

Regular Meeting	THE LEAWOOD CITY COUNCIL	July 6, 2020
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Minutes

Councilmembers Present: Lisa Harrison, Julie Cain, Jim Rawlings, Chuck Sipple and Mary Larson.

Councilmember present via Zoom: Debra Filla, Andrew Osman, and James Azeltine.

Councilmembers Absent: None

Staff Present: Scott Lambers, City Administrator Ross Kurz, Info. Services Director Troy Rettig, Chief of Police Jarrett Hawley, Deputy Fire Chief Kelly Varner, City Clerk Brian Anderson, Parks Superintendent	Patty Bennett, City Attorney Nic Sanders, Human Resources Director David Ley, Public Works Director Mark Tepesch, Info. Services Specialist III Stacie Stromberg, Assistant City Clerk Kathy Byard, Senior Budget Manager
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Staff Present via Zoom: Dawn Long, Finance Director; and Richard Coleman, Planning Director

Others Present via Zoom: David Arteberry, Stifel, Nicolaus & Co, Inc.; John Peterson, Polsinelli Law Firm; Rick Lashbrook, Lashbrook Companies.

- 1. PLEDGE OF ALLEGIANCE**
- 2. APPROVAL OF AGENDA**

The agenda was amended to modify the City Clerk Statement regarding public access inside City Hall.

A motion to approve the agenda as amended was made by Councilmember Cain, seconded by Councilmember Sipple. Motion was approved with a unanimous roll-call vote of 8-0.

3. CITY CLERK STATEMENT

The City Clerk read the Clerk Statement: To reduce the likelihood of the spread of COVID-19 and to comply with social distancing recommendations, this meeting of the Leawood Governing Body is being conducted remotely using the Zoom media format and some of the members of the Governing Body are appearing remotely. The meeting is being livestreamed on [YouTube] and the public can access the livestream by going to www.leawood.org/.

Public comments on non-agenda items will not be accepted during this meeting. Public comments on agenda items not requiring a public hearing may not be accepted. As always, public comment on any agenda item can be submitted in advance. Written public comments received at least 24 hours prior to the meeting have been distributed to members of the Governing Body prior to the meeting. Public comments should be directed to LeawoodPublicCommentGB@leawood.org.

4. PROCLAMATIONS

National Parks & Recreation Month, July 2020

Mayor Dunn read the proclamation into record. Brian Anderson, Parks Superintendent, accepted the proclamation on behalf of the department. Mayor Dunn stated the parks are well used and much appreciated, and she thanked Mr. Anderson and staff for keeping the community beautiful.

5. PRESENTATIONS/RECOGNITIONS - None

6. SPECIAL BUSINESS

Resolution authorizing the offering for sale of General Obligation Refunding Bonds and General Obligation Temporary Notes of the City of Leawood, Kansas; approving the form of Notice of Sale and Preliminary Official Statement to be used in connection therewith; and authorizing the advertisement of such sale in the manner prescribed by law (F)

Dawn Long appeared via Zoom to be available for any questions by the Governing Body and to introduce David Arteberry. Mr. Arteberry addressed the Governing Body via Zoom. He stated the bond represents the City's standard issuance of bonds and notes to fund projects currently in process, and also this year to refinance some outstanding bonds to accomplish some debt payment structuring for the City.

A motion to approve Item 6 was made by Councilmember Rawlings, seconded by Councilmember Cain. Motion was approved with a unanimous roll-call vote of 8-0.

7. CONSENT AGENDA

Consent agenda items have been studied by the Governing Body and determined to be routine enough to be acted upon in a single motion. If a Councilmember requests a separate discussion on an item, it can be removed from the consent agenda for further consideration.

