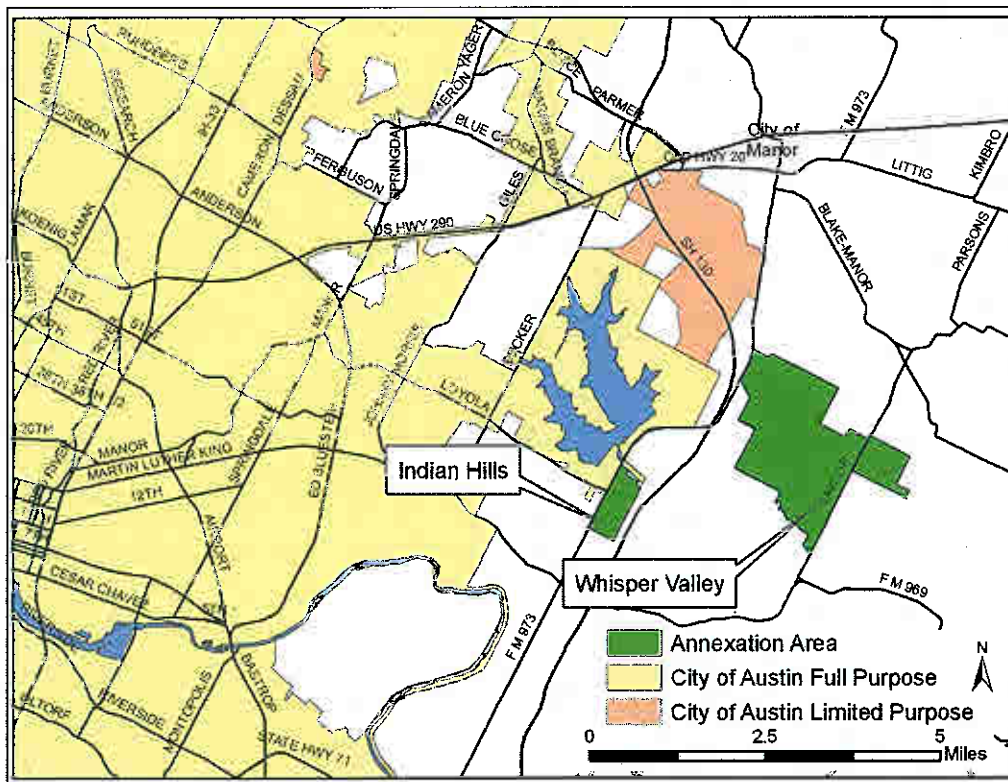




MEMORANDUM

To: Mayor and City Council
From: Leslie Browder, Chief Financial Officer *LB*
Date: January 19, 2011
Re: Update on Whisper Valley and Indian Hills Project

The purpose of this memorandum is to update you on the current status and timeline for financing the infrastructure improvements needed for the future development of Whisper Valley and Indian Hills, two mixed-used planned communities to be located in the SH 130 corridor in the City of Austin's Desired Development Zone as depicted in the map below.



Project Background The Whisper Valley property (2,062 acres) was purchased by Taurus of Texas Holdings L.P. in June 2006 and is located east of SH 130. The site is planned to include approximately 7,500 single and multi-family homes, and more than 2 million square feet of retail and office space. In addition, 700 acres of open space is to be dedicated to the City for use as trails and parkland.

The Indian Hills property (240 acres) was purchased by Taurus in December 2005 and is located west of SH 130. Plans for this site include approximately 1,200 medium-density apartment units and 1.5 million square feet of office, warehouse, distribution and neighborhood retail uses. The center portion of the site will be used for the extension of Decker Lake Road, the main thoroughfare.

