

Minutes

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 6:00 P.M., on Tuesday, September 8, 2009. Mayor Peggy Dunn presided.

Councilmembers present: Gary Bussing, Jim Rawlings, James Azeltine, Lou Rasmussen, Gregory Peppes, Debra Filla, and Julie Cain.

Councilmembers absent: Mike Gill

Staff present: Scott Lambers, City Administrator Joe Johnson, PW Director
Patty Bennett, City Attorney Kathy Rogers, Finance Director
Richard Coleman, Comm. Dev. Dir. Pam Gregory, Deputy City Clerk
Deb Harper, City Clerk

Others Present: None.

**Discuss Land Use of State Line Business Park, located at
103rd & State Line Road**

Mayor Dunn called the work session to order at 6:15 P.M. Introductions were made by those present.

Opening Remarks

Community Development Director Richard Coleman stated discussion of this began when Enterprise Leasing was interested in taking over the Pride Cleaners location. This use is not allowed in any of the zoning districts.

This area consists of 14.5 acres; 22 parcels, with 18 ownerships. The largest parcel is just over 2 1/2 acres, with the smallest being 6,500 square feet. One of the properties, Jiffy Lube, is zoned General Retail [SD-CR], was built in 1958 and has a low F.A.R. The remaining properties are zoned Business Park [BP]. He indicated almost all of the properties have setback issues.

Councilmember Filla wanted clarification of the F.A.R. Mr. Coleman stated it represents the Floor Area Ratio, which is the ratio between the built structure and overall lot area.

All of the businesses, except the Montessori School and Jiffy Lube are located in the flood plain.

The Comprehensive Plan first designated this area for light industrial uses. In 1992, the City completed a study and determined that the area could be considered blighted; however, no action was taken. In 2000, the Comprehensive Plan designated it BP; 17 were rezoned from Planned Industrial [PI] to BP. The current uses fall under the Mixed-Use District [MXD] and SD-CR.

Staff completed an analysis of the site and the weaknesses included the flood plain, small lots, the irregular shape of the overall property, and numerous ownerships. One of its strengths is that it's centrally located with many long-term successful businesses.

Things that could be completed in a re-development plan include reviewing the street network with the ingress and egress of the site, which currently has one location with a signal at 104th Street.

Constraints to the established development include the 100-year flood plain, which discourages investment in the property. All uses are non-conforming because of the bulk regulations of the BP District. If expansion of the properties occurs, regulations require that property owners bring the entire structure out of the flood plain by two feet. This would involve extensive engineering studies to ensure that no additional flooding occurs on adjacent properties. Property improvements cannot exceed 50% of the current value. A channel improvement was completed at 103rd Street. Most of the flooding occurs because of James Branch, versus Indian Creek.

Under the zoning constraints, both the BP District and SD-CR require extensive setbacks. Many of the lots are very small; some the size of an average residential lot with minimal area for development.

When reviewing solutions, addressing the flood plain issues would be very costly for the City, the County, or individual property owners. Staff wanted to also consider some property improvement incentives.

For incremental flood plain improvements, they are required to flood proof or elevate the building. Another possibility is through stormwater improvements, which could involve re-channeling and expanding the flood area to Indian Creek. The County has a program for the City to acquire properties in the flood plain to re-develop. They pay 75% and the City pays 25% of the cost. This falls under the Stormwater Management Advisory Council [SMAC] Program.

An option in the Leawood Development Ordinance [LDO] would be to create a new zoning district, which would reduce the setbacks and open space requirements.

The proposed zoning district would be Planned Commercial Retail Redevelopment [CR-RD], and could be defined to this area.

Mr. Coleman asked the Governing Body for direction regarding the flood plain and zoning issues and how to proceed with incentives.

Mayor Dunn asked the difference in elevation in the residential community around this. Mr. Coleman thought it was 10 feet and indicated some of the homes are also located in the flood plain.

