

Ballpark Commons (BPC) Frequently Asked Questions

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Why are there construction cost overruns?

There are multiple unforeseen and/or uncontrollable causes that resulted in the cumulative cost overruns. Some of the more significant cost overruns include:

- The original plan was to start immediately upon completion of negotiations for a lease with Milwaukee County. The terms of the lease changed dramatically to a purchase negotiation that required almost 18 months to complete resulting in expiration of fixed price contracts.
- Additional development was added to the project following initial designs included at TID formation resulting in additional development of the infrastructure plans.
- Modifications were added to protect the public and improve public safety, such as additional berms and other features.
- Material costs and labor of infrastructure increased. Construction costs generally have been increasing at an average annual rate of 7%. Because BPC is a multi-year project, costs associated with initial construction contracts went up when those contracts were renewed or activated.

- Widespread contamination was discovered in subsurface soils that required DNR approval and a site specific soil management plan. As a result, more costly management and relocation of soil was necessary.
- Initial projections relied on cost and material assumptions based on known reasonable project comparisons. However, many costs increased based on final construction and design requirements, in great part due to the unknowns of development on a landfill.

Why should the City assist the developer with public infrastructure construction cost overruns?

The development has expanded in scope and tax value, construction costs have increased, and land acquisition and construction commencement was delayed for reasons beyond the control of the developer. The City created tax increment district no. 5 (“TID 5”) in 2016 and entered into a public-private partnership to help fund public infrastructure improvements for the BPC master development. Partnering with the developer on increases in the scope and cost of such public infrastructure honors the spirit of the original agreement and ensures that the quality of the master development and public infrastructure is completed to City standards in a timely manner.

What happens if there are future public infrastructure construction cost overruns?

The vast majority of the public infrastructure work has been completed and final completion is expected in the near future. Accordingly, there is minimal likelihood of unanticipated costs or unknown site conditions that require corrective action.

Should there be some unforeseen future cost, the Developer will bear this risk through guarantees and to ensure that remaining work will be completed without additional public financing. The Developer is proposing amendments to all existing agreements to “tighten” any change order or cost overrun provisions to prevent future cost overruns.

The Private-Public Partnership with the developer was created to fill a financing gap for public infrastructure at the site. The City is invested in ensuring sustainable success of the project for all the citizens of Franklin. The City is not obligated to spend any additional money regardless of any future request.

What is the status on the property tax exemption, the process for attainment, and the organizations involved?

The developer is seeking to exempt the project from sales taxes as allowed by WI Statute 70.11 (36). This provides an exemption from construction materials sales tax and Real and Personal Property tax for certain stadium districts. Regardless of the status of that request, the current and all future Developer’s Agreements requires a Payment In Lieu of Property taxes (PILOT) be made during the life of the District and for an additional 20 years beyond the closing of the TID. Regardless of who owns the property, the equivalent to the property taxes must be paid. The tax exemption would not impact the payments to the TIF.

Why is the City considering TIF assistance for Mandel Group proposed apartments?

The proposal by the Mandel Group provides many advantages to the city and the neighbors. It brings the premier apartment developer in the area to the project providing experience and financial stability; additional building amenities (higher value, higher rents); underground parking vs. street parking; higher density driving additional consumer expenditures to local businesses and additional office/retail/apartment building for additional property tax revenue. The additional property value generated by the apartment community generates surplus tax increment.

Mandel Group anticipates building on property that has public infrastructure in place and this cost was included in the original project plan. However; the apartment development will not happen without TIF assistance – this is the BUT FOR test required by Wisconsin statute in order to provide TIF assistance. Simply put, the cost of the apartment community exceeds the projected value.

The Mandel Group’s full time, on-site leasing and maintenance teams actively manage their communities with an eye towards long-term quality, not short-term profits.

How do property sales impact TID assistance?

Sale of parcels or buildings to other investors will have no adverse impact on the TID. All Franklin developers agreements contain a ‘look back’ provision which includes any proceeds from the sale of parcels and enables the City to share in excess profits by the Developer should they materialize. The developer is allowed to sell parcels within the TID and new owners must follow the provisions of the Developer’s Agreement including the payment in lieu of taxes provision, which protects the City during the term of the TID and for 20 years beyond.

Is there third-party professional financial review for this project?

The City has engaged a preeminent financial consulting firm who is a leader in municipal and TIF financing to evaluate the proposal both from a cost perspective and from a revenue perspective to independently determine the viability of the proposal and a return on the investment by the city as well as determine:

- 1) The Developer is not unduly enriching themselves as a result of this project; and
- 2) The Developer is providing significant private/personal equity to the project.

The consulting firm’s review confirms that the developer will satisfy both criteria. Final results of this work will be shared on the City’s BPC page when available.

If the City approves more TIF support for Ballpark Commons, what additional protections/milestones will protect the City’s investment?

Amending TID No. 5 provides the City with an opportunity to amend the developers agreement to include securities and other protections that ensure our citizens will not bear undue burden from potential unforeseen issues. The City has hired Quarles & Brady to negotiate the terms of the amended agreement.

How have the City and the developer addressed environmental construction issues?

Conditional approval was granted by the DNR to construct improvements on the site. Soils engineering reports verify load-bearing capacities based on structural drawings. Construction plans provide details for support structure installation. Construction work is inspected/approved by City of Franklin Inspection Services in accordance with Building Codes and approved construction plans. DNR has oversight over all future environmental regulations and protections.

Is there demand for high-end apartments in the Franklin housing market?

Both the Mandel Group, the preeminent luxury apartment developer in the area, and an independent third-party project a significant demand for high end apartments in our city. The data used to support this conclusion can be reviewed [HERE](#).

Where are Plans and Specifications for the project located?

Plans or specifications that require Plan Commission review/approval are retained in the Department of City Development files. Inspection Services also retains an electronic copy of the plans and any (submitted) specifications. These documents are available for viewing by setting an appointment with the engineering or planning department.

How and why have Planned Development District (PDD) conditions been amended?

The PDD has been amended a number of times, to reflect both receipt of new more detailed plans from the developer, and to reflect changes to plans requested by the developer and agreed to by the Common Council that bring additional value to the project. The PDD does not pertain to costs (which is the role of the TIF and the Developers Agreement) and instead pertains to the planning and zoning standards for the entire Ballpark Commons development.

What is the status of the light and sound study?

There is not a requirement or condition for sound and light mitigation. There was, but is no longer, a requirement for a light and sound study. That condition of the PDD was removed by the Common Council at its June 19, 2018 meeting during its review and approval of a Major PDD Amendment. The removal of the condition has little practical effect because changes to the lighting and sound systems have already been implemented to minimize impacts to the neighborhoods. BPC must abide by the City's standard sound and light regulations, and the developers agreement with Milwaukee County.

What is the status of the landscaping plan?

Based on staff recommendations and enhancements to the development a revised landscaping plan is in process.

What is the status on parking, restrooms, and other public features of BPC?

The only public features of BPC are the public roads and the Oak Leaf Trail (and certain public infrastructure). Those have been approved, and in select locations, are under construction. In regard to parking and restrooms, for the stadium, they will be under construction shortly. All public facilities must follow design standards and ordinances of the City and are inspected prior to being accessible to the public.

Is the developer in default?

No. According to Quarles & Brady, the City's legal advisor on this matter, the developer will only be at fault if there is a failure to pay the guaranteed difference between the City's annual loan obligation due in early 2020 and the increment available for that payment, then there is a default.