

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, August 3, 2020. Mayor Peggy Dunn presided.

Councilmembers Present: James Azeltine, Jim Rawlings, Mary Larson, Lisa Harrison, and Chuck Sipple

Councilmembers Present via Zoom: Julie Cain, Andrew Osman, and Debra Filla

Councilmembers Absent: None

Staff Present: Patty Bennett, City Attorney
Stacie Stromberg, Assistant City Clerk

Staff Present via Zoom: Scott Lambers, City Administrator
Kelly Varner, City Clerk
Ross Kurz, Information Services Director

Others Present: None

Review the City's Economic Development Policies

Mayor Dunn opened the work session. Stacie Stromberg read the City Clerk statement into record:

To reduce the likelihood of the spread of COVID-19 the Leawood Governing Body Work Session is being conducted remotely using the Zoom media format and some of the members of the Governing Body may appear remotely. Public comments will not be accepted during this meeting. City Hall is closed to public access during this meeting, however, the meeting will be livestreamed on YouTube and the public can access the livestream by clicking on www.leawood.org.

Mayor Dunn introduced Scott Lambers to begin his presentation. Mr. Lambers addressed the Governing Body remotely via Zoom. He stated his goal is to review the current policies and what they are attempting to accomplish. He suggested the Governing Body select individual policies at the conclusion of his presentation to be reviewed at future work sessions.

Mr. Lambers stated the benefit to this process is that the Council will be able to adopt policy updates for the current year and Mayor.

Industrial Revenue Bonds – Resolution No. 598

Mr. Lambers began stating that the Industrial Revenue Bonds (IRB) are intended to facilitate cities and counties promotion of economic development with industrial and commercial warehousing activities. They provide benefits to an employer and tax abatements (property and sales tax) with the hope they will create jobs to stimulate the economy. The return to the community is secondary income that is generated. It is intended as a business park or industrial park activity.

Mr. Lambers explained Section 2b of the resolution is unique to the City of Leawood, as it is used for institutional or corporate headquarters and regional offices for major local, regional, and national firms. Mr. Lambers stated this makes Leawood more liberal in its utilization of an IRB.

Councilmember Harrison asked if AMC Theatres would be an example of a corporate headquarters and if they had requested an IRB. Mr. Lambers said AMC would have been eligible for consideration, but they did not request one.

Councilmember Sipple asked if Leawood has ever issued an IRB. Patty Bennett, City Attorney, replied it has been used once before for Leawood Fountain Plaza in 1982, prior to the current policy.

Mr. Lambers stated in Section 3a, this does create an unfair advantage because it reduces the cost of a business to the community, when other businesses in the same area may not have received an IRB. He stated this is boilerplate language in the policy. Councilmember Azeltine asked if the phrasing of Section 3a should be changed. Mr. Lambers recommended to delete it.

Mr. Lambers stated Section 3b covers entire developments, not an individual store. He suggested a future discussion regarding if it should cover new construction, old construction, redevelopment, but not individual development.

He stated Section 3e explains the financial aspect of the business, that it requires bonds to be public or private, and if they are viable. He explained the City is simply a conduit in the process, as the bonds are the responsibility of the owner who takes 100% of the risk. He stated there had been concern having bonds with the City's name on them without control, but emphasized that in case a payment has not been made, the City will not make the payment under an IRB. He suggested this section be revised to make it clearer in the statement.

Councilmember Filla asked if there is an overlap with Section 3b because of a CID (Community Improvement District) policy. Mr. Lambers stated there is an overlap, but these policies provide two different benefits, so it is possible an entity could request both.

Mr. Lambers stated the City is unique in that it does not provide tax abatement during the terms of the bonds. As stated in the current language the City becomes the owner of the property during the term of the IRB, which is how the entity receives the tax abatement and sales tax exemption. He stated it is considered a public improvement. Once the bonds are paid off, it reverts back to the entity.

Mr. Lambers stated there is a statute in Kansas allowing school districts to have a say in the tax abatements, but they have not utilized it. Mr. Lambers gave an example from the City of Ottawa, Kansas, of a payment in lieu of taxes to a school district under an IRB.

Mr. Lambers stated since the current IRB policy is from the 1980s, he will check with neighboring cities' provisions of their IRBs. He said the limits are not many, but IRBs cannot be used for personal property.

