

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, November 16, 2020. Mayor Peggy Dunn presided.

Councilmembers Present: Lisa Harrison, Julie Cain, Debra Filla, James Azeltine, Chuck Sipple and Mary Larson

Councilmembers Present via Zoom: Jim Rawlings and Andrew Osman

Councilmembers Absent: None

Staff Present: Scott Lambers, City Administrator; Patty Bennett, City Attorney; Dawn Long, Finance Director; Ross Kurz, Information Services Director; Mark Tepesch, IS Senior Specialist; and Stacie Stromberg, Assistant City Clerk

Staff Present via Zoom: None

Others Present via Zoom: Bill Hess, GilmoreBell

Continued discussion of the City's Economic Development Policies – Property Tax Abatement

Scott Lambers, City Administrator, addressed the Governing Body. He stated that although tonight's topic is a conversation about the City's economic development policies, the Property Tax Abatement through Industrial Revenue Bonds (IRB) is not a policy that the City of Leawood currently has. He explained that the purpose of an IRB is for industrial and commercial purposes. He stated the City has historically done well without using this policy, and suggested the Council consider how it will be used and if the City has the right to forego residents' property taxes.

Councilmember Sipple stated there is very little room for industrial development left in the City, unless it is along 143rd & Kenneth Rd. He asked how many empty lots remain in that area. Mr. Lambers explained commercial developers usually "over acquire" property to avoid running out of land, so he would assume lots would be purchased 2 or 3 at a time because they are not very big parcels.

Patty Bennett, City Attorney, stated it is important to note that the state statute is broader than industrial uses and has been used by other cities for commercial items, such as apartment complexes.

Bill Hess of GilmoreBell, addressed the Governing Body via Zoom. He stated the history of an IRB was initially used for tax exempt financing (tax exempt bonds) but over time became egregious. The statute was changed to eliminate tax exempt financing for any purpose other than manufacturing. He explained that in Kansas it still allows for housing (not residential)/commercial property for real estate

tax abatement and sales tax exemption on construction costs on a project. Mr. Hess gave the example of The Great Wolf Lodge in the Legends area of Kansas City, KS, where an IRB was issued for sales tax exemptions on the construction costs. He stated that property under an IRB is owned by a city, therefore is subject to a tax exemption. He added that under the state statute there are options that would offer either a sales tax or property tax abatement.

Councilmember Azeltine mentioned that even corporate office buildings can use tax abatements. He stated he would prefer not to give away the City's tax base, but feels it would be useful to have this in the City's toolbox. He stated just because the City has an IRB policy, does not mean the Council has to use it.

Mayor Dunn referred to the Legends area and told how former KCK Mayor Carol Marinovich used several tools to entice development into their city. She stated that she appreciated her success, but mentioned that the City of Leawood has different demographics.

Councilmember Harrison commented that if the Council decides to have this policy in the toolbox, then developers will be expecting to utilize it. She feared the City would be criticized for having a new policy but refuses to use it. Councilmember Harrison asked if the area of 103rd Street near the U.S. Toy building would qualify in this category. Mr. Lambers stated it would, but is unlikely to redevelop because of the challenges of the single ownership that is needed. She mentioned that the apartments already built in Leawood did not need to use tax abatements and wondered why it should be offered now.

Mayor Dunn stated she shares some of the same concerns as Councilmember Harrison as having a tool and the Council not being aggressive to use it. Mayor Dunn mentioned that in one of the policies she reviewed, this could not be used for Greenfield areas and the area of 135th Street is considered a Greenfield.

Councilmember Azeltine mentioned that if the Council did decide to add it to the City's toolbox, he pointed out they would be able to define the scope and what it can be used for. He stated he understands the trepidation but wonders what opportunities would be missed without having it available.

Councilmember Osman pointed out the competition the City faces to attract mixed use projects with other surrounding cities within Johnson County and Kansas City, Missouri. He stated having the incentive in the toolbox is a way to bridge the gap on possible construction-related issues. He stated this is not just a tool for 135th Street but all over Leawood, especially in the case of extenuating or unique projects.

