

Minutes

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting, 4800 Town Center Drive, at 6:00 P.M., on Monday, October 12, 2020. Mayor Peggy Dunn presided.

Councilmembers Present: James Azeltine, Jim Rawlings, Julie Cain, Debra Filla, Mary Larson and Chuck Sipple

Councilmembers Present via Zoom: Lisa Harrison and Andrew Osman

Councilmembers Absent: None

Staff Present: Scott Lambers, City Administrator Patty Bennett, City Attorney
David Ley, Public Works Director Dawn Long, Finance Director
Ross Kurz, Info. Services Director Mark Tepesch, Info Services Specialist
Stacie Stromberg, Assistant City Clerk

Staff Present via Zoom: Richard Coleman, Community Development Director; and Mark Klein, City Planner

Others Present via Zoom: John Petersen, Polsinelli PC; Mark Simpson and Saul Ellis, Fontana Land Company; Tim Tucker, Phelps Engineering; and Jake Engler, CFS Engineers

1. ROLL CALL
2. PLEDGE OF ALLEGIANCE
3. APPROVAL OF AGENDA

Mayor Dunn stated there is a modification to the agenda. It is a corrected list of stipulations for Item 5A (PC 81-20).

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

4. CITY 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 comment 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.

Councilmember Azeltine requested to make a brief comment before the Mayor read the Committee Recommendations into record.

Councilmember Azeltine commented on the recent negotiations of this project. He stated that last week there was a work session to discuss the liabilities attached to the piece of property. The majority of Councilmembers indicated they wanted to explore restructuring the project. He stated that based on the information the Council has recently been made aware of, there appeared to be a misunderstanding. Councilmember Azeltine stated that instead of bringing components of the development agreement before the Council that staff shut down the negotiations. He objected to this because of the consensus of the Council at the last work session. He stated it is the staff's role to gather information so the elected members can make informed decisions. He stated he believes the applicants' motives were questioned. Councilmember Azeltine expressed concern that if this project is not approved it will be another 15 years before another opportunity arises again and the City will have to continue making payments for another 5 years. He stated there are numerous financial burdens on this property and it is in its second foreclosure. He suggested that the Council keep that in mind when reviewing the application.

5. SPECIAL BUSINESS COMMITTEE RECOMMENDATIONS

[From the September 22, 2020 Planning Commission meeting]

- A. Ordinance approving Planning Commission's recommendation of denial of a Rezoning from SD-CR (Planned General Retail), SD-O (Planned Office) and RP-3 (Planned Cluster Attached Residential) to RP-2 (Planned Cluster Detached Residential), Preliminary Plan, and Preliminary Plat for Villa De Fontana, located south of 135th Street and east of Roe Avenue (PC 70-20)

John Petersen, Polsinelli PC, addressed the Governing Body via Zoom. He stated this presentation is a request for rezoning and to approve a preliminary plan and final plat. There are financial implications attached to the project and a development agreement to discuss. Mr. Petersen stated there has been a lot of discussion over the weekend between himself, the City and County staff.

Mr. Petersen stated there is significant existing infrastructure on the site. He stated their plan is to add and enhance to the basic infrastructure with a street network and storm water system, add landscaping and amenities. He acknowledged the concern from the Governing Body about the wall around a portion of the project. He stated it is a retaining wall for grading purposes, a buffering element to add value to those lots for traffic noise, and is part of the architecture. He showed an illustration of the landscaping and wall design. He stated there will be a water feature built into the wall, in addition to many other water features throughout the property. The Developers are not requesting a gate, and Mr. Petersen emphasized that it is not a fully walled off, enclosed community. The neighborhood is open to the community and designed to be inviting to pedestrian access. He explained some of the amenities in the

area that are open to the public are bocce and pickle ball courts, bike/hike trails and sitting areas along the trails.

Mr. Petersen showed a representation of one of the planned villas within the community. He recognized the Council's concern for affordable housing, but stated that this would likely have a base price of approximately \$800,000. He stated it would appeal to current Leawood residents who want to stay in the City yet downsize, and to new residents who desire an amenity package and excellent quality home.

