



Minutes

KID Board of Directors Special Meeting
Carl W. Petersen Board Room
Thursday, October 23, 2012, 9:00 a.m.

President Huffman called the meeting to order at 9:00 a.m. Mr. Freeman called roll.

Directors Present:

Gene Huffman, President
Patrick McGuire, Vice President
Kirk Rathbun
David McKenzie
Dean Dennis

Staff Present:

Chuck Freeman, District Manager
Colleen Storms, District Treasurer
Scott Revell, Planning Manager
Jason McShane, Staff Engineer
Judy Smith, Administrative Contracts Specialist
Doris Rakowski, Executive Assistant

Other Persons Present:

Marc R. Greenough, Foster Pepper PLLC
Annette Sommer, SNW
Fran Forgette Legal Counsel
Brian Iller, Legal Counsel

APPROVAL OF AGENDA: Director Rathbun moved to approve the agenda. Vice President McGuire seconded the motion and it carried unanimously.

Workshop:

- **Introduction to LIDs**
- **Pros/Cons of Self-Funding the Gap**
- **Setting the Interest Rate**
- **Guaranty Fund**
- **KID's Revenue Stream if KID Funds the Project Gap**
- **Determining How KID Can Get its Money Back Before the Term Expires**
- **Administrative Fee**
- **Process to Add or Remove LID Members**
- **Next Steps in the LID Process**

Mr. Freeman introduced consultants Marc Greenough of Foster Pepper PLLC and Annette Sommer of SNW. Mr. Greenough spoke briefly about his company and said Foster Pepper PLLC had previously acted as bond counsel for the District.

Mr. Greenough described the nature and purpose of LIDs. He said LIDs were a tool to recover costs of a public improvement by charging property owners specially benefited by the improvement rather than using assessments. He noted there was never a requirement to form an LID and discussed the history of statutes regarding city and irrigation district LIDs. He defined "special benefit" as the difference in fair market value with and without the improvement.

Mr. Greenough said an LID assessment was not a tax and could only be used to meet the cost of the public improvements for which the LID assessment was imposed. He emphasized that the improvements must be publicly owned infrastructure, though private property disturbed in the process of constructing the public improvement could be restored to its previous condition. Additionally, each parcel's LID assessment could not exceed its special benefit and LID assessments must be proportionately distributed among the assessed properties based on their respective special benefit.

Mr. Greenough said reasons for using LIDs included the perception of LIDs as a fair way of apportioning costs of an improvement and that LIDs were secured by property liens. Reasons given not to use LIDs were the complicated hearing and assessment procedures and the difficulty of changing the arrangement after creation. Mr. Greenough noted that there was a statute exempting agricultural land from assessment for which a document waiving that exemption would be needed. He said that while LID assessments were secured by liens, the foreclosure process was cumbersome.

Mr. Greenough said it was important that property owners were supportive and not surprised by the costs. He advised documenting each step of the decision process for future property owners. He discussed the importance of clearly communicating what was being designed.

Mr. Greenough said that boundaries of the assessment district generally could be changed up until the assessment roll was confirmed, after which it was a lien and very unlikely to be able to be changed. He added that there was a process for re-assessing.

Mr. Greenough said that the law favored local governments regarding LIDs and presumed that all actions taken were legal, properties were specially benefited, assessments were no greater than benefits, and assessments were equitable and proportionate. Challengers would be required to provide expert evidence in a very short period of time in order to be successful. He said despite the legal benefit, this could make a local government appear to be a bully.

Mr. Greenough said formation of LIDs could be by petition or resolution, but he recommended using both. He described contents of the Notice of Hearing to be published and sent to participants. He noted it should include a statement that the actual assessment against the property may vary from the estimate. He said the LID would be formed following a hearing, which was required by statute but was not "jurisdictional hearing" or constitutionally required to validly confirm the assessments. He said defects in the formation hearing were not usually grounds for challenge, but the second hearing for confirmation of the assessments was critical. In response to a question from Mr. Freeman, Mr. Greenough said the timing of the confirmation hearing could be before or after construction.

Mr. Greenough said irrigation statutes were vague regarding how assessments were to be proportionate. He recommended documentation of the rational basis for determining assessment proportionality, such as special benefit study.

Mr. Greenough said the confirmation hearing could be conducted by the Board, but recommended use of a hearing examiner as all consideration must be on the record and no ex parte discussion was allowed. He discussed the potential difficulty for Directors of changing between legislative and quasi-judicial roles in dealing with the public. In response to a question from Vice President McGuire, Mr. Greenough clarified the role of hearing examiners.

Mr. Greenough said LID bonds were supposed to be revenue bonds, secured by assessments and a guarantee fund, but that irrigation statute said they were a general obligation of the District. He said work was underway to revise this statute. Mr. Greenough said the District could self-finance and not issue bonds. He discussed reasons to issue bonds, including risk management. He discussed prepayment of LID assessments and calling and pay off bonds.

Mr. Greenough said the Board had flexibility to establish the interest rate. He said that, typically, when the assessment roll was confirmed, the interest rate would be half a percent higher than the rate at which bonds would be sold. If bonds were not to be sold, there was more flexibility and the District would work with the financial advisor on what was reasonable.

Additionally, the District had the option to purchase its own LID bonds and sell them at a later date, if desired.