- A. Accept Appropriation Ordinance Nos. 2020-22, 2020-23 and 2020-24
- B. Accept minutes of the June 15, 2020 Governing Body meeting
- C. Accept minutes of the February 14, 2020 Sustainability Advisory Board
- D. Approve renewal of Cereal Malt Beverage (CMB) License for Price Chopper, located at 13351 Mission Road (CC)
- E. Approve renewal of Cereal Malt Beverage (CMB) License for RA Sushi, located at 11638 Ash Street (CC)
- F. Resolution calling for a Public Hearing to be held on Monday, August 3, 2020, at 7:00 P.M., or as soon thereafter as may be heard, to consider the 2021 Fiscal Budget for the City of Leawood, Kansas (F)
- G. Resolution approving and authorizing the Mayor to execute a Construction Agreement in the amount of \$79,565.00 between the City and K & G Striping Inc. pertaining to the South Bike Loop Project [Project #71026] (PW)
- H. Approve an expenditure in the amount of \$60,218.76 to Sourcewell Cooperative Bids for the purchase of (2) sets of 4-Mobile Column Lifts (PW)
- I. Declaration of Surplus Property: (8) Maintenance Lifts for trade in/or Purple Wave sale (PW)

A motion to approve the consent agenda was made by Councilmember Larson, seconded by Councilmember Harrison. Motion was approved with a unanimous roll-call vote of 8-0.

8. MAYOR’S REPORT

Annual Report: American Revolution Tricentennial CD Fund (F)

- A. My sincere sympathies to Parks Superintendent, Brian Anderson, and his entire family on the recent passing of his father, Orlan Anderson. Mr. Anderson passed away on June 21st.
- B. Located in the Council packets are a memo and letter, dated July 7, 1976, regarding the American Revolution Tricentennial Fund Certificate of Deposit. As requested by former Mayor William Eddy, a financial report is given at the first Council meeting in July. The current principal amount of the CD is \$8,746.87 and will mature on June 25, 2021.
- C. My appreciation to Police Chief Troy Rettig for his participation on June 25th on a panel for the Johnson County Law Enforcement Virtual Town Hall to discuss current policies. This event was sponsored by the Johnson County NAACP. Chief Rettig represented the City of Leawood well.
- D. A gift of 500 surgical masks was hand delivered by Mei-li and Ken Yang from Principal Tseng of the Lan-Yang Girls’ Senior High School in I-Lan, Taiwan. Another 500 masks will be mailed soon. It is a thoughtful and generous gift honoring their sister-school relationship with Blue Valley North High School.
- E. Congratulations to Leawood City Engineer Brian Scovill for his installation as the President of the Kansas Society of Professional Engineers starting July 1, 2020.
- F. Congratulation to Leawood Chamber of Commerce President Kevin Jeffries on the birth of his first granddaughter, Keira Joann Jeffries, born on June 25th at 9:02 p.m.

9. COUNCILMEMBERS’ REPORT - None

10. CITY ADMINISTRATOR REPORT - None

11. STAFF REPORT

Director of Finance, Dawn Long

2020 Sales Tax Report

Staff member Kathy Byard addressed the Governing Body. She stated the report located in the meeting packets included a summary of the collection of monthly Sales and Use Taxes in comparison of 2019 to 2020 so far. The report shows the City Sales Tax figures in the first two months of the year was above the mark from the same time last year, but including March and April, the City is 15.8% lower than last year, as a whole.

Ms. Byard explained that the City Use Tax is 1.9% higher than the same time last year. She mentioned the April numbers appear lower in 2020, but noted that the City did not receive any sales tax payments from the County Treasurer for vehicles purchased within the month, because the Treasurer’s office was closed. Ms. Byard stated it should get caught up when their offices re-open.

Ms. Byard stated the combined Sales Tax and Use Tax was 11.8% lower now than this time last year. A summary of the categories in March and April 2020 are groceries, retail, utilities, restaurants/bars, and

entertainment/fitness. The City is approximately 8% lower across all categories at this time compared to last year. Ms. Byard stated the County Sales Tax shows a 3% decrease and a 12.8% increase in County Use Tax.

Mayor Dunn asked Ms. Byard since there is a 2-month lag if these figures are accurate for April. Ms. Byard stated they are and that the numbers for May will be available in July, she added.

