



City of Colorado Springs

City Hall
107 N. Nevada Avenue
Colorado Springs, CO
80903

Meeting Minutes City Council

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Wednesday, May 22, 2019

9:00 AM

Council Chambers

Special City Council Meeting

1. Call to Order

Present: 9 - Councilmember Yolanda Avila, Councilmember Jill Gaebler, Councilmember David Geislinger, Councilmember Bill Murray, Councilmember Don Knight, Councilmember Andy Pico, President Richard Skorman, President Pro Tem Tom Strand, and Councilmember Wayne Williams

Councilmember Gaebler was excused at approximately 9:52 AM.

Councilmember Avila arrived at approximately 11:03 AM.

2. New Business

2.A. [19-234](#)

An ordinance excluding certain property from the Creekwalk Marketplace Business Improvement District

(Quasi-Judicial)

Presenter:

Peter Wysocki, Director of Planning and Community Development
Carl Schueler, Comprehensive Planning Manager, Planning & Community Development

Attachments: [Exhibit A-Petition for Exclusion](#)

[Exhibit B-Notice of Exclusion](#)

[Attachment 1_Petitioner Lettter](#)

[Attachment 2_BID_Response](#)

[Attachment 3_Sherman and Howard letter](#)

[Attachment 4_Creekwalk-e-mail Mill Levy Impact on Exclusion](#)

[PowerPoint_2019CreekwalkBIDExclusions](#)

Marc Smith, Corporate Division Chief, Office of the City Attorney, advised City Council of the standard of review for this hearing.

Carl Schueler, Comprehensive Planning Manager, Planning and Community Development presented an ordinance excluding certain

property from the Creekwalk Marketplace Business Improvement District (BID). He gave a brief background of the BID and a summary of exclusion requests. Mr. Schueler presented a vicinity and context map of the parcels petitioned for exclusion.

Jeff Massey, representing the petitioners for exclusion, gave an overview of the properties requesting the exclusion. He stated Michael Roslan, property owner, 1609 S. Nevada LLC, one of the petitioners, was involved with Russ Dykstra, Spencer Fane, who drafted the facilities funding and reimbursement agreement. He stated there was no discussion with any of the petitioners regarding the 51 mill levy cost, but the petitioners have offered to pay for their portion of costs associated with public improvements and upkeep even though there was not any debt obligation at the time of inclusion or exclusion.

Councilmember Williams asked who funded the public improvements that have already been made on the east side of Nevada Avenue. Mr. Massey stated 1609 S. Nevada LLC.

Councilmember Williams asked Mr. Massey to address the state provision regarding the change of boundaries of the district shall not impair or affect any of its rights or privileges whatsoever. Mr. Massey stated the primary purpose of this district is for public improvements and the exclusion of this property will not affect the district in any way. He said there are no existing contractual obligations at this point.

Councilmember Geislinger asked if the streetscape improvements on the east side of Nevada Avenue are completed. Mr. Roslan confirmed they are.

Councilmember Geislinger asked how the exclusion would not adversely affect the other entities included in the district. Mr. Massey stated excluding this 162.5 feet of frontage with them agreeing to pay for their portion of public improvements out-of-pocket, there would not be a liability to the district.

Councilmember Knight asked if 1609 S. Nevada LLC has filed a lawsuit against the district. Mr. Massey stated the district filed a lawsuit against 1609 S. Nevada LLC regarding the facilities and funding reimbursement agreement.

Councilmember Knight stated the petition for inclusion outlines the liability for the assessments on the properties which was signed by Mr. Roslan and Mr. Nolette. Mr. Roslan stated Mr. Dykstra drafted the facilities funding reimbursement agreement and all the improvements were made at the expense of 1609 S. Nevada LLC. He said the petition for inclusion was signed in good faith, but he was not aware of the mill levy requirements of the agreement. Mr. Roslan stated he offered to pay for their share of the public improvements.

Councilmember Williams asked what public improvements were funded by 1609 Nevada LLC. Mr. Roslan stated there were benches, decorative concrete, setbacks, and streetscape.

Councilmember Geislinger asked if they were aware of the possibility for assessment when they signed the inclusion agreement. Mr. Roslan stated they were, but not of the actual amounts.