In response to a question from Vice President McGuire, Mr. Greenough said District ownership of property in the LID was not a problem, though it might be if an individual director owned property in the LID. He discussed investor perception of large property ownership in LID bonds. He noted that LID bonds were negotiable instruments, but not very liquid, as the market was not large and said it could take a long time to sell the bonds.

Mr. Greenough further discussed the reserve guarantee fund as security for the LID bond. He said under current law, irrigation districts could not charge extra to fill a guaranty fund as cities could. He said legislative changes to this statute would be requested. He said irrigation districts could legally take regular assessments to do so.

Mr. Greenough said a decision matrix would be used to determine the timing of confirming assessments before or after construction. He briefly discussed pros and cons of either choice.

In response to a question from Director McKenzie, Mr. Greenough said it was possible to bond part of the LID by prepaying all LID assessments on KID owned property and bonding any LID obligation that was not prepaid in the 90-day prepayment period.

In response to a question from Director Rathbun, Mr. Greenough said it was difficult, but possible, under current statutes to self-finance first and issue bonds later. He said changing interest rates were the biggest risk to doing so. Ms. Sommer confirmed that, due to the amortization schedule, variable interest rates were unworkable. Mr. Greenough and Ms. Sommer agreed that bonds would be unmarketable if terms varied from typical form.

Ms. Storms presented information on cash flow if KID were to fund the financing gap for the project. She said the estimated cost remaining to complete the project was \$15,870,000 of which the Washington State Department of Ecology's (Ecology) share was \$9,666,000, leaving the construction gap of about \$6.2 million plus permanent financing, for a total of \$6,715,000 to be financed. She listed possible sources of the funding including sale of real estate and existing investments. She said the Board needed to establish an interest rate for construction lending.

Ms. Storms discussed Ecology's commitment for the first \$5,000,000. Mr. Freeman confirmed that while indications were good KID to receive the second \$5,000,000 from Ecology, the money was not yet encumbered.

Ms. Storms discussed terms of repayment to Ecology, half of which would stay in a KID special conservation fund. She said repayment was scheduled to begin December 31, 2015, or six months after construction completion. Mr. Greenough noted that Ecology's desire to be repaid on parity with bond holders was unusual, but legal. Ms. Storms discussed cash flow if there were no prepayment.

Mr. Freeman directed attention to the last page of the packet distributed before the meeting. He said 1785 irrigable acres were allowed in the project pursuant to the agreement with the USBR and Ecology. He said a list was maintained by Engineering and briefly discussed requests to be added in or let out of the LID. He said a decision would have to be made in a different Board meeting. In response to a question from Director Rathbun, discussion ensued regarding whether a landowner could be included if they were willing to pay the costs of improvements needed to add service to their property. Mr. Greenough said if a property owner wanted to pay for improvements, participation in an LID was not necessary.

Ms. Storms said if KID prepaid its share of the debt it would total about \$4.8 million. She said the estimated annual debt service would be about \$507 per acre and the weighted rate would be about 2.5%, assuming 5.5% on the bonded portion and .5% on the Ecology funded portion. In response to a question from Mr. Freeman, Ms. Storms said the market could be used to determine a fair and equitable rate if bonding is used. Ms. Sommer said if KID self-financed, comparison to national issues of other LID bonds could be used. She said KID would need to hire an underwriter of publicly selling bonds. Discussion continued regarding interest rates.

Ms. Storms said the next steps included establishing the increased value, obtaining agricultural waivers from participants, determining the interest rate for the construction funding period, and working with the financial consultant for optimal bond financing of the \$6,715,000 gap.

Mr. Greenough reiterated the importance of managing changes so as to not surprise property owners. In response to a question from Director McKenzie, Mr. Greenough said it was unlawful to assess more than the "special benefit" by parcel. He said the "gold standard" was to have a property assessor set the value. He said if property owners did not protest the assessment with expert evidence within ten days of the hearing, the matter would be closed.

At 10:17 a.m., President Huffman called a short break.

Executive Session: At 10:28 a.m., on behalf of the presiding officer, Mr. Iller announced that the Board would go into executive session for approximately 90 minutes to consider the minimum price at which real estate would be offered for sale or lease pursuant to RCW 42.30.110(1)(c), to discuss with legal counsel potential litigation in the form of legal risks of a proposed actions or current practices per RCW 42.30.110(1)(i)(iii) regarding Realty approach, to discuss with legal counsel potential litigation in the form of the legal risks of a proposed action or current practice pursuant to RCW 42.30.110(1)(i)(iii) regarding assessment issues, to discuss with legal counsel potential litigation in the form of the legal risks of a proposed action or current practice pursuant to RCW 42.30.110(1)(i)(iii) regarding construction bridge funding and interest rates, and to discuss with legal counsel potential litigation in the form of the legal risks of a proposed action or current practice pursuant to RCW 42.30.110(1)(i)(iii) regarding the use of a hearing examiner and underwriter.

The Board returned to open session at noon and President Huffman extended the executive session for one hour.


The Board returned to open session at 1:04 p.m. President Huffman thanked Mr. Greenough and Ms. Sommer.

Director Dennis moved to adjourn at 1:04 p.m. and Director Rathbun seconded the motion. The motion carried unanimously.

Attest:

Witness:


Gene Huffman, Board President
Approved December 4, 2012


Chuck Freeman, District Manager

Prepared by Doris Rakowski