

City of Falls Church

Meeting Date: 08-09-21	Title: (TO21-10) ORDINANCE TO CREATE AND ESTABLISH THE WEST FALLS COMMUNITY DEVELOPMENT AUTHORITY	Agenda No.: 07(a)(4)	
Proposed Motions: 1. Move to adopt proposed (TO21-10). (then Verify with staff that Waivers of 30-day period have been received from all petitioners) 2. Move to finally adopt (TO21-10)			
Originating Dept. Head: Wyatt Shields, City Manager	Lead Staff:		Disposition by Council:
City Manager: Wyatt Shields 703.248.5004 FWS 8-4-2021	City Attorney: Carol McCoskrie 703.248.5010 CWM 8-4-2021	CFO: Kiran Bawa 703.248.5092 KB 8-4-2021	City Clerk: Celeste Heath 703.248.5014 CH 08-05-21

2 **REQUEST:** Council is requested to hold a public hearing and consider adoption of the proposed
3 ordinance creating and establishing the West Falls Community Development Authority and
4 establishing the West Falls District. The two motions listed above are needed to carefully reflect
5 the procedure in the statutes for the creation of CDAs. They provide for the opportunity for a
6 petitioner to object to a proposed ordinance, or to waive that objection. Here the City has
7 received written waivers from all petitioners.
8
9

10 The specific request is to create and establish a Community Development Authority (CDA) for
11 the West Falls District of 9.78 acres, for the purpose of issuing bonds to pay for public
12 infrastructure in the district, and administering a special assessment on property in the district to
13 pay the debt service for those bonds, plus eligible administrative expenses associated with the
14 district. This was requested in a Petition from the landowners, including the City of Falls Church,
15 the Economic Development Authority, FCGP, and a Trammel Crowe entity. The signed petition
16 has been agreed upon by the parties and bond counsel and submitted to Council. First reading
17 was given to (TO21-10) on June 28, and second reading was deferred so that this matter would
18 track with the land use approvals.
19

20 **RECOMMENDATION:** Staff recommends holding a public hearing and adopting (TO21-10) at
21 the August 9, 2021 City Council meeting.
22

23 **BACKGROUND:** The Comprehensive Agreement (CA) with Falls Church Gateway Partners
24 (FCGP) calls for the City Manager to recommend creation of this CDA, to help finance the
25 infrastructure for the planned West Falls Project. This ordinance would establish the district over

26 phases 1 and 2 of the proposed development. Until closing on Phase 2 occurs, the assessment
27 would be paid entirely by those properties that are the subject of the Phase 1 closing.
28

29 The creation of a Community Development Authority is authorized by Virginia Code sections
30 15.2-5152 *et seq.* CDAs are authorized to undertake additional projects, or provide some
31 additional services, within a district. A CDA can finance such projects by issuing bonds and then
32 requesting that the locality impose special taxes or a special assessment on properties in the
33 district to pay the debt service on such bonds. This ordinance is before City Council for creation
34 of the CDA only, and bond issuance will require further Council approval at a later date. The
35 City has never created a CDA, but some examples in the region include the Mosaic CDA
36 (Fairfax County), Ballston Quarter CDA (Arlington County), and the Short Pump Town Center
37 CDA in Henrico County.
38

39 In the CA between the City and FCGP executed on June 12, 2019, the creation of a CDA was an
40 option for the City. On February 26, 2021, the City executed an amendment to the CA, which
41 among other provisions, replaced with option with the following agreement:
42

43 Section 5.1.2 **City Project Funds**. Prior to the Phase 1 Closing and promptly following
44 execution of the Amendment, it is acknowledged that the intent of the parties is that the
45 City Manager will timely introduce and support legislation to the City Government that
46 would create a Community Development Authority (“CDA”) to issue tax-exempt bonds in
47 order to fund certain infrastructure as part of the Project. The Parties acknowledge and
48 agree that the CDA will impose an assessment against the Phase 1 Property of no greater
49 than fifteen cents (\$0.15) per One Hundred Dollars (\$100.00) of assessed value of the
50 Project at the time of creation of the CDA, but that the City Government of CDA may
51 impose a higher assessment if it is determined that a higher assessment is necessary to
52 cover the payment of the tax-exempt bonds. To the extent necessary to satisfy the public
53 infrastructure requirements of the CDA, Developer and City shall execute any required
54 amendment(s) to the Phase 1 Ground Lease(s) modifying the description of the ‘Premises’
55 (as defined in any Ground Lease(s)) to delete and remove certain portions of the Phase 1
56 Property for purposes of complying with the CDA terms and conditions. City and
57 Developer agree that they will add a new, or modify the existing, REA in order to ensure
58 that any changes related to the CDA do not affect access to or operation of the Premises
59 under the Ground Lease(s).
60