Russ Dykstra, Spencer Fane, LLP, representing the district, stated he only represented 1609 S. Nevada Avenue LLC for a very distinct matter after the inclusion petitions had been filed. He said Spencer Fane's internal professional responsibility committee review of the facts confirm there was no breach of any ethical or professional responsibility requirements. Mr. Dykstra stated if the proposed exclusion is approved, it will be detrimental to an existing contractual obligation the district has. He stated Danny Mientka, Equity Group, developer of Creekwalk Marketplace BID, sent a copy of the district's operating plan to the petitioner prior to the inclusion was filed and he prepared the form for the inclusion petition which was a standard form.

Councilmember Geislinger asked what the impairment would be if only the east side property is excluded from the district. Mr. Dykstra stated it would impair reimbursement for the public improvements made under the facilities funding reimbursement agreement.

Councilmember Knight asked what the requirements for public improvements were. Jariah Walker, Executive Director, Urban Renewal Authority (URA), stated the undergrounding of utilities and streetscape improvements are included in the development agreement.

Bob Nollete, petitioner, Oxford Orion Investments I, LLC, stated he has never received any documentation or meeting notice regarding the district.

Councilmember Geislinger stated he feels the petitioners knew what they were getting into and there would be an adverse impact on the district to exclude these properties.

Councilmember Williams stated the provision is to not affect any of the district's rights or privileges whatsoever and the district's ability to collect taxes necessary to make public improvement would be impaired by the exclusion which is why he will be voting in favor of denying the request for exclusion.

Councilmember Knight stated he will not be supporting a denial because an exclusion is a way to get out of the district and there is no existing debt yet.

President Skorman stated the district should have provided more of an understanding of what the property owners would be responsible for.

Councilmember Pico stated because the bonds have not been issued yet, the district can adjust their plan and he will be voting against denial of the exclusion.

Councilmember Murray stated this URA project was previously approved and there is no pressing issue to terminate it at this point. Councilmember Knight stated these properties were not included in the district when the project was approved.

Councilmember Williams stated even though the debt has not been issued yet, the obligation is already there and according to law, the four factors for exclusion need to be met and the petitioner has not met them.

Motion by Councilmember Geislinger, seconded by President Pro Tem Strand, to deny the Ordinance excluding certain property from the boundaries of the Creekwalk Marketplace Business Improvement District. The motion passed by a vote of 4-3-2-0

Aye: 4 - Geislinger, Murray, Strand, and Williams

No: 3 - Knight, Pico, and Skorman

Absent: 2 - Avila, and Gaebler

- 2.B. [19-176](#) Authorization of Creekwalk Marketplace Business Improvement District to issue debt in the form of Series 2019A and Series 2019B Limited Tax Supported and Special Revenue Bonds.

(Legislative Item)

Presenter:

Carl Schueler, Comprehensive Planning Manager, Planning & Community Development

Attachments: [Resolution](#)

[Attachment 1-Bonds Cover Letter](#)

[Attachment 2- Forms of 2019 Bonds](#)

[Attachment 3- Trust Indenture - Creekwalk Marketplace](#)

[Attachment 4- Subordinate Bonds Indenture Creekwalk Marketplace 2019](#)

[Attachment 5- District Bond Resolution](#)

[Attachment 6- George K. Baum Opinion Letter & Financial Plan](#)

[Attachment 7- Opinion Letter from SF - CMBID](#)

[Attachment 8- Creekwalk BID Bond Graph Illustrations](#)

[Attachment 9- Creekwalk Marketplace BID Projection with Property Removal](#)

[PowerPoint_2019CreekwalkBIDDebt](#)

[Signed Resolution 51-19](#)

Carl Schueler, Comprehensive Planning Manager, Planning and Community Development presented the Resolution authorizing Creekwalk Marketplace Business Improvement District (BID) to issue debt in the form of Series 2019A and Series 2019B limited tax supported and special revenue bonds.

Councilmember Pico asked if the district is confident if they can repay the bonding obligation. Russ Dykstra, Spencer Fane, LLP, representing the district, stated they are confident they will be able to make the bond payments as projected.

Motion by Councilmember Murray, seconded by President Pro Tem Strand, that the Resolution authorizing the Creekwalk Marketplace Business Improvement District to issue debt in the form of Series A Limited Property Tax and Public Improvement Fee Revenue Bonds in the approximate amount of \$18,145,000 and Series B Limited Property Tax and Public Improvement Fee Revenue Subordinate Bonds in the approximate amount of \$3,030,000 be adopted. The motion passed by a vote of 8-0-1-0

Aye: 8 - Avila, Geislinger, Murray, Knight, Pico, Skorman, Strand, and Williams

Absent: 1 - Gaebler

3. Adjourn

There being no further business to come before City Council, Council adjourned.

Sarah B. Johnson, City Clerk