In June 2009, the City Council voted to approve related development agreements, and in August 2010, voted to approve zoning changes and limited purpose annexation. The properties were originally zoned as agricultural land, with Whisper Valley now zoned as a planned unit development and Indian Hills approved for the straight zoning needed for planned development. The City Council also approved the creation of a separate public improvement district (PID) for each of the two planned developments, in response to a petition by the property owners, a State law prerequisite to creation of a PID. The PID will provide a financing mechanism through the apportionment, levying and collection of assessments to help pay for the basic infrastructure that will support the planned communities (water, wastewater and roads).

Financing Team We are currently working with the developer and a team of financial professionals to develop a viable financing plan for the project. Should City staff and our third party professionals successfully complete the due diligence needed to issue PID obligations, most of these costs will be eligible for reimbursement from the bond proceeds. To cover costs until the bond sale becomes a reality, the Law Department has executed an agreement with the developer in which the developer has provided funds to the City upfront, as well as agreeing to replenish these funds as needed, to defray these initial costs. These developer funds do not require City reimbursement, but may be eligible for reimbursement from future PID bond proceeds. The team includes the City's financial advisor Public Financial Management, the underwriting firm of Piper Jaffray, the law firm of Fulbright and Jaworski, and Economic and Planning Systems, a firm specializing in real estate development market analysis and implementation support.

Proposed Project Phasing and Financing Plan The developer proposes to construct improvements, and to ask the City to issue bonds, backed by the PID assessments, in phases as the property builds out. This is a long-term project, with the first phase designed to construct the basic infrastructure needed before site development can begin. This basic infrastructure (excluding subdivision internal structure) includes approximately 2.4 miles of major divided arterial roadway (Decker Lake Road and Braker Lane) to connect FM 973 to Taylor Lane, a wastewater treatment facility with capacity up to 3 million gallons per day, several lift stations, 2.5 miles of 30-inch wastewater interceptor, and 12 miles of large diameter (24-inch diameter and greater) water transmission main. All water and wastewater infrastructure will ultimately be turned over to the City and designed in accordance with City standards. In total, the costs of these "macro" improvements, which will provide benefit to the project as a whole, are expected to cost \$42 million. Buildout is then anticipated over 15 to 20 years after this initial phase in response to market demand for housing.

PID bonds are considered to be special assessment revenue bonds and are not secured by the full faith and credit of City. Bonded debt service is paid for by special assessments levied on the real property within the PID. As a developer subdivides and sells off the land, the new property owner assumes the assessment burden. The ultimate security for PID bonds is the value of the real property being assessed, so it is important that the appraised value of the land

be sufficient to secure the bonded debt, and reflect conservative valuation assumptions to account for changes in the real estate market over time.

Current financing projections for the “macro infrastructure” of the Whisper Valley and the Indian Hills project include the issuance of two separate series of bonds, a senior lien as well as a subordinate lien.

- The senior PID bonds, estimated in the range of \$10 to \$15 million, will be secured by a lien on the real estate. The assessments will be approved and “levied” by the City Council when the PID’s service and assessment plan is brought to the City Council for approval.
- The subordinate PID bonds, estimated at approximately \$20 million, will also be secured by the assessments, which are secured by a lien on the property, but will be junior to the senior bonds. These bonds will be secured by an additional source of funding, the estimated proceeds of cost reimbursement agreements between the developer and the City related to the water/wastewater infrastructure and Travis County related to the road improvements. The initial phase of the wastewater treatment plant will be constructed by the developer and provide capacity of 500,000 gallons per day. This phase will be funded by the subordinate lien bonds to be repaid by these cost reimbursement agreements. The remaining phases will be funded and constructed by the Austin Water Utility as needed.
- The PID bonds will be tax exempt. The senior PID bonds will have a term of 30 years, but the subordinate lien series will have an early call provision or may have a shorter term so that the bonds can be paid down as the City and County reimbursements become available.
- Additional project controls will be in place, including City control over disbursement of the bond proceeds, as well as payment under the reimbursement agreements, to help ensure that the improvements are completed as planned.
- City staff’s PID guidelines recommend that no city taxes are imposed until PID bonds are retired to help ensure that financing is structured so that undue burden is not placed on future homeowners/landowners by paying both City taxes and PID assessments. As a result, only City services related to the construction and maintenance of the infrastructure being financed will be provided to the encumbered land until the PID obligations are retired and City taxes begin to be paid. For example, public safety services will continue to the responsibility of Travis County during this time period.