61 The intent of the parties is that the CDA will issue \$12 to \$15 million in bonds, the proceeds of
62 which will be used for some of the costs of infrastructure for the site, and that a special
63 assessment will be made and allocated among the various taxable parcels on the site to pay the
64 costs of debt service. The bond proceeds will be used for publicly owned improvements, such as
65 streets, the Commons, and underground utilities located in the public right of way. Under the
66 terms of the CA, the public improvements will be owned by the City after construction, but some
67 may be maintained by the developer under maintenance agreements with the City.
68

69 The plan for this financing is to use a special assessment, which is different from a tax. The
70 amount of the assessment will relate to the projected needs for funds to pay the debt service and
71 other costs, rather than assessed value. The amount to be assessed will be determined when the

72 bonds are issued, and then the allocation of the repayment will be managed annually by an
73 administrator hired by the CDA board. The administrator's costs are paid as administrative
74 expenses of the CDA from special assessment revenues.

75
76 In the Petition the parties have agreed that a back-up special tax may be requested and imposed
77 in the district in the event that either the special assessment is declared to be unenforceable for
78 any reason, or the levy of the assessment for any year is insufficient to pay the debt service and
79 expenses.

80
81 Costs that are now being incurred by the City, including legal and transactional costs, will be
82 reimbursed by the bonds issued by the CDA. It is important that the CDA be created now so that
83 it can have an organizational meeting and adopt a reimbursement resolution to permit those costs
84 to be financed on a tax-exempt basis.

85
86 *Membership of the CDA:*

87
88 The City Council will appoint and remove all members of the CDA. It is important to the tax
89 exempt status of the bonds, that the CDA not be controlled by the private developer or any other
90 private entity.

91
92 An initial five member CDA Board is proposed with the following members:

93
94 Debora Shantz-Hiscott
95 David Snyder
96 Robert Young
97 Wyatt Shields
98 Kiran Bawa
99

100 In the attached documents, this list of members is attached to the Articles of Incorporation. By
101 adopting the ordinance, the Council will also be appointing these members. The proposed
102 ordinance directs that those Articles are to be filed with the State Corporation Commission, and
103 that will be done after Council acts.

104
105 *Risk:*

106
107 The bonds issued by the CDA will not be backed by the City of Falls Church, either legally, or
108 subject-to-appropriation. It is, nonetheless, in the City's interest that there never be a default on
109 the bonds issued by the CDA.

110
111 It is agreed by the parties that the preferred method of covering the debt service on the bonds
112 shall be by Special Assessment. The Special Assessment will be a dollar amount determined at
113 the time of bond issuance, and then the repayment is made annually and handled by an
114 administrator. The Special Assessment is not tied to the assessed value of the property and its
115 buildings, but is a straight dollar amount, which may not exceed the peculiar benefit the financed
116 improvements provide to the properties within the CDA subject to the Special Assessment. Such
117 benefits will be calculated by Municap, a consultant expert in these matters working for FCGP.

118

119 In addition to the Special Assessment, the City will retain the right to impose a Special Tax on
120 the district, but only if the special assessment is determined to be unenforceable, or the revenues
121 are determined to be insufficient to pay the debt service and costs for any year. In such an event,
122 the CDA and City will be able to impose a tax to collect those amounts.

123

124 **FISCAL IMPACT:** Since the bonds will not be backed by the City of Falls Church, there will
125 be no fiscal impact or legal recourse to the City related to the debt service on the bonds.

126 However, if the West Falls project fails or is abandoned by the developer, the City may be
127 exposed to future legal or other consulting costs in a workout situation, and to possible claims
128 that it should step up to remedy the situation. As development progresses in the West Falls
129 District, the City will benefit from the increased assessed value and other local taxes and fees
130 related to that development. Further, the City is currently paying bond counsel and other costs,
131 which are expected to be reimbursed at the time of issuance of the bonds, out of the proceeds.