Councilmember Bussing confirmed with City Attorney Patty Bennett that this would not be classified as “spot” zoning because they would be rezoning the entire area.

Councilmember Filla confirmed that there had not been complaints of traffic issues.

Mr. Coleman thought these properties had an assessed value of \$20 Million and sales tax revenue totals of \$85,000 per year.

Public Works Director Joe Johnson confirmed that this area had been designated in a flood plain since 1974.

Mr. Lambers thought there was \$500,000 in tax revenue from this Business Park.

Councilmember Filla didn't understand why this was an issue since the businesses have been there long-term and generate a lot of revenue. Mr. Lambers stated the LDO amendment would require that new owners abide by its requirements. There is inconsistency of what property owners can do as it applies to the current ordinance.

Mr. Coleman clarified that if a property owner wants to sell, they have to disclose that they can't expand to a non-conforming use and also disclose that they're located in a flood plain. If the property has been out of use for 180 days, they are required to go before the Board of Zoning Appeals [BZA]. They want to establish a way for the businesses to keep operating and become legally non-conforming.

Mr. Coleman noted there were some safety concerns with vehicles parking in the right-of-ways; however, they hadn't spoken with existing property owners regarding any parking issues.

Councilmember Peppes joined the meeting at 6:45 P.M.

Mr. Lambers stated the lack of parking needed to be resolved. Owners have posted their own parking signs for their individual businesses.

Councilmember Azeltine confirmed that none of the owners had been notified of this meeting. He referred to the improvement incentives and confirmed with Mr. Coleman that this could be done through Tax Incremental Financing [TIF] or a Benefit District.

Mayor Dunn thought another option could be the Capital Improvement District [CID], adopted on July 1, 2009.

Councilmember Azeltine thought if they created a new zoning district, it should only apply to a vacancy or change in ownership. He wanted assurance that no harm would come to these stable businesses and in the long-term, he wanted to make this a more attractive area.

Mr. Johnson clarified that in terms of flooding and the SMAC Program, the City could buy-out participating properties, demolish them and the land would become City-owned. Councilmember Azeltine confirmed with Mr. Johnson that the City had not done this in the past.

Mayor Dunn clarified that the City has no intent of buying-out any of these property owners.

Mr. Lambers felt if several businesses closed and there are no new occupants, it would leave too many vacant buildings. This would create a downward cycle and is when the City would consider buying-out a building, not a business, and tearing it down. Currently, there is only one vacant business and this isn't an issue. He felt Enterprise Leasing was not a good choice for the Pride Cleaners location because of minimal parking and traffic with their peak time activity.

Councilmember Cain confirmed that these property owners have known they were in the flood plain for many years. Mr. Johnson indicated they are required to carry flood insurance if there is a loan against the property.

Mr. Coleman clarified that restrictions on setbacks and things that were City imposed could be changed; however, the flood plain problems were federal issues and they would still need to elevate.

Councilmember Azeltine asked how things were previously handled when businesses closed and others came in.

Mr. Lambers stated ownership can change and the use remains the same; however, if they leave and the building remains vacant they would lose their grandfathering. This hasn't happened; he assumed because of low overhead and good business. If a new district is formed, they would lower the development standards currently in place in the LDO.

Councilmember Azeltine confirmed with Mr. Lambers that façade improvements were a different issue and their first concern was to avoid vacancies. They can improve traffic circulation through a TDD and the façades through a CID by collecting sales tax money.

Mr. Coleman clarified for Councilmember Filla that the use proposed by Pride Cleaners was not allowed in the business park.

Councilmember Filla asked if Pride Cleaners would have been able to move forward without delay if staff had already completed the recommendations to lower the standards in the LDO. Mr. Coleman stated the zoning district would need to change and also change the setback and open space regulations.

Mr. Lambers stated they could encompass this when re-doing the regulations for the business park; however, some uses are by Special Use Permit [SUP] that imposes additional conditions. The LDO amendment would allow property owners the opportunity to submit an application for consideration.