Mayor Dunn reminded the Council that years ago AMC Theaters was courted by many cities in which to build their headquarters. She indicated the State gave incentives, but Leawood did not; still AMC wanted to be here because of the location. Councilmember Osman commented that highway accessibility is also important in addition to demographics. Mayor Dunn responded to Councilmember Harrison's comment that at one time the 103rd Street area was considered as a Tax Increment Financing (TIF) location if it could come under one ownership, and Ranchmart (Shopping Center) before there was a Community Improvement District (CID) policy.

Mr. Lambers stated that the City would likely not offer an incentive on a premier piece of land, as opposed to a more difficult piece of property. He agreed with Councilmember Azeltine that having the

policy available would be important to offset a negative and encourage development that might not otherwise occur.

Councilmember Cain stated her inclination is to not start now, but short of having a broad definition of an IRB policy, the Council cannot anticipate every project need. Mayor Dunn stated she noticed in reviewing other cities' finance policies that there was a common theme that if a developer brought jobs and economic development into their city, they could get it. Councilmember Azeltine agreed but suggested that staff could draft a very narrow definition of the policy and Council would review what is allowed, one section at a time.

Mayor Dunn asked how long it would take to get a policy in place, if the City did decide to use it. Ms. Bennett and Mr. Hess both stated not long at all. Mr. Hess stated the tools are always available and can be used in the right circumstance. Ms. Bennett reminded the Council that the City does have an IRB policy but it specifically does not allow for abatement. She stated it is a 1982 policy that should be reviewed and updated.

Mr. Lambers reiterated that if there were any projects that hinted that tax abatement was going to be a consideration, staff could remove the prohibition from the policy. The details would depend on the project, but it would show the City's willingness for discussion and could be done in a couple of weeks.

Councilmember Filla appreciated the discussion brought up by Councilmember Azeltine and for Mr. Lambers' prospective of making the entities part of the process, if there were a tax abatement.

Mr. Hess stated that under the current statute, if the City agreed to an IRB tax abatement there would need to be a public hearing and notice given to all the jurisdictions, so that they are aware and have an opportunity to participate. Mayor Dunn stated as recently as 2017 that the school district's capital outlay mill levy changed. Mr. Hess confirmed that a city cannot abate the school district's 8 mill levy.

Councilmember Azeltine commented that a developer will look at demographics of an area in creating their pro forma, which he feels is in Leawood's favor, but that they are also looking at incentives that a city will offer. He stated that is unlikely that a developer will ask for incentives that are not already in the City's toolbox. Mr. Lambers stated that large corporations have firms doing searches for them, and normally go to the Kansas City Area Development Council (KCADC) first. He stated the City of Leawood has a very good relationship with KCADC and it will continue regardless of what the Council decides to do about the policies. He agreed that demographics are important as well as the employment base, but the incentives are not at the top of the list.

Councilmember Harrison stated that she believes in being prepared, and if the Leawood Economic Development Council or KCADC were aware that the City's policies have gone through recent reviews and updates, she would welcome those conversations. Councilmember Azeltine expressed that there is not a hurry to this, but cautioned it could be a tie-breaker between Leawood and surrounding cities.

Councilmember Larson stated she believes it is wise for the City to have a policy and be prepared, instead of waiting for the situation to arrive. She agreed that it is better to not use the tool until the right situation.

Councilmember Rawlings asked if the City has a policy, does the Council have the capability to deny the request. Mr. Lambers stated the Council has the right to approve or deny at their discretion, no

caveat, and most cities have that written into their policies. He stated it is not likely an unsuccessful applicant would try to sue the City for money.

Mr. Lambers asked the Council to consider a revision regarding the sales tax exemption for construction materials, and asked if Mr. Hess would further explain how it works under an IRB. Mr. Lambers also asked if the Council would move to authorize the City Administrator to remove the prohibition of tax abatement in the City's IRB policy.