Councilmember Sipple asked about the administrative fee and if the money flows through a trustee. Mr. Lambers confirmed it goes through a trustee who then distributes the money, but the City still has auditing responsibilities.

Mr. Lambers stated Section 4d outlines a single-ownership structure. He stated he would check with other cities on this item, as well. Section 4e explains it is not to be used to refinance existing debt, which Mr. Lambers stated is a good policy to keep.

He stated in Section 4f the occupant must have 80% occupancy, unless otherwise approved. He stated this language should be more specific.

He stated the current policy regarding the Sales Tax Exemption Certificate in Section 4i allows the purchase of materials for the project to be sales tax exempt, but it could mean the City would lose 20 cents on the dollar. He suggested a payment in lieu of taxes to make the City whole, but it should be discussed further. Mr. Lambers suggested the Resolution of Intent mentioned in Section 4j be extended to 2 years.

Councilmember Azeltine asked if there have been any statute changes since the current IRB policy was adopted. Ms. Bennett said no. He asked to have several examples of how IRBs are used throughout Johnson County available at a future policy discussion. Mr. Lambers stated the Johnson County Appraiser's Office has an annual list of cities who have issued IRBs.

Mr. Lambers recommended this policy receive a review and some modifications.

Mayor Dunn stated a former councilmember had concerns about having the City's name on a bond for payments and recommended private placement. Mr. Lambers replied that it can be limited to private placement, but that the City has both.

Mayor Dunn stated there will be a future work session to discuss changes to the current IRB policy. Mr. Lambers stated he would like to have the review of the chosen policies scheduled by the end of the year.

Commercial Tax Increment Financed Projects – Resolution No. 1317

Mr. Lambers stated this is a redevelopment tool, unlike the IRB which is typically for new construction. The intent is an underlying base of property taxes being paid to all the entities and is a good tool for downtown reinvestment. He stated this is where the payment in lieu of taxes, also referred to as a PILOT, comes into play.

Councilmember Azeltine asked to verify that the City would not be required to have a PILOT agreement, but that it is an option. Mr. Lambers replied yes, it is at the discretion of the City.

Councilmember Sipple asked if in a Tax Increment Financing (TIF) Agreement the school districts would be involved in any discussion. Mr. Lambers stated yes, and if the Council would like to revisit this policy, he recommended the example of what is used in the City of Ottawa. Councilmember Sipple stated he did not believe there were any areas within the City of Leawood that would qualify for this type of redevelopment tool. Mayor Dunn stated when the TIF policy was put in place, there had been two anticipated locations.

Councilmember Azeltine stated he would like to have the option of a TIF for new development, as other communities have done. Mr. Lambers stated that for new projects a tax abatement, a policy the City does not have, would come into play. Councilmember Azeltine stated the statute does not prohibit using a tax abatement for new property in conjunction with a TIF. Ms. Bennett stated the statute has some limits on what it can be used for.

Mr. Lambers stated Section 2c states the intent of the policy for retail sales activity as opposed to a property tax generating activity. He stated it is a good objective to include in the policy statement. In Section 2d “revitalize” implies this policy will be used to tear down an existing structure and replace it with a bigger, better one, but the options are limited, he stated. Mr. Lambers stated the City will not need to be revitalized for a long time to come.

Mr. Lambers stated Section 3b is important for the policy to exist for the Council’s consideration of financial assistance, especially in cases of local, regional, and national firms to come to the City. In Section 3e, the current zoning will need to be revised to reflect the current LDO (Leawood Development Ordinance.)

Mr. Lambers stated Section 4b should be revised to specifically set out a timetable. Councilmember Filla asked if the schedule is all or nothing or a decreasing schedule. Mr. Lambers answered that it is not uncommon for a city to wean the developer off the benefits over several years.

Councilmember Sipple asked about Section 4d that explains the issuance of special bonds and if the City would hire a consultant to figure property tax collections. Mr. Lambers stated the Council would accept the applicant’s information, but an outside consultant may be brought in depending on the complexity. Councilmember Sipple asked if those bonds would have the City’s name on them. Mr. Lambers stated the bonds would not have the City’s name on them. He stated the policy’s inconsistency is whether or not the City issues full-faith bonds or special bonds. It is not clear in the current policy what those special bonds had intended to be. Councilmember Sipple asked since the bonds are not to be used for the construction of buildings or other structures of the remodel, what could they be used for. Mr. Lambers stated public improvements such as parking and street improvements. He stated an SBD (Special Benefit District) would not be uncommon, but it is likely a new project would already have the infrastructure in place and would be limited on how it is used.

