bonds shall be for 20 years. The bonds will be subject to separate approval when the necessary documents have been prepared. The Council is requested to authorize the engagement of Gilmore & Bell, P.C. to complete this component.

- The Applicant will pay a fixed Payment in Lieu of Taxes of the ad valorem property taxes otherwise due for years 1-20 to the City and to any applicable Collection Authority by December 31st of each year.
- The Chapter 100 are estimated to total approximately $1,300,000.00.

Comprehensive Development Agreement

The City and the Applicant have proposed a $9,562,021.00 incentive for the Applicant to construct and develop the Development Project within the City, which would retain a grocery store within City limits. A summary of the Development Agreement is provided in outline form below and highlights the key provisions of the Development Agreement.

Article I – Rules of Interpretation

- Article I sets forth the rules of interpretation and definitions that are applicable to the Development Agreement.

Article II – Development Project and Incentives

- Article II addresses the Development Project description and financing of the Development Project.
- The Development Project consists of an approximately 20-acre site located at the North-East corner of MO-7 Highway and 163rd Street. The Pleasant Hill Marketplace will include an approximately 60,000 square foot grocery store and approximately five pad sites, which total approximately 17,650 square feet. The pad sites will be prepared for future vertical development.
- The total Development Project cost is estimated to be $25,800,000.00.
- The Applicant is requesting $9,562,021.00 in public assistance through reimbursement of certain Reimbursable Project Costs. The requested amount is 37% of the total Development Project costs. The public costs are distributed over the following incentives:
    - **Community Improvement District:**
        - A CID sales and use tax in the amount of 1.0% will be levied within the CID boundaries. This means customers who shop at the proposed Pleasant Hill Marketplace will pay a 1% CID sales tax, in addition to other sales taxes applicable.
        - The maximum amount of CID Sales Tax Revenue available to reimburse the Applicant is $5,746,600.00.
        - The CID shall remain in place for a maximum 27 years, unless the City and the Applicant agree to terminate the CID at an earlier date.
        - CID Sales Tax Revenue shall be used for improvements, administrative fees, formation costs, and operating costs.
    - **Chapter 100 Industrial Revenue Bonds:**
        - Chapter 100 Industrial Revenue Bonds provide property tax abatement and sales tax exemption for construction materials.
        - Only the grocery store portion of the Development Project is subject to the Chapter 100 incentives.
        - The term of the bonds shall be for 20 years.
        - The Applicant will pay a fixed Payment in Lieu of Taxes of the ad valorem property taxes otherwise due for years 1-20 to the City and to any applicable Collection Authority by December 31st of each year.
    - **City Sales Tax Revenue Reimbursement:**
        - The City will reimburse to the Applicant 50% of the City's 1.75% sales tax revenue generated by the Development Project.
        - The 1.75% City sales tax rate is comprised of the 1% general revenue sales tax and two Capital Improvements sales taxes, which total 0.75%.

All other City sales taxes are not included in the Sales Tax Revenue Reimbursement.

- The Sales Tax Revenue Reimbursement shall not exceed $2,200.000.00, or 20 years, whichever comes first. When the maximum amount is reached, or when the 20 years is reached, the sales tax revenue reimbursement will terminate, and the City shall receive 100% of the sales tax revenue generated from the Development Project.
- The amount of City Sales Tax Revenue generated by the Development Project shall be calculated as the amount that is above the gross sales of the existing grocery store sales of $21,000,000.00.

- Section 2.06 sets forth the reimbursement procedure for the Applicant to be reimbursed for Reimbursable Project Costs incurred for the construction and development of the Development Project.
    - Section 2.06 provides that the Developer's reimbursement shall not exceed $7,946,600.00.
    - Section 2.06 provides that when a certificate of occupancy is issued for the Grocery Store, the following conditions must be met: i) the Grocery store shall be at least 54,000 square feet and be branded as a Cosentino's Price Chopper; ii) the Development Project shall be rough graded, with enhanced utility capacity to support the pad sites; and iii) the Developer shall submit documentation to prove an investment of at least 90% of the projected $17 million budget.
    - If the Developer fails this condition, they shall make PILOTs to all effected taxing jurisdictions in the amount of 100% of the property taxes that would have been owed. This means that if the Developer does not meet the conditions listed above, they will not receive the benefit of the tax abatement under the Chapter 100 Plan.
- Section 2.07 sets forth an administrative fee to reimburse the City for its administrative costs and expenses associated with the ongoing administration of the Development Agreement. The Administrative Fee shall be 2% of the City Sales Tax Revenue generated by the Development Project and 2% of the CID Sales Tax Revenue generated by the Development Project.