City’s Due Diligence Process As we work with the developer to plan for the issuance of PID bonds, we will be completing a number of steps that will help assure the financial viability associated with the Whisper Valley and Indian Hills project, as outlined below.

- Under the oversight of the City’s real estate staff, contracting with a qualified appraiser to assess the value of the Whisper Valley and Indian Hills properties to help ensure that adequate loan-to-value ratios are in place prior to the issuance of PID obligations
- Conducting a lien search to verify that the property is free and clear of any legal encumbrances

- Researching the financial background and “credit worthiness” of the developer, similar to the due diligence completed for City redevelopment projects
- Using the services of Economic & Planning Systems to provide analysis, quality assurance and risk mitigation as the financing and appraisal process moves forward

Impact of Recent PID Legislation on Financing Plan In 2009, two significant PID bills were considered by the State Legislature. Senate Bill 978 was intended to be a comprehensive “rewrite” of the law governing municipal PIDs. The bill passed the House and Senate but was vetoed by the Governor. House Bill 621 was a narrower bill that was ultimately adopted, and created an interest rate limitation on all PID obligations. The limitation was such that the interest rate may not exceed one-half of one percent above the highest average interest rate reported by a newspaper for a weekly bond index in the month before the date of the issuance of the contemplated PID obligations. Further, the newspaper must specialize in bonds and be acceptable as a reliable source for bond interest rates to the governing body of the municipality. Fulbright and Jaworski was recently informed that the Attorney General’s Office will accept Barron’s as a financial newspaper so long as the City makes a finding in the paperwork associated with the bond transaction that it determines that Barron’s is a newspaper that specializes in bonds. The Attorney General’s staff further indicated that a corporate bond index will be accepted so long as the bonds that comprised the index were investment grade obligations at the time those bonds were issued. These two determinations of the Attorney General’s Office should help alleviate previous concerns about the effect of the interest rate limitation on marketability of the obligations.

Another concern was that current PID statutes might limit phased PID development agreements, similar to Whisper Valley. In November 2010, City legal staff and the developer met to discuss this issue with the Attorney General’s Office. The parties concluded that phasing of assessments is not prohibited by the language of the statute and that the statutory provisions provide the governing body with the discretion as to how the assessment method should best fit the development facts. Further, entering into a reimbursement agreement before assessments for the entire amount of the improvement covered by the reimbursement agreement have been levied does not place an unnecessary risk on the landowners/homeowners within a PID due to the fact that each homeowner/landowner is getting an assessment equal to his/her benefit and since the assessment is set upfront, landowners/homeowners will know in advance the amount of their assessment. Further, the revised bond structure proposed by the developer that provides for the cost of the macro infrastructure to be assessed across the entire project rather than included in future phases, makes phasing issues less of a concern.

A bill similar to the comprehensive “rewrite” of the law governing municipal PIDs that was proposed in 2009 is expected to be reintroduced at the State Legislature in 2011, with possible other fixes and clarifications. This bill would likely enjoy broad support from both the development community and other governments interested in using PIDs as a financing mechanism.

Timeline We anticipate completing the necessary due diligence over the next two months and bringing forward an action item for Council to approve a bond offering memorandum and the issuance of PID bonds, as well as the service and assessment plans for Whisper Valley and Indian Hills, sometime in the first or second quarter of 2011. We will be developing and circulating a more specific timeline in the future, and are currently in the process of interviewing

potential appraisers under the oversight of the City's Real Estate Services division. Please do not hesitate to contact me if you have any questions or need additional information.

cc: Marc A. Ott, City Manager
Lauraine Rizer, Real Estate Services
Sharon Smith, Law Department