

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 Monday, June 2, 2014. Mayor Peggy Dunn presided.

**Councilmembers present:** Jim Rawlings, Tom Robinett, James Azeltine, Andrew Osman, Julie Cain, Debra Filla, Lou Rasmussen

**Councilmembers absent:** Carrie Rezac

**Staff present:** Scott Lambers, City Administrator  
Dawn Long, Finance Director  
Deb Harper, City Clerk  
Patty Bennett, City Attorney  
Joe Johnson, PW Director

**Others Present:** John Petersen, Esq., Polsinelli Law Firm  
Amy Grant, Paralegal, Polsinelli Law Firm  
Henry Klover, Klover Architects  
James Harpool, MD Management  
Garry Hayes MD Management  
Kevin Jeffries, CEO, Leawood Chamber of Commerce

**REVIEW OF COMMUNITY IMPROVEMENT DEVELOPMENT  
APPLICATION FOR CAMELOT COURT SHOPPING CENTER AT 119<sup>TH</sup>  
AND ROE AVENUE**

Mayor Dunn called the meeting to order at 6:05 P.M. Introductions were made by those present.

**Opening Remarks – City Administrator Scott Lambers**

Mr. Lambers stated subsequent to the last meeting, he has attempted to put together the Council's individual positions and come up with a number that would be a representative consensus point based on the variety of opinions expressed as to funding levels for the CID. That number is a reimbursement amount of \$6 million. They are currently at 50%. The question is how much more than 50% the Council is willing to come to a consensus on. Councilmembers Rasmussen and Filla were at 50%. In a spirit of compromise with all parties moving their position in an upward fashion, they could reach the Mayor's position of \$6 million, which would be a \$1 million increase. Councilmember Azeltine provided a range of 50%-100%; Councilmembers Cain, Rezac and Rawlings were 60%-70%. He assumed they could compromise downward, and it would be acceptable to them as well. Councilmember Robinett indicated he could support 100%, but he could move from that position. In contrast, Councilmember Osman was very specific and was opposed to the drive-through and in favor of others. If the number was reduced beyond that, he would not be in support.

Councilmember Rasmussen felt Mr. Lambers' analysis was fair. He could support 60%.

Councilmember Filla direct attention to the spreadsheet using Section 4 of the criteria. She weighted each of the six criteria; the site has unique constraints, making development more difficult and costly at 20% and all the rest at 16 for a total of 100 points. There is 0% for Mixed-Use and 100% for unique site constraints. The project substantially supports economic development, so she placed 25% to that. Numbers 3 and 4 would be 25%. She agrees with Councilmember Azeltine that the process needs to be predictable and repeatable upon which developers know the expectations. For encouraging redevelopment, she gave 50%. For the project incorporating construction of public infrastructure, she gave 75% and came out with 48 points or 48%. In the first line item, she found it hard to describe, which is why she prefers using the criteria. In the interest of consensus, she can move to 50%.

Councilmember Robinett stated he was not a Councilmember when the CID policy was approved. The focus should be when the Governing Body determines it is in the best interest of the city and the project or proposal meets one or more of the six criteria. The first hurdle would be the six criteria, and if it meets one or more of those, then the City can begin looking at what's in the best interest of the City. He is not in favor of having this hard formula. What other cities are doing in regard to development cannot be ignored. The City needs to think about long-term ramifications as to whether these developments are able to be improved. This is in better shape than Leawood Plaza, but he doesn't want to see this coming up five years from now as another Leawood Plaza with the HyVee situation. There has been a lot of discussion regarding the private-public partnership. The cost of the loan was in the Camelot Court proposal but not in Hawthorne Plaza. He is in agreement that it should be excluded from the list of reimbursable expenses potentially, however, it can't be divorced from the private investment that the ownership group is incurring. Similarly, he doesn't think they can separate out Hen House investments and only consider MD involvement. CID sales tax is not typical property tax; if customers don't want to pay the extra sales tax, they have the option of shopping there or going somewhere else. He is in the 100% range but could support less. It would be difficult to support a lot less. He would like to see this go forward.

Councilmember Osman appreciated the phenomenal work Scott had done. The City is establishing precedent and what will be a CID for the next 20-30 years. The IRB [Industrial Revenue Bond] policy was established in 1983 and hasn't been updated. He compared the Hawthorne Plaza CID and the Corinth Shopping Center CID for Prairie Village to the state statute. In one sense, Leawood shouldn't look at what other cities are doing; however, in the same breath the area developments have an impact on Leawood. Hawthorne Plaza is a 50-50 partnership split between community and private developer of qualified costs. There are also things in there that were allowed, that wouldn't be allowed in Leawood; such as the demolition of YaYa's to do a Container Store and interior improvements for a restaurant. They are giving \$5 million plus, which works out to 33%. Financing is very difficult in today's market, and banks are not willing to loan on commercial properties from 2008. The only people doing it are institutional investors. Hawthorne Plaza is owned by an institutional investment company, so they are financing themselves. The City has already taken away the financing mechanism for MD Management. If the city establishes a policy and assigns percentages arbitrarily and then gives different percentages the next time, developers are not going to spend \$300,000-\$500,000 on speculation.