132

133 **TIMING:**

134 June 7, 2021: Petitions to Create CDA received by the City
135 June 28, 2021: 1st Reading on Ordinance to Create West Falls CDA
136 August 9, 2021: 2nd Reading on Ordinance to Create West Falls CDA
137 August 9, 2021: City Council appoints Members of the CDA
138 August 19, 2021: Scheduled First Meeting of the CDA Board
139 August 2021: 1st Draft of the Preliminary Limited Offering Memorandum
140 December 2021: City Council Authorizes Bond Issuance and Special Assessment.
141 February 2, 2022: Bond Sale
142 February 15, 2022: Closing on Bond Sale

143

144 The petitioners have formally asked for a waiver of the 30-day study period. In order to avoid
145 the waiting period for adoption of the Ordinance, as set forth in Virginia Code § 15.2-5156(B),
146 the Petitioners each have formally waived the right to examine the proposed ordinance creating
147 the Authority and to withdraw their signature after the public hearing but before adoption by the
148 City Council as permitted by Virginia Code § 15.2-5156(B). The Petitioners have formally
149 requested that the City Council create the Authority immediately following the public hearing on
150 August 9.

151

152 **ATTACHMENTS:**

153 Petition to create and Establish CDA
154 Map of West Falls District
155 Articles of Incorporation for West Falls CDA

(TO21-10)

156
157
158 ORDINANCE TO CREATE AND ESTABLISH THE WEST FALLS
159 COMMUNITY DEVELOPMENT AUTHORITY WITHIN THE CITY OF
160 FALLS CHURCH, VIRGINIA
161

162 WHEREAS, the City Council of the City of Falls Church (“City Council”) has received, on June
163 7, 2021, a Petition from the City of Falls Church, Virginia, the City of Falls Church
164 Economic Development Authority, FCGP DEVELOPMENT LLC, a Delaware
165 limited liability company, and TC MIDATLANTIC DEVELOPMENT V, INC., a
166 Delaware corporation (“Petition”), requesting that the City Council establish a
167 community development authority to help fund certain public infrastructure
168 improvements on the economic development site at the west end of the City; and
169

170 WHEREAS, the City Council finds that establishment of such a community development
171 authority would be in the public interest and would promote economic development
172 and revitalization within the City.
173

174 NOW THEREFORE, the City of Falls Church hereby ordains:
175

- 176 1. The West Falls Community Development Authority is created and established pursuant to
177 Article 6 of Title 15.2 of the Code of Virginia of 1950, as amended, in accordance with the
178 Petition, Pursuant to Virginia Code § 15.2-5153 for the Creation of the West Falls
179 Community Development Authority; and
- 180 2. The West Falls Community Development Authority (the “West Falls CDA”) encompasses
181 the portion of the City of Falls Church, Virginia (the “City”), set forth in Exhibit 3 to the
182 Petition (the “West Falls District”), which is attached hereto and made a part hereof,
183 provided that in case of any conflict in the description of the extent of the West Falls
184 District among the items included in Exhibit 3, the extent of the West Falls District as set
185 forth in metes and bounds description shall be controlling; and
- 186 3. The West Falls CDA is not permitted to provide services that are provided by, or are
187 obligated to be provided by, any authority already in existence whose charter requires or
188 permits service within the West Falls District; and
- 189 4. Attached hereto and made a part hereof are Articles of Incorporation of the West Falls
190 CDA; and
- 191 5. Inclusion of information required by Virginia Code § 15.2-5103(A)(3) is impracticable.
- 192 6. Any bonds issued by the West Falls CDA shall be a debt of the West Falls CDA and not
193 of the City; and
- 194 7. A copy of this Ordinance shall be recorded in the land records of the Circuit Court for the
195 Seventeenth Judicial Circuit of the Commonwealth of Virginia and shall be noted on the
196 land books of the City, as provided by Virginia Code § 15.2-5157.

197 This Ordinance shall become effective upon adoption.

198 1st Reading:

199 2nd Reading:

200
201 Adoption:(TO21-10)