Councilmember Sipple asked if the funds to the City come in one payment or two wire transfers. Ms. Byard stated the funds come in at one time, between the 22nd and 25th of the month, and with detail of the source. Councilmember Sipple also asked how other cities are faring. Ms. Byard stated she made reports available in the Councilmembers' mailboxes that show March data from surrounding cities and will do so again next month.

Scott Lambers stated he spoke with the City Manager of Overland Park, who said their city forecasted a 30% decrease but instead reported only a 25% decrease for the same time period as summarized by Ms. Byard.

Mayor Dunn stated stories in the *Kansas City Star* have forecasted large decreases and furloughs. She added it is encouraging to see the City's Use Tax increasing.

Mayor Dunn thanked Ms. Byard for this reporting to the Governing Body.

COMMITTEE RECOMMENDATIONS

12. PLANNING COMMISSION

[From the January 28, 2020 Planning Commission Meeting]

Ordinance approving Planning Commission's recommendation of denial of request for Revised Preliminary Plan for a Mixed Use and Medium Density Residential Development, located south of 135th Street and west of Kenneth Road (PC Case 04-20) [ROLL CALL VOTE] *[Continued from May 4, 2020, May 18, 2020, June 1, 2020 and June 15, 2020 Governing Body Meetings]* (PC)

City Administrator Scott Lambers addressed the Governing Body. Mr. Lambers stated this request has been continued in hopes that the applicant and the City could work out an agreement with certain financial issues regarding the project. Mr. Lambers stated that there was some progress. He agreed to recommend to the Governing Body that the City would finance the improvements to 137th St. and High Dr. with Special Benefit District financing, in which the applicant also agreed. This would allow the applicant to benefit from the low interest rate of the City's general obligation rates. Mr. Lambers reminded the Governing Body that when the City finances a project, temporary notes are issued to start construction. Traditionally, when notes come due in the fall, the City issues new temporary notes to carry forward to the next April or May, although it can go on for another year. Mr. Lambers stated he agreed to have the City issue temporary notes one more year to defer the bonds being issued another year and the assessments occurring afterwards. There would be a 3-year time lapse in which the property owners have to pay, and he felt this would be a benefit to the developer. It would include 137th St., High Dr., and the de-acceleration/acceleration lane on 135th St.

Mr. Lambers stated he and the applicants were unable to come to an agreement regarding the power lines on 135th St. He stated he felt it was inequitable that the property owners on one side of 135th St. pay the

full cost, while property owners on the other side gain the benefit without any costs. Mr. Lambers explained that in their discussions, he hoped to develop a plat tax in which property owners on both sides of 135th St. pay a pro rata share that would equal a total of approximately \$1.6 million. After some discussion the City's attorney stated per City policy, the property owners on the project side of the street are under the obligation to bear the costs of burying the power lines.

Mr. Lambers stated the third lane on 135th St will be a benefit to the project. The applicant agreed to pay for half a traffic signal, but did not feel they should pay for the third lane. Both Mr. Lambers and the applicant agreed that the best way to handle the issue was not through planning stipulations, but with a development agreement so the traffic signal would be done at the time it is warranted and dependent on the development across the street from this project. Mr. Lambers suggested funds would be set up into an escrow account depending on the time frame of future development.

Mr. Lambers stated the applicant replied that he did not want to pay for the entirety of the underground power lines or the third lane, and instead wanted to make a cash payment in lieu of this. Mr. Lambers stated he would allow the applicant's proposal to be presented to the Governing Body.

Councilmember Harrison asked if the turn lane would be built first. Mr. Lambers stated they are two different issues. The de-acceleration/acceleration lane would need to be built with the project, and the turn lane would be delayed until a traffic signal was necessary.

Councilmember Harrison asked about the location of the power lines needing to be buried. Mr. Lambers explained it runs the length of the property.

Councilmember Sipple asked if the power lines are currently overhead and on the south side of the street, and although it benefits both sides of the street, if the applicant is required to pay for the entire cost. Mr. Lambers confirmed that and stated according to KCP&L tariffs the applicant is also required to pay the entire amount upfront. Mr. Lambers suggested the City would pay to build the third lane and bury the power lines, then the cost of the improvements are fixed and the City would front the money through its debt service schedule. As the plats and development would come in, the City would be reimbursed. He stated the applicant was not agreeable to that recommendation.