These developments are different. Corinth CID approval included costs that wouldn't be allowed by Leawood, but were allowed by state statute. If parking ratios and access points don't happen, the tenants don't go there. He would like to ascertain from the developer if \$5, \$6 or \$10 million will be enough. A distinct dollar amount should have been set last year. The rules should not have been changed.

Councilmember Azeltine agreed with Councilmember Osman's position and encouraged the Council to look at the next 3-5 years down the road with no HyVee at 122<sup>nd</sup> and State Line and no Hen House at 119<sup>th</sup> and Roe. He thought it unfair when 1/3 of the cost was taken out before calculating reimbursement.

Mayor Dunn stated removing the interest cost was recommended by several people.

Councilmember Azeltine stated the City currently has two TDDs [Transportation Development District] with over \$1 million going to pay for the debt service. Mr. Lambers stated it's just for cost, no interest is being paid. The amount of the improvement for the Park Place parking lot was \$2.1 million. One hundred percent of the taxes went to the project, but it didn't go for debt service. For Town Center Crossing, those were bonds that have been paid.

Councilmember Azeltine stated he is attempting to view this as a business decision. They're paying 100% of finance costs here and are taking the finance costs out over here, and the \$6 million amount is 17% of the total project cost. He agrees with Councilmember Osman.

Councilmember Rawlings stated he is uncertain where the \$10 million came from. Some things are known now that weren't known when this was discussed. He is comfortable with moving to the \$6 million or possibly more, depending on the consensus.

Councilmember Cain stated she would want to use this tool if she were a developer. Camelot Court is an epicenter in Leawood. She doesn't feel Camelot Court looks bad now. She struggles with giving 100% that is going toward allowable exterior costs. She's in favor of paying for lights, parking lots and medians. She could possibly go higher than \$6 million, but not 100%.

Mayor Dunn stated Councilmember Rezac advised she is still comfortable with 66% of allowable site and exterior improvements and would be willing to go as high as 70% (\$7 million) depending on the direction of the conversation tonight, as long as the recommendation takes the loan interest out of the equation since they are paying \$10 for interior improvements. She recognizes that Hawthorne is the fourth corner of this intersection and a competitor of Leawood, she appreciates Camelot Court keeping up their property versus Ranchmart. She doesn't want to send a message that the City rewards developers for not keeping up their property.

Councilmember Filla stated spending \$300,000 to get a potential \$6 million is a good return and the developer will probably still come back even if it is not 100% known upfront. These costs aren't wasted because they should be part of a business case to remodel. Ranchmart South had no CID money involved, and they made it happen. If Camelot Court's proposal doesn't make sense without a CID, should the City make it a viable project through this tax incentive? She questioned the reason that all the facades have to match.

Councilmember Osman stated he is perplexed. The Council discussed this and agreed on a policy approving up to \$10 million of reimbursable expenses to a developer, and now the rules are being changed to reflect the expenses are eligible but are not going to do 100%. He is in favor of 100% of the cost of the reimbursable expenses. Granted, bad behavior exists at other properties; however, this is a different scenario. Tax incentives exist for home improvements, so all across the board, government provides subsidies in some fashion. Notwithstanding the Chamber of Commerce, the City doesn't have an economic development tool.

Councilmember Robinett stated this is a \$39 million project, and CID is going to cover maybe ¼ of that. This will be paid by the patrons. This amount is not being taken off the tax rolls, or reducing tax revenue for the City. Both property and sales taxes will increase as the development is improved and renovated. Things are changing rapidly. Comments have been made about this area being the epicenter of development; however, how many have gone to 135<sup>th</sup> and Nall recently, which is providing a lot of competition. Developers coming from outside the Kansas City area look at Prairie Fire and consider it because it has taken off like a rocket. That is the type of thing the City has to compete with. This is a limited tax, and anyone who pays it pays it by choice. It's important that commercial development is encouraged which would benefit the City.

Councilmember Azeltine stated Prairie Fire is using CIDs, IRBs and STAR [Sales Tax Revenue] Bonds.