Mr. Hess explained that if the City owns a project or property and has plans for construction, the City would already be exempt from sales tax. The City has to file a notice with the Kansas Department of Revenue, in which it receives an exemption certificate for the contractor to use upon purchasing construction materials. He stated the same thing occurs with an IRB, in that if the City either owns the property or has a lease-hold interest in the property and it is being used for public purpose, then the exemption certificate is available. He stated this could happen in any of the qualifying IRB-type projects that are allowed by statute. Mayor Dunn asked about bonds, in which Mr. Hess replied that the bonds in those cases are placed with the developer's bank to help facilitate the exemption. Mr. Lambers asked if bonds are required to be issued. Mr. Hess replied yes. Ms. Bennett stated the time in which the bonds would be required to be paid back could be the length of construction, for example. Mr. Hess stated yes, it would be similar to a construction loan.

Councilmember Filla asked why the City has to own the property or lease-back. Mr. Hess stated that is how the statute is written as an exemption for municipalities and it is a way to facilitate it into an economic development situation, which is a public purpose. Councilmember Azeltine mentioned it also offers a better interest rate. Mr. Hess agreed in a case such as a manufacturing plant. He pointed out that there would be a tax exemption on the interest on the bonds in the State of Kansas but not Federal. Ms. Bennett stated the lease-hold interest in the property or the ownership of the property would be required for both a sales tax exemption and a tax abatement under the IRB statute. Mr. Hess confirmed yes.

Councilmember Filla stated the suggestion made by Councilmember Azeltine and Mr. Lambers to remove the prohibition makes sense for the short term. Mr. Hess made a suggestion that he agrees taking out the limitation on abatement would be an obvious thing to do, but it would not be difficult to put together a policy to recognize what tools the City does have in an effort to show that the City is willing to an agreement under the right circumstances.

Mr. Lambers asked if there was consensus of the Council to proceed to allow the sales tax exemption on the purchase of construction materials, to do away with the prohibition on property tax abatement on the IRB policy, and to clarify in the CID policy a 25% max for public participation. He stated staff can present it to the Council before the end of the year. Mayor Dunn asked if the sales tax exemption for an IRB is different than the current policy. Mr. Lambers stated that the policy needs to be clarified that if an applicant requests a sales tax exemption for materials only it would be in the form of temporary construction loan with an IRB, and not for 15-20 years. Mayor Dunn stated the City's CID policy is far more restrictive than the state statute allows; however, if the City does not include any qualifiers in place, she believes it would take longer than the end of the year to come back to the Council to review. Mr. Lambers stated under his recommendation, every application would stand on its own while still meeting all the statutory requirements. Mayor Dunn stated she does not want to take the IRB statute verbatim. Mr. Lambers stated the IRB policy is straightforward as far as what is eligible, as opposed to the CID policy. Mr. Hess stated what the City wants to accomplish can be done by

advertising that the City has a lot of tools available under state law that they are willing to consider to be more inviting.

Councilmember Azeltine agreed with the Mayor that he does not want staff to rewrite the policy to create an “open season.” He pointed out that the City’s CID policy has ranges. He stated he does not believe there is a rush in getting the policy done. Councilmember Azeltine asked about the 25% limit and if it is for the sales tax exemption or abatement. Mr. Lambers stated this was from the conversations about the limit of the total public participation in a CID project because there is no limitation in the current policy. He explained that cities offering property tax abatements are typically tied to job creation.

Mayor Dunn stated she would like to have more time for staff to work on the policies so that the Council has time to read through them.

Mr. Hess commented that in the IRB statute there is a requirement that there is a cost-benefit analysis. Mayor Dunn stated every one of the policies have this and Mr. Hess replied that they should.

Councilmember Azeltine asked if the IRB policy can be drafted to have a range of percentages of abatement and include a timeline limitation. Mr. Hess stated the abatement goes by statute and would be considered a payment in lieu of taxes.

Mayor Dunn thanked staff and Mr. Hess for the discussion.

The meeting adjourned at 7:06 p.m.

/s/ Stacie Stromberg
Assistant City Clerk