Mayor Dunn asked if it would be an SBD (Special Benefit District) in which Mr. Lambers stated it would be an SBD on top of another SBD on High Dr. and 137th St. Mayor Dunn asked what the interest rate is on the temporary notes. Mr. Lambers it would be about .5%.

Councilmember Azeltine thanked Mr. Lambers for his work on the recommendation of an SBD and temporary notes, but wondered if a development agreement would include the details, or if it would be in a planning application. Mr. Lambers stated planning would outline the steps needed to take place, while the development agreement would provide the specifics with regards to the implementation. The Council would need to approve the final plan with a development agreement.

Councilmember Azeltine stated he would like to have a work session to discuss the City's financing policies. He also stated this is the last of the developable land in Leawood and compared to what is happening in other parts of Johnson County, very little has happened in this area. He feels it may be because of the limitations of the City. Councilmember Azeltine stated a TIF (Tax Increment Financing) option is worth a discussion. Mayor Dunn stated the City has a TIF policy for blighted areas.

Councilmember Azeltine stated he believes it would benefit other councilmember to have a conversation in relationship to this project.

Councilmember Rawlings thanked Mr. Lambers for the efforts of working with the applicant thought the offer was a good compromise. Mr. Lambers stated the applicant gave it consideration, but expressed it was more of an assessment of a property tax making the project financially unattainable; in addition the project does not proposed much retail activity. Councilmember Rawlings asked the cost of the streets and Mr. Lambers stated it would be \$700,000.

Councilmember Harrison asked when the City instituted the policy to bury power lines. Mr. Lambers stated it was in the 1990s with the development of Town Center Plaza. She stated this should not be a surprise to property owners that the cost would be their obligation, because it is not a new policy. Mr. Lambers stated the property owner is the same on both the north and south side of 135th Street, but it is the intention of the applicant to have the south side developer bear the brunt of the cost.

Councilmember Cain asked if the staff recommendation is to deny the application because the applicant and City did not come to an agreement with the power line and access road. Mr. Lambers stated the Council has already approved the preliminary plan that has the requirements for the improvements to be paid by the developer, but the developer wants to amend the preliminary plan and revise the finance obligation.

Councilmember Filla asked when the parking, potential retail and restaurant development would be built. Mr. Lambers stated the question would be best answered by the developer, Mr. Lashbrook. Councilmember Filla suggested that looking forward, greenspace in that project would be an amenity, especially if more and more people are working from home and could grow their own food and do less commuting to offices. She stated that urban farming versus office space would be a better amenity.

John Peterson addressed the Governing Body via Zoom. He gave a brief history of the application request with the Planning Commission and Governing Body. Early on, the applicant had an issue with expanding 135th St. to three lanes and burying power lines. The proposal was approved with those stipulations but these issues were always in place, Mr. Peterson said. He continued saying that the developer was always aware of the huge cost of these improvements and has not suddenly changed his mind on paying for them. They had agreed to the improvements tied to this project, but felt burying the power lines is for aesthetic reasons within the City of Leawood.

He stated he and the applicant have discussed financing options with the City regarding the project's villas. They reviewed how much debt could make this project viable, and stated the \$2.2 million stood in the way. He said the developer took a serious look at the project to find the value and finance options while still having a high quality product. Mr. Peterson stated the developer worked for months on various options.

Mr. Peterson stated the \$7.5 million road cost is not viable for their mixed-use building, with approximately 60 townhomes and 81 villas. This amount does not include stormwater, sewers, grading, and buildings. Lowering real estate price is not realistic. Mr. Lambers suggested creating an SBD, but Mr. Peterson stated a SBD is just another way for a developer to borrow--it is not an incentive and the 141 villa owners cannot carry that amount of property taxes over 15 years. He stated a partial SBD for the roads is a good start.