<u>Article III – Community Improvement District</u>

- Article III provides that the Community Improvement District will be administered in substantial conformity with the Cooperative Agreement, **<u>Exhibit D</u>**. For ease of reading, the Cooperative Agreement
- The Cooperative Agreement sets forth the imposition, collection, administration, and enforcement of the CID Sales Tax Revenue.
    - Cooperative Agreement:
        - Article 1 provides definitions applicable to the Cooperative Agreement.
        - Article 2 provides standard contracting representations.
        - Article 3 sets forth the imposition, collection, administration, and enforcement of the CID Sales Tax Revenue.
        - Section 3.6 sets forth the order of distribution of the CID Sales Tax Revenue:
            - City's 2% Administrative Fee
            - Operating Costs of the CID, and associated Financing Costs
            - CID Reimbursable Project Costs

  - Article 4 sets forth the design, construction, financing, and ownership and maintenance of the CID improvements. The CID shall not undertake additional CID improvements without the prior approval of the City Council.
  - Article 5 contains special covenants, which require 1) the City to keep records on behalf of the CID; and 2) the Applicant to provide notices of the CID to tenants and transferees. Section 5.4 requires the CID Board to prepare annual budgets for the City Council's review and approval.
  - Articles 6 and 7 contain standard contracting terms.

<u>Article IV – Design and Construction of the Development Project</u>

- Article IV addresses the design and construction of the Development Project. The Applicant must obtain all necessary governmental approvals and/or permits necessary for the construction of the Development Project.
- Section 4.06 requires the Developer, upon completion of the Development Project, to submit a report certifying that the Development Project has been completed in compliance with the Agreement and that all sums due from the Developer to any contractors have been paid.

<u>Article V – Ownership and Maintenance of Project Improvements</u>

- Section 5.01 provides that the City will convey the Grocery Store portion of the Development Project to the Applicant pursuant to the Chapter 100 Plan and Chapter 100 bond documents.
- Section 5.02 provides that the Developer shall own or lease and maintain the Development Project improvements if they have not been dedicated to the City.
- Section 5.03 provides that the Developer shall require all contractors who work on portions of the Development Project that will be owned by the City to obtain insurance.
- Section 5.04 sets forth provisions that must be included in any sale or lease of property contained within the Development Project, which notify an owner or tenant of the responsibilities and duties contained within the Development Agreement.

<u>Article VI – Sales Tax Reimbursement</u>

- Article VI sets forth the conditions of the Sales Tax Revenue Reimbursement. For ease of reading, the Sales Tax Revenue Reimbursement is discussed above, in Article II.

<u>Article VII – Special Covenants through Article X – Miscellaneous Provisions</u>

- Article VII sets forth standard contracting terms, including record retention, indemnification, and compliance with laws.
- Section 7.05 requires the Applicant to provide the City Council with an annual progress report.
- Article VIII sets forth default and breach terms. The City or the Applicant may terminate the Development Agreement if notice of a breach has been provided to the defaulting party and such default is not cured within 60 days.
- Article IX sets forth standard contract representations of the City and the Applicant.
- Article X contains miscellaneous provisions, which includes notices, recording of the Development Agreement, and amendments of the Development Agreement.

- Section 10.10 provides that the Applicant shall notify the City prior to the proposed sale or other transfer of any or all the Development Project or Development Project Property. Any transfer shall provide for the compliance with the Development Agreement.

STAFF RECOMMENDATION: After conducting a thorough review of the Comprehensive Development Agreement, along with the assistance of Lauber Municipal Law, the City's legal counsel, it is City staff's and consultant's conclusion that the City Council has the information necessary to authorize the Mayor to enter into the Comprehensive Development Agreement for the Pleasant Hill Marketplace on behalf of the City.

CID Petition

The CID Petition is the foundational document for the establishment of a community improvement district. On June 18, 2024, JWW Investment, L.L.C., the owner of the property ("Petitioner") at the behest of the Applicant, filed with the City Clerk a Petition for the Establishment of the Pleasant Hill Marketplace Community Improvement District (the "Petition") pursuant to Sections 67.1401 through 67.1571, RSMo, (the "CID Act").

Upon receipt of the Petition, the City Clerk, with the assistance of the City's legal counsel, reviewed the Petition and determined on June 21, 2024, that the Petition substantially complies with the requirements of Section 67.1421.2, RSMo.

