

Minutes

Audio Tape No. 671

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 6:30 P.M., on Monday, December 18, 2006. Mayor Peggy Dunn presided.

Councilmembers present: Jim Rawlings, Lou Rasmussen, Gary Bussing, Scott Gullledge, Gregory Peppers, Mike Gill, Debra Filla, and James Azeltine.

Councilmembers absent: None.

Staff present: Scott Lambers, City Administrator
Patty Bennett, City Attorney
Deb Harper, City Clerk
Christy Wise, Deputy City Clerk

Others present: Larry Winn
Bruce Peshoff
Michael Harty
Laura Uhlmansiek, Kansas City Star reporter

1. Opening Remarks

Mayor Dunn called the Work Session to order at 6:30 P.M. Introductions were made by those present.

City Administrator Scott Lambers distributed a memorandum prepared by Assistant City Attorney Shannon Marcano regarding non-conforming land uses. The memo indicates that Leawood is fairly consistent compared to how various other cities handle this issue. For Leawood, the subject is not significant in terms of numbers and for the fact there will be no more annexations of property.

A request to review the current ordinance was made by a prospective property owner. There were concerns if the structure were destroyed by a natural event or unfortunate incident, restoration would not be allowed given the current setback requirements. Understandably, the individual is hesitant to purchase the building knowing they may not be able to replace the investment, if needed. The memorandum indicates a method by which reconstruction could occur through the Board of Zoning Appeals [BZA].

Mr. Lambers relayed that discussion with City Attorney Patty Bennett regarding this particular structure determined that if there were more than 50% destruction, Staff would support a BZA decision that it would meet the statutory requirements for structure replacement in the original condition. However, this indication of good faith does not resolve the issue of assurance for the prospective property owner.

A decision to do one of the following is needed by the Governing Body:

1. Keep the status quo currently set in place.
2. Provide a mechanism by which property owners can proactively go before the BZA and receive a permit granting permission to rebuild the structure on the existing footprint while complying with all current City building codes.

Mr. Lambers stated he is agreeable to option No. 2 given there is a limited number of non-conforming uses in the City with no more anticipated in the future.

2. Discuss restoration of Non-conforming Land Uses and Structures

Mayor Dunn asked if future BZA members would be bound to decisions made by the currently seated BZA. Ms. Bennett stated the mechanism would be a non-conforming situation exception permit that would allow a particular structure the ability not to comply with the non-conforming structure ordinance going forward. The exception would attach to the structure and land.

Councilmember Gill assessed that non-conforming structures are grandfathered from current codes until something occurs such as redevelopment or fire, at which point another structure in the same location would have to comply with current codes. He asked why the policy is inequitable. Ms. Bennett stated fairness levels vary depending upon the circumstances of different properties with most being equitable. Restrictions would need to be placed upon the exceptions. Exemplifying a recent project on 135th Street and State Line Road, Councilmember Gill stated he is hesitant to evoke a new policy allowing grandfathered cases to remain in effect after the property is no longer there.

Councilmember Filla summarized that the historic property in question would need a setback variation in order to rebuild. Current ordinances would not allow a commercial or residential building, thus the owner would have invested a large amount of money on land that cannot be redeveloped. Mr. Lambers stated if destruction occurred, the only option for this land would be to extend the existing shopping center southward with perhaps an office component. The value paid for the structure would not be returned.

To Councilmember Gill's point, Mr. Lambers stated currently there is no process for the property owner to obtain relief if the structure is destroyed over 50%. The question is whether to allow a review process on a case-by-case basis. Councilmember Gill said he would not have any objection to this type of review, however is not in favor of perpetual protection for all grandfathered cases. Mr. Lambers stated the review would go through the BZA but, if Council so desires, could go through the Planning Commission and City Council as well.

Noting that he voted against the exemplified 135th Street and State Line project, Councilmember Bussing stated there are distinctions in that the best use of certain properties may require special circumstances.

Councilmember Azeltine asked what currently prevents a property owner from requesting an exception from the BZA. Mr. Lambers stated the BZA would not rule on such a request at this point because the structure still exists. The prospective property owner simply wants proactive assurance prior to purchase that the building could be restored if destroyed. Mr. Lambers stated he and Ms. Bennett are in agreement that under current state statute, the individual would be allowed without objection from Staff to rebuild in terms of footprint. Discussion took place regarding how to present the exception requests with the BZA determined as the most appropriate venue.

Councilmember Rasmussen voiced disfavor with approaching the matter in the manner described as it would not be correct policy. He provided historic facts about the property in question, which is at 80th Street and Lee Boulevard. This area was originally developed by the Kroh Brothers and the City has since rebuilt the corner. At one point, the City Council considered including this location in a review for redevelopment of existing commercial developments. Changing the policy will require several assumptions: that the property will be destroyed, that the possibility of redeveloping the area will be compromised, that current zoning regulations will be in existence when a fire occurs, that the future LDO will have the same terms and conditions, and that future City Council members will not be proactive in coming to a conclusion. There is no reason to prejudge a future City Council. He further added it has been very difficult for cities to establish the ability by law to update structures following destruction.

