

CITY COUNCIL COMMUNICATION



MEETING DATE: August 25, 2020

ITEM NUMBER: 9.A

SECOND READING:

{{customfields.ResoOrdNumber}}

TYPE OF ITEM: General Business

PRESENTED BY:

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SUBJECT/AGENDA TITLE:

A Resolution Of The Longmont City Council Ordering A Notice Of Public Hearing On Petition To Establish The LFM Business Improvement District

EXECUTIVE SUMMARY:

Longmont Fairground Partners LLC has submitted a petition to the City requesting approval to establish a business improvement district (BID), to be known as the LFM Business Improvement District, covering property it owns on Hover Street just south of Rogers Road (Attachment A). The petitioner, owning 100% of the property within the proposed district boundaries, intends on proceeding with a commercial development that is proposed to include an office building, small retail center comprised primarily of commercial pads, and hotel. The district would issue up to \$12.0 million in bonds to fund site preparation and infrastructure improvements in support of the commercial projects. Repayment of the bonds would come from the imposition of a property tax levy of up to 50 Mills on commercially assessed property. The BID does not have condemnation authority.

The petition is submitted pursuant to the "Business Improvement District Act," Section 31-25-1201, et seq., of the Colorado Revised Statutes, which requires the petition to be presented to the City Council for consideration at a hearing set not less than 20 days nor more than 40 days upon fulfillment of the statutory filing requirements. Upon receipt by the City of a \$5,000 cash deposit on August 7, 2020, the applicant's petition was considered complete in accordance with State statute, and therefore requires the City Council to set the mandatory hearing within the specified time period.

The City ordinance pertaining to Special Districts does not apply to the establishment of BID's as it is specific to the establishment of districts organized under the Special District Act (C.R.S § 32-1-101, et seq.) BID's are organized pursuant to Section 31-25-1201, et seq., of the Colorado Revised Statutes, and therefore is to be processed in accordance with statutory requirements.

COUNCIL OPTIONS:

1. Set a hearing and 1st Reading of an ordinance establishing the LFM Business Improvement District on September 8, 2020

**RECOMMENDED OPTIONS:**

Set a hearing and 1st Reading of an ordinance establishing the LFM Business Improvement District on September 8, 2020

FISCAL IMPACT & FUND SOURCE FOR RECOMMENDED ACTION: None

BACKGROUND AND ISSUE ANALYSIS:

Longmont Fairgrounds Partners LLC (Developer) purchased a 26.93-acre tract of land in 2016, as shown in Attachment A, with the intent of developing a commercial project. The site is situated on Hover Street immediately north of the Home Depot store. As currently proposed, 16.648 acres of the site would be developed for commercial use including the possibility of an office building, small retail center comprised primarily of commercial pads, and hotel. The balance of the site is reserved for a multi-family project that will not be included within the boundaries of the BID but will benefit from the associated infrastructure improvements. The developer-initiated development review by the City in late 2017 with submittal of a preliminary plat. A final plat for the property was submitted to the City for review in April 2020. The City has received no site development plans for review at this time.

Through the preliminary plat review process, it was established that development of the property will require significant site preparation and infrastructure improvements that the developer contends to be extraordinary, and thus imposing a financial challenge in bringing the development to fruition. The biggest challenge lies in the fact that about 80% of the property needs to be filled and graded to remove it from the floodplain. In conjunction with this significant “regional” serving storm drainage improvements, including an approximate 3-acre detention facility, are to be built. Further, the City is requiring the construction of a segment of collector roadway, along with a traffic signal, that will provide a connection between Hover Street and Dry Creek Drive to the west. This segment is critical as it will serve to complete the construction of the collector street through the adjacent forthcoming HMS residential development to Andersen Street, with an eventual connection to Airport Road.

Given the associated site preparation and infrastructure costs, the developer is seeking to establish a BID that could be used to assist in funding such improvements.

Statutory Authority to Establish a BID

A business improvement district (BID) is a private sector initiative to manage and improve the environment of a business area with improvements and services financed by self-imposed and self-governed taxes, special assessments, or fees. Services financed by a BID are intended to enhance, not replace, existing city services. The creation of a BID is authorized by Section 31-25-1201 of the Colorado Revised Statutes whereby its creation is initiated by petition of

owners of at least 50% of the assessed valuation of property and at least 50% of the district's land within the District boundaries. BIDs are accountable to those who pay for services through a BID board of directors comprised of property and business owners within the district appointed by the governing body of the municipality.