The CID Act requires the City Council to hold a public hearing and further provides that after the close of the public hearing, the City Council may adopt an ordinance approving the petition and establishing the district as set forth in the petition. The City Clerk provided the statutorily required notice of a public hearing on the establishment of the proposed district. On July 8, 2024, the City Council held a public hearing to consider the Petition.

Summary of Contents of CID Petition

- Required to be signed by more than 50% of the owners of property located within the proposed district measured on a "per-capita" and an assessed value basis. In this case the Property within the CID area is owned by a single owner, JWW Investment, L.L.C. The Trustee of JWW Investment, L.L.C., Mr. Kevin Connealy, signed the Petition and therefore the Petition was signed by 100% per-capita and 100% of the property owners by assessed value.
- Name of District: Pleasant Hill Marketplace Community Improvement District.
- A legal description and map of the District were attached to the Petition as required by statute.
- If approved, the District will be established as a political subdivision of the State of Missouri.
- District Governance:
    - The District will be governed by a Board of Directors having 5 members
        - The Petitioners complied with the statutory requirement to have at least one member of this Board be appointed by the City of Pleasant Hill.
    - The initial Board of Directors will be comprised of Justin Kaufmann, Adam Lyngar, Dante Cosentino (collectively, the Owner's Representatives), Shelby Teufel, and James W. Hanes (together, the City's Representatives). The members will have initial terms of either 4 or 2 years as required by the CID Act.
    - Successor Directors will be appointed in accordance with Section 5 of the Petition, which allows the Board of Directors to submit a slate of successor directors to the City. Successor Directors shall be appointed by the Mayor with the consent of the City Council.
- Funding Mechanisms:
    - Pursuant to the Petition, the Petitioners are requesting the authority to impose a CID Sales Tax of up to one percent (1.0%) upon all eligible retail sales within the District as provided in the CID Act.

- Term of Existence:
  - The Petition requests the maximum length of time for the existence of the District of twenty-seven (27) years from the date upon which any sales tax is levied within the District pursuant to the Petition.
  - The CID Act permits Districts to be established for a definite period, or for a maximum or minimum (perpetual) period of existence.
- Blight Determination:
  - The Petitioners are seeking a blight finding and that the District revenues are reasonably anticipated to assist with remediation of the blighted conditions within the District and will serve a public purpose.
- Five Year Plan (Exhibit C to the CID petition):
  - The CID Act requires a CID petition to include a five-year plan describing the purposes of the district, the services it will provide, the improvements it will make and the estimated costs of the services and improvements to be incurred
  - District Purposes:
    - The District purposes are set out in full in Exhibit C of the CID Petition – Five Year District Management Plan.
    - In summary, in the first five years, the District's purpose is to provide funding for: the operation and administration costs of the District; cost of project improvements and services; and formation. All these costs are CID-eligible costs under the CID Act.
    - These costs are provided in Exhibit A of Exhibit C of the CID Petition (Five Year District Management Plan)
  - Cost Estimates (Exhibit A of Exhibit C of the CID Petition)
    - Improvement and services costs: $5,746,600
      - $2M land acquisition
      - $3.48M site construction
      - $263K soft costs
    - Estimated Service Costs: $2,500 per year for operating costs, plus costs of formation at approximately $30K
  - Revenue Estimates (Exhibit A of Exhibit C of the CID Petition)
    - Approximately $313,000 to $404,880 per year

STAFF RECOMMENDATION: After conducting a thorough review of the Petition to establish the CID, along with the assistance of Lauber Municipal Law, the City's legal counsel, it is City staff's and consultant's conclusion that the City Council has the information necessary to approve the Petition for the Creation of the Pleasant Hill Marketplace Community Improvement District.

Chapter 100 Overview:

- Missouri law authorizes municipalities to issue Industrial Revenue Bonds to finance manufacturing, commercial, warehousing, and industrial projects for private corporations. Under Chapter 100, the city issues bonds to finance real and/or personal property for eligible development projects.
- Eligible projects include warehouses, distribution facilities, research and development facilities, office industries, agricultural processing facilities, service facilities (which provide interstate commerce), manufacturing plants and commercial developments.
- Upon the issuance of Chapter 100 bonds, the municipality's ownership of the property makes the property tax exempt, which acts as tax abatement for the beneficial owner of the bond-financed property over the term of the bonds.
- City maintains ownership of the real and/or personal property and leases it back to the company under a lease-purchase agreement.
- Through the lease agreement, the company is responsible for making payments that are sufficient to pay the principal and interest on the bonds as they come due.
- Typically, the bonds are purchased by the company or the company's private lender.
- Because title to the property is held in the name of the city during the term lease, the bond-financed property is exempt from property tax. The company then assumes ownership at the end of the term of the bonds.
- If the full tax exemption creates too much incentive, payments in lieu of taxes (PILOTs) payments may be required.
- In addition to the property tax abatement, the company also benefits from a sales tax exemption for construction materials and/or equipment purchased for the project.
- The Chapter 100 statutes require the City Council to notify affected taxing jurisdictions of the meeting when the City will first consider approval of the Plan. The City Clerk provided the statutorily required notice of a public hearing on the establishment of the proposed district. On July 8, 2024, the City Council held a public hearing to consider the Plan and any and all comments were fairly and duly considered.

Background:

- Plan for Industrial Development
  - On or about June 14, 2024, the final version of the Plan for an Industrial Development Project and Cost-Benefit Analysis for the Pleasant Hill Marketplace Project (the "**Plan**") setting forth a project for a grocery store and related commercial development was filed with the City Clerk. The Plan is attached to the Comprehensive Development Agreement as **Exhibit E**.
  - The Project consists of the design, development, and construction of an approximately 60,000 square foot grocery store and associated parking, utilities, and other infrastructure improvements (the "**Project**") 7.27 acres situated in the northeast quadrant at the intersection of East 163rd Street and Missouri Route 7 in Pleasant Hill, Missouri, ("**Project Site**").
- Cost of the Project and Sources of Funds

- Total estimated costs of the Project is: **$17,500,000**.
- Source of funds:
  - Proceeds of a total aggregate principal amount not to exceed $17,500,000 of City of Pleasant Hill, Missouri Industrial Development Revenue Bonds issued in one series; and
  - Any additional costs in excess of the proceeds of the Bonds will be paid by the Developer or its assigns.

- Terms of Lease
  - The City will hold title to the Project site pursuant to Chapter 100 transactions. The City will lease the Project to the Company for lease payments equal to the principal and interest payments on the Bonds.
  - Under the terms of the lease agreement with the City, the Company will have the option to purchase the Project at any time and will have the obligation to purchase the Project at the termination of the lease.
- Bond Purchase Arrangements and Length of Bond Term
  - Developer or the Developer's private lender will purchase the Bonds;
  - The Bonds will have a term of 20 years;
  - Bond proceeds will be used for Project construction costs and purchasing and installing personal property (i.e. shelves, freezers, etc.).
- Equalized Assessed Valuation
  - The most recent equalized assessed valuations of the real property and personal property of the Project site are $277 (2022) and $277 (2023).
  - The estimated total equalized assessed valuation of the real property at the Project site after development of the Project is $1,728,000 and the estimated total equalized assessed valuation of the personal property at the Project site after development of the Project is $582,750.
- Payments in Lieu of Taxes
  - The Company will make payments in lieu of taxes ("PILOTS") for the Project as follows:
    - (1) prior to and during construction, the amount calculated to equal the taxes that would have been due on the unimproved land were it in private ownership, and
    - (2) from and after completion of construction, for a period of 20 years, a fixed PILOT calculated from a starting point of $12,607, increasing every other year thereafter by 3% until the 11th year following completion of construction, in which year the fixed PILOT will be $36,537, increasing every other year thereafter by 3% until the end of the twenty-year abatement term described herein.
- Cost-Benefit Analysis. In compliance with Section 100.050.2(3) of the Revised Statutes of Missouri, the Plan was prepared to show the costs and benefits to the City and to other taxing jurisdictions affected by the Project. This Plan does not attempt to quantify the overall economic impact of the Project. The tax rates used in this Plan reflect the rates in effect for the

tax year 2023. The actual years and PILOT amounts may vary based on Project implementation. Notices of the Plan and its related cost-benefit report were sent to the affected taxing jurisdictions on June 17, 2024, as required by state statutes.

STAFF RECOMMENDATION: After conducting a thorough review of the Plan for an Industrial Development Project and Cost-Benefit Analysis for the Pleasant Hill Marketplace Project, along with the assistance of Lauber Municipal Law, the City's legal counsel, it is City staff's and consultant's conclusion that the City Council has the information necessary to approve the Plan for an Industrial Development Project and Cost-Benefit Analysis for the Pleasant Hill Marketplace Project**.**