Mr. Petersen acknowledges the proposed plan does not comply with the 135th St. Corridor Plan. He stated there is a tremendous amount of commercial space along the Corridor that is already built but still not completed, in addition to the large amount of land that is zoned commercial. He stated the study done by RCL Company in an earlier application showed the Corridor is 300% overbuilt for retail and it is unlikely there will be significant office development. He stated they believe this project promotes walkability to restaurants, shops, and retail.

Mr. Petersen covered the list of stipulations starting with Staff Report No. 12 regarding lot sizes. He stated this has been worked out with staff and is resolved.

For Stipulation No. 2 he stated there are two lots adjacent to the property on which there are office buildings. In the current LDO (Leawood Development Ordinance) it states that office zoning restrictions are to be a certain setback from residential property. In the residential code there is no requirement of distance from office zoning. He stated the developers have designed landscaping to buffer the lots next to the office buildings and that they have written support of the owners of the office buildings that they are comfortable with the proposed plan. For this reason, he requested this stipulation be deleted.

Mr. Petersen stated that Public Works Stipulation No. 1a, refers to access points on 137th Street for two lots. He indicated that City staff supported an eyebrow street in which vehicles would not be backing out directly onto 137th St. He explained moving the houses back for the eyebrow street puts them into a no-build area. The developers designed a side-loading garage and turnout option, so Mr. Petersen requested this stipulation be removed.

Mr. Petersen stated the developers are seeking a Rule Exception to allow existing private streets to remain. He stated the City has already paid for the existing infrastructure (road network, storm water facilities, storm water inlets, water and sanitary) on the site. He stated that to tear them out and start over would add approximately \$1.5M to \$2M in costs to the project. He stated the Developers met with O'Donnell and Sons Construction and CFS Engineers to learn and evaluate a comparison of the existing City streets versus new streets. He stated any new cul-de-sac and eyebrow streets will be built to current City standards. He stated the CFS Engineer's report showed the existing streets will operate well.

He acknowledged the Council's concern of allowing private streets. He stated the Council has approved them in other neighborhoods, such as the Villas in Mission Farms. He understood the Council's concern of requests to take back the maintenance of private streets, but indicated in the LDO it is very specific that the City cannot take back private streets. Each homeowner has to sign an affidavit prior to occupancy that indicates their knowledge of a private street and the on-going funding mechanism to maintain the street. Mr. Petersen stated they are not requesting private streets to keep people out, but rather to take advantage of the existing infrastructure, good land use, and development principles.

Mr. Petersen stated Staff Report Stipulation No. 3 requires the applicant to pay the impact fees. Mr. Petersen stated it would equal approximately \$50,000. He requested that stipulation be deleted since those fees have already been paid.

Mr. Petersen stated Public Works Stipulation No. 2c refers to a traffic light at 137th and Roe. He explained that originally the Villagio development was required to pay for the costs of a traffic light, if and when it was necessary, but Mr. Petersen stated this was based on future commercial development. He pointed out because their project only includes 63 homes and because of the financing, the developers request this stipulation be removed in its entirety.

Mark Simpson addressed the Governing Body via Zoom. He stated that he and his partner Saul Ellis have completed many successful projects in the City of Leawood that has added approximately a quarter of a billion dollars of value to the City. He gave an overview of special amenities and the level of quality that is planned for their proposed development.

Mr. Petersen offered a summary of the action items for the Council to consider. He stated that the Planning Commission had several positive comments, although they have recommended denial due to the fact the project does not adhere to the 135th St. Corridor Plan.

David Ley, Public Works Director, addressed the Governing Body. He began with the first stipulation the applicant has requested to have removed regarding the driveways on 137th St. He stated staff has been consistent over 30 years that no residential driveways go directly onto 133rd and 137th Streets. Mr. Ley stated staff had concerns regarding the pavement thickness, as stated in the CFS Engineer report. He pointed out that there will be construction traffic and trucks using this road while building the homes. Mr. Ley stated another issue that was not pointed out was replacing the limestone curbs. Mayor Dunn stated that since they are high back curbs there will be a portion that will need to be removed for each villa. Mr. Ley replied that he did a quick calculation based on the frontage and found that approximately 30 feet of the curb will need to be replaced just to build the driveway accesses.