BID's can only be established with the consent of the governing body of the municipality within which the district is to be created. Upon establishment, the district is granted powers provided by statute and authorized by the local ordinance creating the district, or any amendment to the ordinance, adopted by the governing body.

The process to create a BID is initiated with the filing of a petition with the governing body. Per statute, the petition requires signature of persons owning real or personal property in the service area of the proposed district having a valuation for assessment or ownership in land acreage of not less than fifty percent within the proposed district boundaries. The petition is to include the proposed district name, its boundaries, a general description of proposed improvements and services, the names of petitioners' representatives having power to enter into agreements relating to organization of the district, and a monetary deposit to cover the governing bodies processing costs, as required from the municipality.

Upon acceptance of the petition, having met the conditions of the statute, the governing body is required to hold a hearing on the petition not less than twenty days nor more than forty days thereafter. The governing body, upon the completion of the hearing, can deny or approve the petitioners' request to create the district. In the instance of approval, such approval must be by ordinance declaring the district organized, describing the district boundaries and service area, and giving it the corporate name specified in the petition. Prior to the organization of the district, the governing body may exclude property from the service area or boundaries of the district. The district, upon establishment, will be a quasi-municipal corporation and political subdivision of the state that has perpetual life. A district can be terminated by ordinance, but only upon any debt being fully retired.

Formation and Roles of a BID Board of Directors

The municipality's governing body sits as ex-officio board of directors for the district until such time as a board of directors is appointed. At any time by ordinance, the governing body of the municipality may create a board of directors of not fewer than five members. Each member must be an eligible elector of the district, and if possible, no more than one-half of the members of the board may be affiliated with one owner or lessee of taxable real or personal property in the district. The municipality may set such conditions, limitations, procedures, duties, and powers under which the board shall conduct its business and each member serves at the pleasure of the governing body. Upon a board vacancy, any new member is required to be appointed by the governing body.

The governing body of the municipality may remove a member of the board of a district or the entire board thereof for inefficiency or neglect of duty or misconduct in office. Further, a board member(s) or the entire board may be removed by the governing body of the municipality for inefficiency or neglect of duty or misconduct in office should ten percent of the electors of a district petition for such removal. Any action to remove a board member(s) requires such member to receive a written copy of the charges and have the opportunity to be heard in person or by counsel before the governing body.

The board must meet at least once a year as board to adopt budget, audit etc.

Authority of BID to Undertake Improvements and Provide Services

BID's require submittal to and approval of an operating plan on an annual basis by the governing municipality. Except as limited by the operating plan, the State statute provides the BID broad authorization to manage, control, and supervise all the business and affairs of the district. This includes the authority to make improvements and/or provide services that serve the district. To facilitate implementation of improvements, the district has authority relative to acquisition, construction, financing, installation, and operation of such improvements. It further has authority to finance and operate services as follows:

1. Consulting with respect to planning or managing development activities;
2. Maintenance of improvements, by contract, if it is determined to be the most cost-efficient;
3. Promotion or marketing of district activity;
4. Organization, promotion, marketing, and management of public events;
5. Activities in support of business recruitment, management, and development;
6. Security for businesses and public areas located within the district;
7. Snow removal or refuse collection, by contract, if it is determined to be the most cost-efficient;
8. Providing design assistance.

Financial and Taxing Authority of a BID

The BID has authority to borrow money and incur indebtedness, including through the issuance of bonds, for the purposes of the district. There is no requirement for public sale of debt other than limits set forth in an approved operating plan.

As a means of repaying any debt, the district board has the power to impose a mill levy and collect ad valorem taxes (i.e. property tax) on and against all taxable commercial property within the boundaries of the district. The statutes do not permit taxes to be applied on residential and agricultural properties. The imposition of taxes is subject to compliance with

the Taxpayer's Bill of Rights (TABOR). The statute imposes no limitation on the mill levy that can be imposed.

In addition to the power to levy ad valorem taxes, the BID board has the ability to impose special assessments on properties within the district based on proportional benefit. The statutes provide specific conditions and procedures for setting special assessments on properties. Another source of income available to districts are tolls or charges (i.e. fees) for any services or improvements furnished by the district. The board has the ability to fix, and from time to time increase or decrease, fees for any services or improvements furnished by the district.