Mr. Lambers stated to issue bonds for an SBD, he recommended the Council be very cautious because of the issuance of debt.

He stated the Leawood Economic Development Council (EDC) receives a percentage for the tax increment as stated in Section 4g. Mayor Dunn stated she is not certain this is needed, as the City already pays the EDC from the City's General Fund. Mr. Lambers stated he is not sure if this is separate or if the City Council acts as the EDC.

Councilmember Sipple asked since the applicant is responsible for the debt service out of incremental tax increases, what guarantees are on the bonds. Mr. Lambers stated it is up to the developer and bond holders.

Mr. Lambers asked if he should plan to schedule future work sessions at this time. Mayor Dunn stated there are enough questions to warrant it. Councilmember Cain suggested the TIF policy be further down the list for discussion. Mayor Dunn stated the goal is to review them one at a time and be finished by the end of this year. Councilmember Azeltine stated this is an educational meeting on all the policies and felt more time should be concentrated on the policies the City has not reviewed in a couple of decades. He felt it was important to know what all the financial options are as allowed by the statute. Councilmember Osman agreed with Councilmember Azeltine to review IRB and TIF financing policies first, especially in terms of tax incentives. Mr. Lambers asked which policy to schedule for the second meeting in September or first meeting in October. Councilmember Osman suggested an IRB review first. Councilmember Filla agreed.

Special Benefit District Assessment Policy

Mr. Lambers stated the Special Benefit District Assessment Policy (SBD) is one that many cities do not use. He stated the City of Leawood is unique in providing financing of public improvements while giving the developer the ability to capture the City's low interest rate for a general obligation bond. If the payments are not made, the City will make the payment and place a lien on the property.

Councilmember Filla asked how often the City has used this policy. Mr. Lambers stated he will arrange a list of Special Benefit Districts to provide to the Council. Councilmember Cain asked Mr. Lambers' opinion on why the SBD is used more often than a CID (Community Improvement District) or TDD (Transportation Development District) and if it was a good decision looking back. Mr. Lambers stated it was the only statute available at the time. He stated the way the City has the policies currently structured, the TDD is for new projects and the CID is for existing, older projects. The benefit of a TDD and CID is they are sales tax driven. For an SBD there is an annual property tax that is to be paid by the developer. Councilmember Filla asked if SBDs can be used by citizens for sidewalks or traffic calming. Mr. Lambers stated the cost of issuing bonds is very expensive and should be used for projects no less than \$1 million. He stated that in issuing bonds, if the City had to foreclose, a lien would be placed for possible eviction, which the City would want to avoid doing to residents. Councilmember Filla asked if an SBD had been used in the City before but without being bonded. Mr. Lambers stated a benefit district could be established without being bonded and paid through assessments.

Mr. Lambers stated in the policy provisions the City requires a certified Letter of Credit (LOC) outlining the payments for the new development. Mr. Lambers explained the importance of the timeline of the financing and timing of assessments. He noted if the developer is unable or unwilling to make payment the City then has the LOC as a financial guarantee. It would be reviewed by Bond Counsel and financial advisors.

Mr. Lambers stated SBD improvements must be public improvements that the City would own and cannot be used for private improvements. Mr. Lambers stated assessment financing would not be approved if the petitioner has financial interest in property that is delinquent.

Mr. Lambers suggested changing the debt finance amortization term limit to 15 years, instead of the 10-15 year range. Improvements usually have a life expectancy of more than 15 years so he felt that is not unreasonable.

Mr. Lambers recommended there be a discussion regarding developers requests to fund the projects themselves and deeding them back to the City. His stated his concerns are where cost cutting measures are taken and administration of the project. He suggested adding language to the policy to reflect the City retaining administration of the project.

Mayor Dunn stated she believes that historically SBDs have been paid on time. Mr. Lambers confirmed that generally that has been true. He stated if a developer is delinquent, the delinquent fee goes to the county.

Mr. Lambers concluded by stating he will schedule the first work session in September for CID and TDD policy reviews. Mayor Dunn stated it should be planned for the second meeting in September or when dates are available. She thanked Mr. Lambers for his work on this presentation.

ADJOURN

The meeting adjourned at 7:18 p.m.

/s/ Stacie Stromberg
Assistant City Clerk