



Legislation Text

File #: 20-647, Version: 1

CITY COUNCIL AGENDA ITEM

ACTION REQUESTED:

Receive the staff report and consider whether to direct staff to prepare a resolution establishing a 5th Avenue referendum for the November 3, 2020 general election

DEPARTMENT: Legal Department

SUBMITTED BY: Michael DiSanto, City Attorney and Amy Emery, TED Operations Manager

BOARD/COMMISSION REVIEW:

None

BACKGROUND:

For more than 20 years, Naperville City Councils' have invested strategically to purchase and lease land around the 5th Avenue Train Station. Now, the City controls more than 13 acres in the area that has the potential to accommodate, not only redevelopment, but municipal improvements to address existing stormwater, pedestrian safety, traffic, commuter parking, and affordable housing needs. In 2017, the Council initiated consideration of potential development plans for the area. The 5th Avenue Project involves a web of complex questions surrounding not only the type of development, but its design, height, open space accommodations, populations served, impacts on the surrounding neighborhoods, relationship to downtown Naperville, ownership options, financial considerations, and more.

Over the past three years, Ryan Companies and City staff have facilitated input and feedback from City Council, residents, and community stakeholders through a variety of methods. However, at this stage, there remains uncertainty whether there is City Council consensus as to what, if anything, can or should be done at this time. Significant Council consensus is needed because the City's Municipal Code generally requires a three-quarter vote of Council, seven votes, to convey real estate or lease real property owned by the City.

October 1, 2019 Ryan Concept

The last 5th Avenue concept plan formally presented by Ryan Companies to the City Council was on October 1, 2019. That concept introduced the Well Community approach and included more green spaces than prior proposals as well as changes to the mix of uses and design. The concept was denied on a 6-3 vote of City Council. On November 5, 2019, City Council directed the matter come back to a workshop for further discussion.

January 30, 2020 Revised Concept

Prior to scheduling a City Council Workshop, Mayor Chirico and Councilman Kelly, collaborated independently with Ryan Companies to create a revised concept representing a compromise among

the divided opinions of the City Council and community. Their revised concept was released publicly on January 31, 2020. Among its notable elements are reduced building heights, a new park space, and a relocation of several uses from the October 1, 2019 concept in an attempt to address community concerns related to traffic, parking, height, density, pedestrian safety and green space amenities.

This revised concept was publicly reviewed by the 5th Avenue Steering Committee on February 15, 2020. Reactions from the Steering Committee and public attendees were mixed and did not include an endorsement (a summary of the Steering Committee's input is attached). Following the Steering Committee meeting, a City Council workshop on the revised concept was initially scheduled for March 2, 2020.

Workshop Scheduling Delayed

At the February 18, 2020 City Council Meeting, it was announced that the March 2, 2020 5th Avenue Workshop would be rescheduled. Additional time was needed for Ryan Companies to prepare detailed cost estimates quantifying the potential scope of municipal and private investment in the development. Further, more time would allow City staff (and the City Advocate, as needed) to evaluate the financial information and provide the City Council with analysis, including, potential business terms.

Efforts were underway schedule a workshop date in April when City operations were impacted by the COVID-19 outbreak, resulting in an indefinite delay in scheduling.

Potential 5th Avenue Referendum

At the May 5, 2020 City Council meeting, under new business, Councilman Coyne raised the idea of seeking public input about the future of the project via a ballot referendum. Councilman Coyne indicated that a referendum on this issue could help Council discern the interest of the community on moving forward with the current concept proposal. Council directed staff to prepare a report on the referendum option for its consideration at a future Council meeting.

DISCUSSION:

Referendum Types

Illinois law allows two types of referendum on the ballot; binding and advisory. A binding referendum, if approved by a majority of the voters, has the effect of law and can only be used for matters specifically authorized by statute or the Constitution. Prior local examples of binding referenda propositions allowed by law are whether to impose term limits for City Council members and whether City Council members should be elected by districts or at-large.

Non-binding, or advisory, referenda propositions have no legal affect if passed by the voters, but are often used to gauge the opinion of the community on a public policy issue. City Council has specific statutory authority to place advisory referenda propositions concerning public policy on the ballot. Prior examples of non-binding referenda propositions allowed by law are whether to whether the Illinois legislature should pass meaningful pension reform for public safety employees and whether the City should allow the sale of recreational adult use cannabis.

A referenda proposition concerning whether the City should proceed with a 5th Avenue development plan and borrow funds to pay for it would be legally permitted as an advisory, non-binding referenda

proposition.

Importantly, Illinois law prohibits the use of City resources or funds to advocate in favor of or against any public referenda propositions.

Placement on the Ballot

Referenda, either advisory or binding, can be placed on the ballot by one of two methods. The first method is initiated via a petition, whereby registered voters in sufficient numbers, as required by law, sign a petition proposing a specific referenda proposition. The second method is via a resolution passed by a governing body. In the City's case, the City Council may place specific referenda propositions on the ballot by passing a resolution (by a simple majority vote) authorizing the placement of specific referenda propositions on the ballot. Generally, not more than three referenda propositions may be submitted regarding the City on the same ballot.

Timeline for Placement on Ballot

To be eligible for inclusion on a ballot, Governing bodies may adopt a resolution authorizing an advisory referendum not more than one year prior to a regularly scheduled election, but not less than 79 days before said election.

The next regularly scheduled election is the November 3, 2020 general election. To establish a referenda proposition on the November 3, 2020 ballot, the City Council must adopt a resolution authorizing a specific referenda proposition at last 79 days prior to the election (i.e., on or before Sunday, August 16, 2020). The last regularly scheduled City Council meeting prior to August 16, 2020 is **July 21, 2020**. Staff recommends that if Council chooses to establish a referenda proposition for the November 2, 2020 ballot, it adopt the requisite resolution on or before the July 21, 2020 regularly scheduled City Council meeting.

Referendum Language

If it is a City Council initiated referendum, the City Council approves the language of the public proposition placed on the ballot. State statute requires referenda propositions to: (1) be one sentence, (2) begin with the word "shall", and (3) be able to be answered by "YES" or "NO."

A consideration point is whether more than one question is necessary. Staff's research of referenda propositions concerning large developments in other municipalities suggests one question is the prevailing approach. Most combine a specific project and costs in one question as doing so avoids the potential of having the majority of voters respond to the first question in the affirmative and the second in the negative resulting in unclear direction.

For discussion purposes, Councilman Coyne has prepared the following sample proposition that frames the issue around the specific pending (Chirico/Kelly) concept proposal and the potential costs.

"Shall the City of Naperville proceed with a 5th Avenue development plan that is substantially similar to the concept presented at the February 15, 2020, 5th Avenue Steering Committee meeting and borrow approximately \$0, 000,000 to pay for improvements to commuter parking, stormwater detention, and additional municipal infrastructure substantially similar to those improvements outlined in said concept plan?"

Next Steps

Council may consider the information contained within this staff report and direct staff accordingly via a motion from the dais. Potential options are detailed below.

Option 1*: Direct staff to prepare for its consideration at the June 16, 2020 Council meeting, a resolution establishing a 5th Avenue referenda proposition for the November 3, 2020 general election; or

Option 2: Instead of a referenda proposition, direct staff to schedule a City Council workshop re: the 5th Avenue.

Option 3: Take no action on 5th Avenue at this time.

** Council may modify the language of the referenda proposition prior to any final action to adopt any enabling resolution. If Council chooses the referendum option, staff anticipates pausing any further work on the 5th Avenue Project until additional Council direction is provided after the results of the referendum are known.*

FISCAL IMPACT:

N/A