

Legislation Text

File #: BILL NO. 18-166, **Version:** 1

An Ordinance approving an Agreement for Release of Real Estate Purchase Option between the City of Lee's Summit and Westcott Investment Group, LLC. (Note: This item was TABLED at the October 2, 2018 Council Meeting.)

Issue/Request:

An ordinance approving an Agreement for Release of Real Estate Purchase Option between the City of Lee's Summit and Westcott Investment Group, LLC.

Key Issues:

If approved, the proposed ordinance would provide for the ability of Westcott Investment Group to submit \$1,405,280 payment to the City and dedicate 2 +/- acres of property to the City prior to the release of the existing Option and Development Agreement that are in place today.

Westcott Investment Group, developer of The Grove at Lee's Summit, is requesting to restructure the existing agreement between Westcott Investment Group and the City of Lee's Summit. The summary of the proposed Agreement for Release of Real Estate Purchase Option would result in the following:

- * Westcott Investment Group would pay the City \$1,405,280.00 (City's previous investment in the property)
- * Westcott Investment Group will dedicate 2 +/- acres to City for future Fire Station or other use(s) as City determines appropriate
- * After payment and dedication of property to City - City will release the existing Option Agreement and no special conditions or restrictions other than the City's customary zoning and land use regulations will apply.

Revisions for October 16th meeting

At the October 2nd meeting, the Council raised the concern that if the Agreement was approved as originally presented and the City's right to repurchase the property is eliminated, Westcott might fail to undertake any development on the property and instead sell the property for a profit. Based on this concern, the following additional provisions have been added to the Agreement to address this concern:

Profit Sharing Provision: If any portion or all of the Property is sold after this Agreement is executed and before Westcott receives one or more certificates of occupancy for at least 200,000 square feet of development, and if the Sale Price is greater than the Base Land Value then the City will receive half of the profit from this sale. The "Base Land Value" is \$0.39 per square foot, which represents the City's \$1.4M original contribution divided by the number of square feet of land area on the Property. The Sale Price will be compared to the Base Land Value on a per-square-foot basis. The maximum amount that the City can receive under this profit-sharing provision is \$1.4M, which represents a potential doubling of the City's original investment in the property in the event that sales occur before 200,000 square feet of development occurs.

Security for Profit Sharing Provision. If any property is sold, Westcott or any subsequent owner is

obligated to provide for the payment at closing, directly from the funds available at closing pursuant to the title company's settlement statement. The Agreement will be recorded with the Jackson County Recorder of Deeds and will run with the land as an obligation with the Property until the Release Agreement is terminated. The City has the right to prohibit or invalidate any sale that does not provide for a City Payment, and this will create a cloud on the title that will prevent any purchaser from taking good title without making the required City Payment at closing pursuant to the Release Agreement.

Duration. This profit sharing provision will be in place until certificates of occupancy for at least 200,000 square feet of development on the Property has been issued by the City. When Westcott achieves this amount of development, the profit sharing provision no longer applies.

Ensuring Fair Market Value. If Westcott proposes a sale of property that is less than what the City believes is the fair market value for the sale, the City can trigger an additional provision which requires both parties to arrange for independent appraisals of the property that is proposed for sale. If the average of the two appraisals is greater than the actual proposed sale price then the average of the appraisals will be used to calculate the profit-sharing payment to the City rather than the actual sale price.

Proposed City Council Motion:

Ordinance approving an Agreement for Release of Real Estate Purchase Option between the City of Lee's Summit and Westcott Investment Group, LLC. - I move for second reading.

Background:

In September 2011, the City and Exergonix, Inc. entered into a public/private partnership to purchase the "Pfizer property" which is approximately 83 acres along the eastern side of M-291 South, and to promote economic activities within the corridor. The City utilized \$1.4M in funds from the Economic Development/Business Retention Opportunity Reserve Fund to assist Exergonix in purchasing the property. In return, Exergonix was to adhere to certain performance standards per the agreement and complete the proposed development by September 1, 2016.

On March 10, 2016, Exergonix and Westcott Investment Group presented a request/proposal to revise the development agreement performance measures and assign the agreement to Westcott Investment Group. At that time, Westcott Investment Group proposed to bring forward a rezoning of the property from Planned Industrial (PI) to Planned Mixed Use (PMIX), implement design standards for the development, and start construction on 200,000 square feet of building(s) by the summer of 2017. The City Council directed staff to continue to negotiate with Westcott Investment Group.

On April 14, 2016, Westcott Investment Group presented an updated proposal indicating a willingness to construct 500,000 s.f. of building(s) and associated infrastructure within the next five years and requested Council approve the ordinance approving the assignment and development agreement. Council commented on the discomfort with the proposal and the proposed ordinance failed by a vote of 0 "aye", 7 "no". Subsequent to the ordinance vote, the Council voted 4 - 3 to direct staff to continue to negotiate with Westcott Investment Group.

After continued negotiation, on May 19, 2016 the Mayor and Council considered a proposed development

agreement and option agreement and after discussion, voted 5 - 1 to approve proposed Bill 16-113 approving the development agreement and option agreement.

On May 26, 2016, Mayor Rhoads vetoed Bill 16-113 in accordance with City Charter, Section 4.4 (c) therefore the proposed Bill 16-113 was placed on the next regular meeting of the Council where the Council could consider passing the vetoed ordinance by an affirmative vote of two-thirds of the entire Council.

On June 2, 2016, the Council considered vetoed Bill 16-113 and voted 6 - 1 to pass Bill 16-113. Bill 16-113 became Ordinance No. 7890 and is in effect at this time.

On November 17, 2016 the City Council adopted Ordinance No. 8021 approving a rezoning and Preliminary Development Plan (PDP) along with design standards for The Grove at Lee's Summit development. The ordinance remained unsigned by the Mayor after ten days, therefore in accordance with the Charter in effect at that time, the ordinance was deemed to be approved.

Since the approval of the PDP, Westcott has pursued filing Land Use Approval submittals necessary for the development to move forward, including but not limited to, the following: (1) the submitted Final Development Plan which has been reviewed and is in the City's 'approvable' status; (2) the Land Disturbance Permit (Phase 1) has been issued; (3) payment of wetland mitigation credits; (4) the site permit for streets and stormwater infrastructure is ready to issue; (5) the site permit for sanitary sewer infrastructure is ready to issue; (6) the site permit for public water line infrastructure is ready to issue; (7) the engineering plans for street, storm, sanitary and 16th Street widening, mass grading and stormwater are in the City's 'approvable' status; (8) the Final Plat has been reviewed and recommended for approval by the Planning Commission; and (9) the building plans have been reviewed and are ready for permitting.

Mark Dunning, Assistant City Manager

David Bushek, Chief Counsel of Economic Development and Planning

Recommendation:

Staff recommends approval of the proposed ordinance.

Committee Recommendation:

This matter has not been considered by a Council Committee and is being presented to the Mayor and Council for consideration.