Mr. Petersen stated he appreciated all the comments. The applicant wants to do this project. They have spent two years putting the project together and have gone through the planning process and agreed with the staff on the types of improvements. It would be impossible to ever get the staff to agree to do just one part of a façade of a shopping center. They wanted interest to be a reimbursable expense. Spending \$36 million today against \$10 million of CID reimbursed over 20 years is about \$3 million of CID value in present value numbers. Currently, the plans have been approved at a cost of \$39 million, and the CID consideration is sliced to percentages of the reimbursable portion. The developer must get a rate of return just like everyone else does. There is significantly less cash flow coming out of the shopping center, even with the assistance. He doesn't feel it necessary to evaluate every percentage that was offered tonight. It has to be considered globally. The developer thought \$10,050 million was fair and reasonable. The only way to put a business model together is to put total cost and expense versus reimbursed amount. Banks don't let developers borrow money and put it into a center if the ratio isn't right. The bottom line is that \$6 million in CID money will cause the applicant to withdraw the application with great disappointment. They believe they could do it with \$8 million, but it is tight. Hawthorne has been offered as an example of a reasonable approach. They didn't allow interest in their overall cost or contingency. Total project cost was \$15,531,000. Approved reimbursement was \$5,376,000 or 34.6% of allowed reimbursable costs. The total cost of Camelot, taking out the finance costs, is \$22,958,000. The \$8 million is 34.8%.

They looked for balance and comparative analysis of a shopping center in the area. It, too, asked for help from the City. Mr. Petersen confirmed with Councilmember Osman that they were allowed to do interior improvements to the restaurant at Hawthorne. Even though every set of circumstances is different. There was no percentage; it was an agreed-upon amount of \$5 million plus. The budget was laid in line items, but the agreement says that if the developer wanted to spend all the \$5 million in two line items, it was allowed. What matters are total cost and a reasonable rate of return on the investment. That is where the incentive of the CID comes in.

Mayor Dunn stated the \$10 million from a year ago that Councilmember Osman mentioned is a recent number. A year ago, they were in the \$8 million plus range. Currently, three councilmembers who want to do 100% or thereabouts and the rest are close to 60% or more. Mr. John Petersen just stated they need \$8 million, which would be 80%. Carrie said she would go as high as 70% but is not here. Mr. Lambers stated since she is not here, her absence constitute a no-vote.

Mayor Dunn stated she liked the appearance that Henry Klover has created. They have some really good tenants that had no CID money. It is not just with CID money that a business can compete. She appreciates what Ranchmart South did; however, they only did half of the center. Mr. Peterson replied they just filed an application with the City of Overland Park for a CID to do the back side of the center because that was a financial disaster, and they won't finish it without some help because there is no return on investment.

Mayor Dunn stated this item is on our regular meeting's agenda so she is attempting to bring the two sides together. Councilmember Osman stated he is dogmatic at 100% and is trying to be fair and equitable to every developer with the City's policy. It's difficult for an applicant to come in and understand the thought process.

Councilmember Cain stated based upon the conversation, she is willing to go to \$8 million. Councilmember Azeltine concurred. Councilmember Robinett also concurs. Councilmember Rawlings stated he appreciated the offer of compromise and can reach the \$8 million mark also.

Councilmember Rasmussen stated the intent of the Policy is to help developers try to achieve what is now known as the more modern standards of Leawood. Whatever amount is agreed upon tonight, he believes will set a precedent. This shopping center does not have the characteristics of the other shopping centers. He believes this should be line item because there are some areas in the city with storm water issues and overhead power lines. He is also concerned that the City is using its taxing power to the point where it could be problematic at 10%. He will remain at 60%.

Mr. Petersen confirmed with Councilmember Filla the estimated payback of 1% at \$8 million is 17-22 years. With the increased sales other shops have experienced after a CID, they anticipate it to be 17-18 years.

Councilmember Filla stated she wants to see the project move forward and will support the \$8 million.

Mayor Dunn stated with five councilmembers in favor, the resolution could be approved, as it only requires a simple majority. The numbers in the documents can be changed and approved with the 80%. Ms. Bennett suggested the resolution be approved, but asked that the Revised Development Agreement be continued to the next meeting to ensure accuracy.

Councilmember Rasmussen believes there is language in the Development Agreement that could create some potential confusion about the process. When a petition is submitted establishing the area, and a development agreement is subsequently submitted, it implies that the City is approving the Community Improvement Development whether there is a statement that says it meets the five criteria or not. He understood the initial hurdle should be whether or not City Council agrees that the area is deserving of a CID. Then the issue becomes the amount. There should be some recognition along the line so the developer has some assurance that something will be there at the end.

Mr. Lambers stated if you combine the CID approval with the Final Plan, you could be making planning decisions based on a financing statute, which would not be fair to the developer. There would be no difference between that and a SBD [Special Benefit District] and the developer shows the plan with the infrastructure.

There being no further business, the work session was adjourned at 7:22 P.M.

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Deb Harper, CMC, City Clerk