Councilmember Sipple asked if the Public Works Department is comfortable with the eyebrow street. Mr. Ley stated it does offer a better solution, and it is something the Department requested all along. Councilmember Sipple asked if parking is allowed on 137th St. Mr. Ley stated it is currently not restricted along 133rd or 137th Streets. Councilmember Sipple asked what the estimate is to improve the streets and curbs to City standards to make them public streets. Mr. Ley stated he has not calculated that cost.

Councilmember Filla emphasized that construction traffic can shake a home, as she has experienced in her own neighborhood. She stated that Mr. Petersen mentioned this would be an area in which current Leawood residents would want to downsize but wondered where they are coming from. She stated she appreciated the amenities that are proposed. She asked if any future debt on the City will impact the City's AAA bond standing. Mr. Lambers stated the scope of the project would not have any significant impact on the City. Councilmember Filla stated her concern on affordable housing and diversity the in housing stock within Leawood.

Patty Bennett, City Attorney, asked to speak on the Rule Exception that Mr. Petersen mentioned earlier. She quoted from a section in the Subdivision Regulation of the LDO referring to allowing the City to

vary from the strict restrictions of a subdivision regulation. She stated the Rule Exception is not properly before the Governing Body because it must first pass by $\frac{3}{4}$ majority of the Planning Commission. Ms. Bennett stated staff and Mr. Petersen have not discussed a Rule Exception, and in her opinion under the language of the LDO, the Governing Body does not have anything properly before them.

Mr. Petersen stated that the Rule Exception was suggested by staff and that he does not agree with Ms. Bennett's interpretation on the LDO for the existing streets. He stated they will build new streets to the City's standards but they will be private.

Councilmember Larson inquired if the wall in the proposal can achieve the same buffer element using a berm and landscaping instead, similar to Hallbrook at State Line and 119th St. Mr. Petersen stated with Hallbrook it was more of an issue with the size of the properties and the large amount of right-of-way areas. He stated villas have smaller lots and are maintenance provided so it does not work as well. He stated the wall is designed as a retaining wall, but it will also be part of an architectural feature of the neighborhood. Councilmember Larson asked if there was consideration to make the wall shorter. Mr. Petersen stated it is specifically designed to minimize the sound from the streets and the decision of its height was not taken lightly.

Councilmember Azeltine stated he understands the desire to have the private streets built to the City's standards, but he feels the point is moot since homeowners will be required to sign affidavits of their agreement to maintain them. He stated there has been overbuilding of retail and commercial along 135th St., and he sees this development as adding synergy to the area and improving the demographics.

Mr. Petersen confirmed in 10 years' time, the Homeowners Association would have approximately \$350,000 in place for street maintenance.

Mr. Petersen stated the Rule Exception was voted on by the Planning Commission. He pointed out it was denied, but that the City Council does have the ability to override their vote. Ms. Bennett replied that the Council does have the authority to change the ordinance after review of the Planning Commission. She stated the way the ordinance is written states, "variations may be passed with $\frac{3}{4}$ vote of the regular membership of the Planning Commission subject to review in action by the Governing Body." Ms. Bennett stated the Planning Commission did not pass it with a $\frac{3}{4}$ majority.

Mayor Dunn stated she listened to the recording of the Planning Commission meeting on this case and felt there were some questions from Chairman Elkins on their ability to act on the exceptions. Ms. Bennett stated there are variances that staff can accept regarding unusual shapes or conditions, but she believes the Planning Commission is not used to seeing this particular provision.

Mark Klein, City Planner, addressed the Governing Body via Zoom. He stated the Impact Fee and Park Fee were based on non-residential square footage, so they were only collected for the buildings when the original developers applied for a permit. He stated it was likely paid for the bank that is currently on the property. He stated for the Transportation Impact Fee on the south side of 137th St. may have been paid already and that the City staff will check.

Councilmember Harrison asked if the traffic light at 137th St. would be paid in full or partial by the Developers. Mr. Petersen stated that after recent discussion they requested to not pay for it at all.

Councilmember Harrison asked if the decibel level was studied along 135th St. for the traffic noise. Mr. Petersen replied no. Councilmember Harrison mentioned what is to happen if all the lots are not sold and how the homeowners are to incur all the costs of the taxes, amenities, and HOA fees until the area is fully built. Mr. Petersen stated the wall and appropriate landscaping design will be very effective for traffic noise. He confirmed that the Developers are very knowledgeable about the villa market.