Councilmember Filla confirmed with Mr. Lambers that if they conducted a buyout, it would cost the City a total of 25% of the market value (not assessed value) of the properties, which is \$20 Million. Mr. Lambers indicated his former statement of \$500,000 was incorrect regarding tax revenue for the area and thought the correct amount was \$115,000.

Councilmember Filla concluded that the City doesn't have the economic resources to resolve the FEMA flood plain issues. They could; however, create regulations regarding setbacks and provide incentives to improve the appearance, parking and traffic.

Mr. Coleman stated if they intend to move that direction, they would hold a meeting with the property owners.

Councilmember Peppes confirmed with Mr. Coleman that FEMA doesn't get involved as long as a tenant doesn't improve the property more than 50% of its value.

Councilmember Bussing confirmed with Mr. Coleman that this is the second largest land area within the City. Mr. Bussing asked what the City had done to improve this property. Mr. Johnson stated they improved the HVAC system, the doors and buildings. They plan to re-pave the parking lot and re-do the curbs in the near future to drain water to the storm sewer.

Mr. Johnson thought the Audiomart building was also vacant and for sale.

Councilmember Rawlings asked if they could establish a common area for parking. Mr. Coleman thought parking could be improved by defining the property lines for each business. Mr. Lambers indicated creating additional parking would be at the expense of the green space.

Councilmember Bussing thought with the density being one of the main issues with the business park, they should condemn the Pride Cleaners and Audiomart buildings and tear them down. This would allow additional parking and they could create a benefit district, which the property owners could participate in the beautification by adding green space and trees. Mr. Coleman thought this was a possibility because of the inefficiency of the land use.

Mayor Dunn thought this could be too costly for the City and a developer may want to re-develop these 14.5 acres. Mr. Bussing thought it was inconceivable that someone would want to elevate the entire development two feet above the flood plain.

Mayor Dunn confirmed with staff that Pride Cleaners and Audiomart were located in free-standing buildings.

Mr. Lambers clarified that the demolition and improvements would need to be done through a Transportation Development District [TDD].

Mayor Dunn asked for consensus from Council whether staff should proceed with a new zoning district.

Mr. Lambers felt time was an issue and preferred they authorize staff to prepare the LDO amendment and have it go before the Planning Commission and Council for review, in order to complete this by the end of the year.

Mayor Dunn reiterated that no action would be taken on these successful businesses to cause them any harm.

Mr. Lambers stated the Special Benefit District [SBD] only comes into play if the City owns the improvement; which is unlikely. They would need to consider a TDD or CID. He clarified that the CID was through a sales tax up to 2% that is levied for a variety of purposes to promote re-development by helping with beautification improvements, not infrastructure improvements. This would acquire no debt; it would be a PAYG project.

Mr. Lambers confirmed for Councilmember Cain that 55% of the property owners would have to agree to this.

Mayor Dunn clarified this wouldn't be something the City imposed without the property owner's input and desire.

Councilmember Azeltine thought they should consider another work session in regards to the CID.

Mr. Lambers felt the zoning was the current issue and they could discuss the finance portion at a work session in December.

Mr. Lambers asked Mr. Johnson to provide a more detailed analysis of the flood plain requirements if the buildings are improved. There could be additional grade issues that could further impact the improvements.

Mayor Dunn referred to Councilmember Bussing's comments regarding eliminating some of these buildings to help with parking, traffic, etc. Mr. Lambers indicated this was an option and would involve the CID to determine what improvements should be considered first. He reiterated that tonight's discussion was only for the zoning process and they could discuss that option in the future.

Mr. Coleman stated they would begin work on establishing a new zoning district to lower the City's standards to help the existing businesses conform. He intended to work with Mr. Johnson for a better understanding of federal regulations for re-development.

There being no further business, the meeting was adjourned at 7:25 P.M.

Pam Gregory, Recording Deputy City Clerk