

Meeting Agendas/Info

**CITY COUNCIL
COMMUNICATION:**

ITEM _____

01-031

**OFFICE OF THE CITY MANAGER
CITY OF DES MOINES, IOWA**

AGENDA:

JANUARY 22, 2001

SUBJECT:

COURT AVENUE
ENTERTAINMENT
CENTER

SYNOPSIS -

Steiner + Associates, a developer based in Columbus, Ohio, has made excellent progress toward construction of the Court Avenue Entertainment Center. For the project to proceed, it is necessary for the City to revise the existing development agreement and to commence a developer-initiated process to confirm developer selection. A "Terms of Agreement" between the City and Steiner has been prepared that would serve as the basis for preparing the developer-initiated proposal and drafting a new development agreement.

TYPE:

**RESOLUTION
ORDINANCE
RECEIVE/FILE**

SUBMITTED BY:

ERIC A. ANDERSON
CITY MANAGER

FISCAL IMPACT -

Based on the proposed Terms of Agreement, the project would be subject to a minimum assessment agreement. The minimum assessment agreement will stipulate that the Phase I project has a taxable value of \$18 million within four years. (An \$18 million taxable assessment will generate about \$775,000 per year in property taxes.) There would be no tax abatement or tax increment cash grant provided to the developer. (The existing development agreement requires the City to provide annual economic development Tax Increment Financing (TIF) grants to the developer of up to \$4 million over eight years. These TIF grants have been eliminated in the new proposal.)

The developer would be required to pay \$2 million for the land for Phase I. (The existing development agreement requires the developer to acquire the land for Phase I for \$3 million; however, the new proposed Terms of Agreement calls for the developer to pay all of the demolition and site preparation cost.) The proposed Terms of Agreement also requires the developer to pay \$2 million for the Phase II site, should the developer choose to proceed with the Phase II development.

The proposed Terms of Agreement calls for the City to provide cash injections-or "deferred payment loan" of up to \$7.4 million-to

the project. Repayment of the \$7.4 million loan by the developer would be solely from a portion of net operating income and "residuals" after preferred returns are paid to the private equity investor and developer. (Residuals are the profits resulting from the sale of property.) The precise repayment terms will be specified in the final development agreement. The \$7.4 million could be funded from a variety of sources, including bonds, loans, internal sources, and non-City funds. TIF dollars generated by the project would be one possible source available to the City to repay a portion of the \$7.4 million. It is anticipated that a significant portion of the \$7.4 million provided by the City would be structured as non-appropriation debt.

In addition, there would be some additional expenses for streetscape improvements and sewer extensions, although these improvements would likely have been undertaken without the Entertainment Center project. These expenses will need to be programmed into the Capital Improvement Program (CIP).

A U.S. Department of Housing and Urban Development (HUD) Section 108 Loan of \$15 million would be repaid by the developer from revenues generated by the project. HUD will require that the 108 Loan be secured by future Community Development Block Grant (CDBG) funds, although it is not anticipated that CDBG funds would be used to make repayments.

Although a detailed plan for the Phase II development has not yet been developed, the proposed Terms of Agreement provides for the Phase II development to have a minimum of 250,000 square feet. It is reasonable to assume that the Phase II development would have a taxable value of \$25 million and would generate about \$1 million per year in property taxes.

A detailed funding plan specifying the source of funding will be provided in conjunction with the final development agreement.

RECOMMENDATION -

Authorize the City Manager and Corporation Counsel to:

1) Prepare a developer-initiated offering with Steiner + Associates for the Court Avenue Entertainment Center in accordance with the attached Terms of Agreement; and

2) In conjunction with Steiner + Associates, prepare a revised

development agreement in accordance with the attached Terms of Agreement; and

3) Prepare an application for the HUD Section 108 Loan, including the necessary local review and consultation with HUD.

BACKGROUND -

By late summer of 2000, Steiner + Associates had obtained pre-lease commitments for a significant amount of space in the project. With the recent ruling of the Iowa Administrative Rules Committee regarding a liquor permit forameworks, Steiner now believes the project can move forward with implementation.

As part of the leasing process, Steiner has re-analyzed the financing needed for the project. This re-analysis indicates that the original financing structure as proposed by Centertainment (the prior developer) is not adequate, particularly in terms of the public investment. As a result, we have determined that the public investment in the project must be changed if the project is to go forward, which in turn requires that the existing development agreement be revised. In addition, in order to comply with State law it is proposed that the City conduct a developer-initiated offering process to sell the land.

City staff and Steiner representatives have prepared the attached Terms of Agreement which can serve as a basis for the revised development agreement and the developer-initiated offering. Key provisions of the Terms of Agreement are summarized as follows:

- Upon approval of this Terms of Agreement, Council will authorize the City to prepare a developer-initiated proposal with the developer that will include a contract (or development agreement), concept site and architectural plans, and the necessary leasing and financing commitments. The formal competitive process would begin after the developer submits a formal proposal-including concept plans, and leasing and financing commitments-along with an executed contract. The competitive period would last for about 45 days. The competitive process would be open to all, but successful bidders would be required to meet the minimum requirements established by the developer-initiated proposal. Upon completion of the competitive period, Council would then be able to award the contract to the selected developer. It is envisioned that construction of the Phase I project

could begin in the fall of 2001.