Councilmember Filla listed alternative solutions including revising the ordinance to include exemptions for structures with special historic status, present the case to the BZA, or create a development agreement containing provisions. If the objective is for someone to buy and restore the building, accommodations should be made to create business viability for the property post-destruction. She pointed out there is a high level of investment and building permit activity in north Leawood at this time. More commercial development in this area is not indicated given the market place with empty square footage of existing buildings in need of tenants.

Councilmember Filla also raised the question of whether the parking areas should be redesigned at this point in order to benefit the entire corner. If purchase of the property is not supported, the corner will not be maintained.

Mayor Dunn stated she is not opposed to hearing requests on a case-by-case basis, however does not want to leave decisions entirely in the hands of the BZA. She would prefer cases additionally go through the planning process in order to obtain a more detailed analysis. Mr. Lambers stated the prior process of obtaining approval from the Planning Commission and Governing Body previous to presentation to the BZA for specific variance requests has been reversed.

Currently, exceptions are taken to the BZA followed by project presentations to the Planning Commission and Governing Body. Although the BZA may grant a variance, the project must still be approved through the planning process.

Councilmember Bussing noted the planning process will not be necessary until actual reconstruction of a structure occurs, at which time the property will be tagged with a granted exception from the BZA. He also elaborated on Councilmember Filla's comments regarding redevelopment. Purchase of the property will most likely occur only if there is reasonable expectation that the building can be replaced in an economically viable fashion should a natural disaster occur. Redevelopment capital will flow to the highest and best use, however these begin to deteriorate as restrictions are added. He agreed that cases should be presented to the BZA on a case-by-case basis at the point of purchase.

Mr. Lambers informed Councilmember Gill that approval from the BZA will state, "if the structure is destroyed by 51% or greater, reconstruction to the original footprint will be allowed and be consistent with the current City building codes in place at the time of reconstruction." Councilmember Gill stated language should be used to specify "destroyed by an unexpected Act of God" in order to prevent intentional deterioration by a developer. Mr. Lambers suggested the language, "unintentional consequence or natural disaster."

Councilmember Azeltine agreed with presenting the cases to the BZA. Regarding flow of capital, he stated uncertainty should be eliminated from a business decision standpoint. A procedure should be set in place, especially for older areas in the City.

Councilmember Bussing clarified with Mr. Lambers that the issue pertains only to non-conforming structures, not non-conforming uses. There is no waiver for non-conforming uses.

Councilmember Rasmussen commented he looks forward to the point when a viable redevelopment plan is created for this corner in order to alleviate the cycling of empty stores and inadequate parking. Councilmember Bussing stated desirable redevelopment will not occur in this area if the City continues to make the economic viability of capital investments more difficult.

Mayor Dunn stated consensus is needed to allow this particular case to go before the BZA, with the assumption that it will be destroyed, in order to obtain permission ad infinitum and running with the land to rebuild with the needed variances. She noted there is no guarantee that the BZA will grant the request.

Mr. Lambers stated an amendment to the LDO must take place before the request can be presented to the BZA, which will take approximately 90 days to complete due to statutory timetable requirements. The BZA request will take 45 days.

Referring to a development agreement, Ms. Bennett informed Councilmember Filla that the City Council cannot bind a future City Council to such an agreement.

Mayor Dunn stated it would be wise for an individual to await a decision by the BZA before purchasing such property.

The procedure was outlined as:

1. Amend the LDO in order to authorize the BZA to proactively rule on a request for property that has not been destroyed.
2. Present variance/exception request to the BZA, which will be either denied or granted in perpetuity.
3. If the structure is destroyed, reconstruction plans will be presented to the Planning Commission and City Council for approval.

Mr. Lambers suggested amending the agenda for the regular Council meeting this evening to include a request to direct Staff to amend the LDO in order to allow the BZA to proactively rule on variance requests.

Prior to leaving the meeting at 7:10 P.M., Councilmember Gill voiced agreement to setting a procedure in place.

Mayor Dunn confirmed consensus to amend the LDO from Councilmembers Azeltine, Filla, Rawlings, Peppes, Gullledge, and Bussing.

Mr. Lambers stated the request should be placed on the agenda under Other Business.

Councilmember Rasmussen stated providing an exception for a structure within an area that needs total redevelopment is perpetuating a problem.

There being no further business, Mayor Dunn adjourned the meeting at 7:15 P.M.

Christy Wise, Recording Deputy City Clerk