Councilmember Cain stated she looks forward to seeing more information from staff. She agreed that these developers build high quality products and they know the villa market; however, she feels that the 135th St Corridor Plan was not just put together in a take-it-or-leave-it manner and it has served the City well. In the past the Council has denied projects because they do not fit the 135th St. Corridor study. She stated she personally would like to see more single-family homes along 135th St, but she questioned if the Council should “blow up” the 135th Street Comprehensive Plan for this isolated plan. She stated the Council should take the time and effort for thoughtful planning.

Councilmember Azeltine stated the Council has done spot zoning along 135th St. within the Corridor Plan. He stated if the City does not find a way to make it work, there will not be another opportunity for a long time. He asked if the Developers would be willing to pursue a variance. Mr. Petersen stated he feels there are several ways in which the Council could accept existing streets as private drives. He stated the 135th St. Corridor Plan is not a Master Plan but rather a guideline.

Mayor Dunn stated the Corridor Plan took more than a year to adopt with the help of Mid-America Regional Council grants, task forces, the Planning Commission, land owners, and citizens. She stated it has been tweaked by the Council when necessary.

Councilmember Sipple asked if the Council were to accept the proposal, what precedent would be set for future 135th St. developers. Mr. Lambers stated this is a unique situation because of the current status of the property.

Councilmember Filla stated there is a need for a diversity of housing stock within the City. She expressed her concern of the Developers trying to make it work and being driven by profitability and deadlines.

Councilmember Rawlings asked about affordable housing in Leawood and if a market study was done for this project. Mr. Simpson stated they have looked at that issue, but the costs are very high. They are developing a fourth house plan as an affordable option that will be starting at \$700,000. The lots have to be at 20-25% of the overall cost of the house for an appraisal of a home loan. Mr. Petersen stated if the Council were to wait for another development, the City cannot legally abate taxes, the assessments, and the penalties.

Councilmember Azeltine agreed with the applicant and Mr. Petersen that the longer the property goes without a development, the less likely it is to happen, barring a miracle. In regard to the affordable housing market, he stated Leawood represents 5% of Johnson County and is at least 80% built out. Affordable housing here will have a minor impact in Johnson County.

Councilmember Larson stated this is an extraordinary circumstance and a good project before the Council. She felt it would be a missed opportunity if the City could not make this work. She supports it.

Mayor Dunn called on Elaine Gangel to address the Governing Body via Zoom. Ms. Gangel, 4344 W. 137th Terr., stated her home backs directly to this property, and while she has enjoyed it being undeveloped for some time, she understands it is an extraordinary opportunity. She stated the area has become a de facto dog park and bicycle training path. She felt the development opportunity should not be overlooked but cannot imagine a project that could surpass this project. She stated her and her husband are in support of the project.

Mayor Dunn called on Lori Groom to address the Governing Body via Zoom. Ms. Groom, 4640 W. 137th Terr., stated she agreed with everything Ms. Gangel stated.

Councilmember Filla asked if the City Administrator would respond to an earlier comment about finding a future developer for this property because of its debt burden. Mr. Lambers stated the land continues to grow in value each year, but because the City is landlocked, eventually the debt ratio to land value will decrease. He explained the debt that is already on the property can be a hindrance.

Councilmember Osman stated he was not in favor of the 135th St Corridor Plan in the beginning. He stated there have been unique circumstances before along 135th St. He stated his concern with projects when homeowners are left holding the bag, especially in a downward cycle. He stated he is also concerned with approval of a total residential project, so he does not support this project.

Mayor Dunn stated there are a number of stipulations so if the Council wants to make a motion to approve, they will want to go through each one. She stated she likely will not vote on this, but would not support it because she would want more time to find a compromise with staff.

Mr. Lambers stated he is concerned about the stipulation Ms. Bennett mentioned earlier. He suggested the Council enter a motion for the project in favor, subject to the stipulations being deliberated and approved. He summarized if there is not enough votes to override the Planning Commission then there is no point going through the exercise.