Required BID Operating Plan and Budget

A BID operating plan and budget, approved by the governing body, is required prior to the issuance of bonds, levy of taxes, imposition of fees or assessments, and provision of improvements or services. The operating plan or budget is to list the services or improvements to be provided by the district, the taxes, fees, or assessments to be imposed by the district, the estimated principal amount of bonds to be issued by the district, and such additional information as the municipality may require. The district is required to submit an operating plan and proposed budget for the governing body's approval on an annual basis. The municipality may require the district to supplement the district's operating plan or budget where necessary. The operating plan and the budget may, from time to time, be amended by the district with the approval of the municipality. Any unapproved material departure from the operating plan and the budget, as originally approved or amended from time to time, may be enjoined by an order of the municipality.

Petitioners Request to Establish BID

The petitioner is proposing a district that encompasses 16.648 acres of property upon which commercial development is planned. It does not include a remaining 10.282 acres of land upon which a multi-family residential project is proposed. The multi-family tract, however, is identified as being within the Service Area of the BID as proposed infrastructure improvements will benefit its eventual development. The residential project, being outside the boundaries of the district, will not be subject to any mill levy imposed by the BID.

In compliance with State statute, the petition for creation of the BID has been signed by persons owning 100% of the real or personal property in the service area of the proposed district as shown on the assessor rolls of the County of Boulder and by persons owning at least fifty percent of the acreage in the proposed District.

It is proposed that the District be managed by a Board of Directors consisting of five electors, selected by the petitioner, and all of whom would be voting members. It is further proposed that the Board is not subject to term limits and will be placed on the ballot in an upcoming election.

In 2020 - 2021 and subsequent years the District may receive inclusion requests for additional property as boundaries are established and additional property owners choose to participate in the District.

The BID does not have authority to condemn property.

Proposed Administration, Operations, Services and Maintenance

The proposed operating plan does not provide an explicit list of improvements to be undertaken by the BID; rather, it provides broad latitude allowed by State statute. More specifically, the operating plan, as proposed, would allow the BID to undertake, including, without limitation, water services, safety-protection devices, sanitation services, marketing, streetscape improvements, street improvements, curbs, gutters, culverts, drainage facilities, sidewalks, parking facilities, paving, lighting, grading, landscaping and storm and wastewater management facilities and associated land acquisition and remediation. Costs related to such public Improvements may include the costs of design, acquisition, construction, and financing. The petitioner has not provided a more detailed list of proposed improvements or associated cost estimates.

The services, facilities, and improvements to be provided by the BID are not intended to duplicate or supplant the services, facilities and improvements provided by the City of Longmont within the proposed district boundaries. The BID is being created to provide enhanced and otherwise unavailable services and improvements within its boundaries. Upon completion of the infrastructure construction, and acceptance by the City, those improvements to be owned and operated by the City, as agreed to, shall be conveyed accordingly. Thereafter, the City would assume maintenance responsibility for such facilities. The BID would remain responsible for operating and maintaining other facilities, improvements and services remaining within its domain, either directly or by contract with other units of government or the private sector.

Proposed Financial Considerations

The developer is seeking to establish a Business Improvement District for the purpose of funding site preparation and infrastructure improvements for property they currently own. The operating plan, as presented, would provide the District with authority to issue up to \$12.0 million in bond funding that would be repaid primarily through a property tax mill levy



applied to the commercial development. Limited tax general obligation bonds issued by the District shall be structured and/or credit enhancements provided such that the bonds cannot default if the District is imposing the required maximum allowed mill levy.

The plan sets a maximum mill levy of 50 mills on the commercial property(s). By law, any property that is within the BID boundary that is classified by the county assessor for property tax purposes as residential or agricultural is not subject to the revenue raising powers of the BID and will not be assessed by the BID.

The BID would also be able to utilize other revenue sources authorized by law, including rates, fees, charges, or differing forms of special assessments as provided by law, or public improvement fees to apply towards repayment of debt. The District would be able to enter into agreements including reimbursement or similar agreements and leases; as well as agreements for ongoing services such as legal, administration, compliance, budget, audit, etc.

The debt of the District will not constitute a debt or obligation of the City in any manner. The faith and credit of the City will not be pledged for the repayment of the debt of the District. This will be clearly stated on all offering circulars, prospectus, or disclosure statements associated with any securities issued by the District construction and financing of the public improvements in 2021.

The District is subject to compliance with the Taxpayers Bill of Rights (TABOR). The petitioner is targeting a November 2020 election, not to be a coordinated election with the County.

The required budget presented in the LFM BID Operating Plan & Budget document is set at \$50,000 which is intended to cover administrative costs in the upcoming year. The budget does not reflect any debt payment because of the issuance of bonds.

ATTACHMENTS:

- A. Resolution
- B. District Location and Boundary Map
- C. Operating Plan and Budget
- D. Petition for Organization