Mr. Peterson continued that he thought Mr. Lambers' suggestion of an excise tax was a viable one, yet the City Attorney stated in earlier discussions that it is not a legal option in the City. Mr. Peterson said they calculated, based on several variables and based on a development agreement, that they are willing to pay the City \$700,000 at the time of permitting the first building. He stated they would continue to work with staff on a development agreement and modification of stipulations.

Mayor Dunn asked if the offer of \$700,000 is one-third of the \$2.1 million improvement costs, and if it is for the start of the mixed-use development. She also asked if the other two-thirds of the improvement costs would be paid along with the phasing. Mr. Peterson stated that amount was figured by using the formula of a proposed excise tax for the entire 50 acres. He stated the theory of the approach in the finance option is so one developer is not bearing the total cost for the good of the City and it avoids a heavily burdened tax assessment for future property owners.

Councilmember Harrison stated she had a meeting with Rick Lashbrook last fall to learn more about the cost of doing business and as a learning opportunity for her. She asked if the land north of 135th St. is significantly cheaper than land of the south side. Mr. Peterson stated generally no, but there are a few pieces of land along the corridor that are being foreclosed upon. Councilmember Harrison asked what the property tax benefit is to the City and if that money could be put toward adding turning lanes when traffic increases. Mr. Peterson answered it would be based on the City's mill levy. She asked what the plan is if the commercial aspect does not develop. Mr. Peterson stated the villas and road system will be built first, so that will set the pace and future developers will be subject to the develop plan.

Mr. Lambers replied figuring a rough estimate on property tax revenue to the City based on 140 homes is take the average price of \$500,000, divide that by 1,000, then multiply by 11.5% for state assessed valuation, then 20% of that is what the City receives. It equals approximately \$2,000 a unit.

Mayor Dunn stated she believes this discussion needs to continue for various reasons.

Mr. Lambers stated the property owner on the north side of 135th is the same as the property owner on the south side and asked if he would agree to pay an excise tax. Mr. Peterson stated he does not know. Mr. Peterson stated it is unique in Johnson County that it is the developer's responsibility to 100% build thoroughfares and bury power lines without true incentives, and he believes that is why there has been no development from State Line to Roe Ave on 135th St. He added that the property owner has owned the land for some time before the City's policy was put in place.

Mr. Peterson stated they are respectively asking to be remanded to the Planning Commission at the end of July for a townhome concept, and in the meantime, will work with the City Attorney and Mr. Lambers to create a development agreement.

Mr. Lambers stated the time period may be optimistic and an INTERACT meeting is required. Mr. Peterson stated this would be a revised plan, not a rezoning. Mr. Lambers replied that the City does not want to hold up the project unnecessarily.

Mayor Dunn stated she is interested in other property owners sharing the cost of burying the power lines but sees a continuance is needed.

Mr. Lambers stated the developer had agreed to make the approximate \$2 million improvements in the previous plan, but they want to contribute \$700,000 and the remainder of the improvement costs come from somewhere else so it would be shared by all who benefit from the improvements.

Mr. Peterson added that the developer is also dedicating the right-of-way to the City as part of a development deal.

Councilmember Filla stated she is impressed on the creativity of the principle parties to solve the funding issues. She stated she supports continued efforts and the positivity in moving forward.

Councilmember Rawlings asked about the traffic study regarding the third lane and why it needs constructed at this time. Mr. Lambers stated the Planning Committee decided it would be the enforcement mechanism tied to development of a certain amount of traffic counts and the assessments. Mr. Lambers stated that Mr. Peterson said in earlier discussions that is untenable to have a long-term, outstanding obligation put on a developer. He made a suggestion that if the applicant is willing to agree to a voluntary excise tax for the undergrounding of the power lines it would distribute the cost to the property owner on both sides of 135th St.

Councilmember Azeltine stated the approach by the Governing Body over the past 20 years is not working. He stated because this project is undeveloped land without a current revenue stream that he recommends a work session to discuss financing options. He stated he fears there will be another economic cycle in which very little development takes place. He said he is interested in discussing TIF and excise taxes in a work session.