- The project would be developed in two phases. Phase I would be located on the south side of Court Avenue between 3rd and 5th Streets, and is essentially the project as previously proposed. Phase II would be developed on the large parking lot located immediately south of Phase I (see attached map). The City currently owns the land for Phase II. The developer would have the option to acquire the land and develop Phase II for a prescribed period of years.

Phase I

- The developer would be required to initiate construction of an 180,000 square foot entertainment center on the Phase I site by not later than the fall of 2001.

- The Phase I project shall include: a "state of the art" 16 screen theatre with stadium style seating; a 20,000 square foot book store; a 20,000 square foot hi-tech, interactive entertainment venue; restaurants; retail; and other entertainment venues.

- For the Phase I project, the developer must supply evidence of lease commitments for 60 percent of the total leaseable space prior to execution of the contract by the City. In addition, the developer must provide evidence of firm financial commitments for all private equity funds needed for the project.

- Fourth Street within the project site shall be open to public traffic. The ownership and maintenance of 4th Street within the project site is still under discussion, but will be resolved as part of the final development agreement.

- The initial 180,000 square foot development will have a minimum assessment agreement that requires an initial taxable value of \$11 million, increasing to \$18 million within 4 years. The minimum assessment agreement would be in effect for the term of the agreement. (Using current tax rates, an \$11 million taxable value will generate about \$475,000 per year in taxes and \$18 million in taxable value will generate about \$775,000 per year in property taxes; a portion of this amount is available as tax increment.)

- City agrees to sell the site to the developer "as-is" for a total price of \$2 million with one-half of said amount due upon

conveyance of the property, and one-half due 18 months after conveyance or upon completion of the project, whichever occurs first. The developer shall be responsible for all demolition, removal, grading, and site preparation needed for the project; however, the City will be responsible for working with the private utility companies to relocate existing private utilities from the site (e.g., gas, electricity).

- The City will be responsible for extending storm sewer to (but not within) the site.

- The City will be responsible for required environmental remediation identified by the Iowa Department of Natural Resources prior to completion of the project, except that the developer shall be responsible for the first \$100,000 of expenses.

- The City will pay for improvements within the public rights-of-way adjoining the site (Court Avenue, 3rd Street, Vine Street, 5th Street, and possibly 4th Street) to an amount not to exceed \$500,000. These improvements will include such items as street paving, rail crossings, curbs and gutters, sidewalks, street lighting, landscaping, trash receptacles, and other public amenities.

- The project shall not receive tax abatements or annual economic development grants from the tax increment revenues produced by the project.

- If terms and conditions acceptable to the City and the developer can be negotiated, the City will apply for a HUD Section 108 Loan in the amount of \$15 million with a term of ten years.

- The City will provide a deferred payment loan to the project in the amount of \$2 million. This \$2 million loan will be drawn down pro-rata with first mortgage/construction loan and private equity dollars. Consideration paid to the City for making the \$2 million deferred payment loan will be a designated portion of the project's net operating income and residuals after a preferred return is paid to the private equity investor and the developer. ("Residuals" occur when the project is sold at a profit.)

- The City will arrange for an additional \$5.4 million deferred payment loan to the project. This \$5.4 million deferred payment loan will be used as a contingency fund that can be utilized for agreed upon capital expenses only after all other designated project funds have been expended. Consideration paid to the City for making the \$5.4 million deferred payment loan will be a

designated portion of the project's net operating income and residuals after a preferred return is paid to the private equity investor and the developer. ("Residuals" occur when the project is sold at a profit.)

- There is no guarantee that the City will receive revenue from the deferred payment loans outlined above. However, if the project does well, the City would share financially in the success of the project after a preferred return is paid to the investor and the developer.

- The City will agree to open the 3rd and Court, and 5th and Walnut parking garages for public use at no charge to users during evening and weekend hours at an initial charge to the developer of \$114,000 per year. The surface parking lot with approximately 600 spaces will be owned by the City and operated (including routine maintenance) by the developer for the term of this contract. It is understood that the developer may charge a fee for parking in this lot. The City shall receive 15 percent of gross parking or other revenues received from the use of the property.

- The City will work with Operation Downtown, a program administered by the Downtown Community Alliance and funded through a self-supported municipal improvement district, to enhance the level of security and cleaning of the public areas around the project site.

- The City will undertake a detailed master planning effort that focuses on the Court Avenue area, including specifically the land and buildings surrounding the project site bounded by the Des Moines River on the east, Martin Luther King, Jr. Parkway on the south, Walnut Street on the north, and 7th Street on the west.

Phase II

- The developer agrees to acquire from the City the Phase II site within five years from the completion date of Phase I, but not later than July 1, 2007. However, the Council may elect to extend this time period beyond July 1, 2007 if requested by the developer and such an extension is deemed to be in the best interest of the City. Upon acquisition of the property, the developer agrees to promptly initiate construction of a Phase II development which shall include a mixed-use development of at least 250,000 square feet as the parking required for the Phase I development. No additional economic development incentives will be provided by the City for

the Phase II development. The developer will be required to provide a proposed concept plan for the development of Phase II as part of the initial development proposal.

Attachment