Mayor Dunn stated the Planning Commission did deny the application. Mr. Lambers stated the Planning Commission did not make a finding and did not have a vote, and he does not agree with the all-encompassing 7-0 denial. Ms. Bennett stated if the Council wants to direct staff to look at it further, the City could either change the stipulation to add the condition of a variance, or work with Public Works and Mr. Petersen to interpret the current code.

Councilmember Azeltine questioned if the Council could have a motion to approve this contingent upon working out the stipulations. Mr. Lambers stated yes, but there is much to debate about the stipulations between the Council and the Developer. Mayor Dunn stated if the motion to approve does not pass with a 2/3 majority, there would be no reason to go through the stipulations. Ms. Bennett explained what is in front of the Council is not a recommendation of the stipulations from the Planning Commission, so if the Council wished to override the Planning Commission, it would be a 2-step vote: one vote to override and one vote for the stipulations to have in the override.

A motion to approve the application pending the working out of the stipulations between City Staff and the Developer was made by Councilmember Azeltine, seconded by Councilmember Sipple.

Mayor Dunn stated the intention is for the Council to discuss the stipulations at tonight's meeting because staff has already given their recommendation. Councilmember Filla asked if the motion is to override the Planning Commission, in which Councilmember Azeltine responded yes. Ms. Bennett stated the motion is to override the Planning Commission's recommendation of denial subject to determination of stipulations in the next motion.

Mayor Dunn stated an additional vote will be needed to approve the discussion of the stipulations. Mr. Lambers explained if the motion passes with 6 votes, the Council will start deliberating on the outstanding issues. If the motion fails, then a subsequent motion to deny the application would be in order.

Motion failed with a roll call vote of 4-4. Councilmembers Larson, Azeltine, Sipple, and Rawlings voted AYE. Councilmembers Cain, Filla, Osman, and Harrison voted NAY.

Mr. Simpson expressed his frustration with the City's decision.

A motion to affirm the Planning Commission's recommendation of denial of the application was made by Councilmember Filla, seconded by Councilmember Cain.

Councilmember Azeltine expressed his concern for future opportunities of quality development on this property.

Councilmember Rawlings asked for clarification on the motion. Mayor Dunn stated the Council is voting on the affirmation of the Planning Commission's recommendation of denial.

Motion was approved with a roll call vote of 5-4. Councilmembers Osman, Harrison, Cain, and Filla voted AYE. Councilmembers Azeltine, Sipple, Rawlings, and Larson voted NAY. Mayor Dunn voted AYE to break the tie.

Mayor Dunn stated the reason for her vote is due to the fact there are many stipulations in flux and the challenges in the Development Agreement.

Mr. Simpson offered to meet with his financial institution if the Council would consider giving staff more time to work with the Developers. Mayor Dunn asked if he is requesting a reconsideration to come to an agreement on the disagreements brought forth tonight. Mr. Petersen stated if the only way to move forward is to tear out the existing infrastructure, then it would be over; otherwise, they will work through the other stipulations. Mayor Dunn asked if the Planning Commission needs to review the stipulation or variances. Ms. Bennett stated the Council could move ahead, but the votes have already been had. She explained the Council would need a motion to reconsider from the prevailing side.

Councilmember Filla stated she has grave misgivings in using CID Bonds for residential property, especially during the pandemic.

Mayor Dunn asked if any Councilmember on the prevailing side would like to make a motion to reconsider. With no response it dies for lack of a motion. Mayor Dunn thanked Mr. Petersen and Mr. Simpson and City staff for all the time and work involved.

- B. Resolution approving the Planning Commission's recommendation of denial of a final plan and final plat for Villa De Fontana, located south of 135th Street and east of Roe Avenue (PC 81-20)

A motion to approve Item 5B was made by Councilmember Harrison, seconded by Councilmember Cain. Motion was approved with a 5-3 vote. Councilmembers Cain, Filla, Harrison, Osman, and Rawlings voted AYE. Councilmembers Azeltine, Sipple, and Larson voted NAY.

6. OTHER BUSINESS

Resolution approving and authorizing the Mayor to execute a Development Agreement pertaining to creation of a Community Improvement District for the Villas De Fontana Development

Ms. Bennett withdrew Item 6.

The meeting was adjourned at 8:57 p.m.

/s/ _____
Stacie Stromberg, City Clerk