Councilmember Osman commented that he agrees with Councilmember Azeltine. He stated the Governing Body needs to work on studying the finance and incentive options.

Councilmember Larson stated she recommends a work session to discuss alternative modes of financing. She said she would like to find the best path to move forward.

Mayor Dunn stated Planning Commission items are not discussed at work sessions. Mr. Lambers replied in this case financing is intermeshed with this project and suggested it be continued for 2 weeks. Mayor Dunn stated she thought Mr. Lambers could bring a resolution to the Council at that time.

Mr. Lambers stated if there were to be any incentives to consider it would be the undergrounding of the power lines for the sake of economic development. He continued that he felt under the current policy it is inequitable, but there are no other options at this time.

Councilmember Rawlings asked what the balance in the Economic Development Fund is. Mr. Lambers stated it was approximately \$2-3 million.

Mayor Dunn mentioned that Mr. Lambers' proposal would set a precedence in the City for development. Mr. Lambers stated the definition could be narrowed down.

Councilmember Rawlings stated he would be in favor of Mr. Lambers returning to the Council with a cost share proposal for the power lines.

Councilmember Azeltine stated this has been a major stumbling block for development along 135th St. in the past. He stated a work session to explore financing options for the whole corridor and learn more about TIFs, excise taxes, CIDs and others. Mayor Dunn mentioned if more than one work session is planned, it would delay the progress on the project.

Councilmember Osman asked where in the City are power lines located above ground in commercial areas. Mr. Lambers stated a map will be provided to him.

Councilmember Filla agreed with Councilmember Azeltine about a work session, but commented that no matter how to construct the IOU, the project cannot handle any more debt.

Mr. Lambers stated he could bring to the Council a fund balance, but there would need to be a discussion regarding the third lane and the details of a development agreement. He stated if the Council is interested in deferring the third lane to some extended period of time, he would discuss that with Mr. Peterson.

Mr. Peterson stated they have come too far and they are very willing to work with Mr. Lambers and staff on financing. He commented that they are not asking for an incentive but for a continuance.

Patty Bennett stated what she believes Mr. Peterson is suggesting is for the Council to move ahead on the financial issues, but the Planning Commission would still be involved in a townhome preliminary plan process.

Mr. Peterson stated an efficient way to move forward is to continue with the Council on the financing agreement, create a development agreement, and at the same time the applicant would go through the planning approval process for the townhomes, then come back to the Council with all plans at the same time.

Mayor Dunn expressed that Mr. Peterson and Mr. Lambers meet soon.

A motion to continue Item 12 to the July 20, 2020 Governing Body meeting was made by Councilmember Azeltine, seconded by Councilmember Larson. Motion was approved with a unanimous roll-call vote of 8-0.

Mr. Lambers recommended a Governing Body Work Session to be scheduled for the first meeting in August to review the City's policies on incentives.

13. OLD BUSINESS – None

14. OTHER BUSINESS - None

15. NEW BUSINESS

Schedule Governing Body meeting for July 20, 2020 at 7:00 p.m.

A motion to approve Item 15 was made by Councilmember Filla, seconded by Councilmember Cain. Motion was approved with a unanimous roll-call vote of 8-0.

Mayor Dunn introduced the addition of two new items to the agenda.

B. Schedule a Governing Body Work Session for August 3, 2020 at 6:00 p.m. to review the City of Leawood Economic Development policies.

A motion to approve Item 15B made by Councilmember Harrison, seconded by Councilmember Cain. Motion was approved with a unanimous roll-call vote of 8-0.

Councilmember Azeltine asked staff to be prepared to discuss incentive options that the City currently does not use, as well as those already in place.

C. Schedule the Governing Body meeting for August 3, 2020 at 7:30 p.m.

A motion to approve Item 15C made by Councilmember Cain, seconded by Councilmember Larson. Motion was approved with a unanimous roll-call vote of 8-0.

ADJOURN

Meeting was adjourned at 9:25 p.m.