

## **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, March 15, 2021. Mayor Peggy Dunn presided.

**Councilmembers Present:** James Azeltine, Deb Filla, Julie Cain, Jim Rawlings, Mary Larson, Chuck Sipple, and Lisa Harrison

**Councilmembers Present via Zoom:** Andrew Osman

**Councilmembers Absent:** None

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

**Others Present via Zoom:** Ben Thompson, Gilmore & Bell

### **Continued discussion of possible property tax abatement and sales tax exemption through the issuance of IRBs**

Scott Lambers, City Administrator, stated that the City has two policies, one of which is referred to as the Expedited Plan/Policy or Plan A. He explained that the Expedited Plan is on tonight's City Council meeting agenda. Mr. Lambers stated that Mr. Curtis Petersen, Polsinelli PC, requested to appear via Zoom to discuss with Ben Thompson, Gilmore & Bell, certain items. The items for the policy were provided by Mr. Thompson. Mr. Lambers requested that the Council make a decision on those items and approve the policy at this evening's City Council meeting before moving forward on the other policy (also known as Plan B.)

Mayor Dunn clarified that the speakers will be appearing at the City Council meeting and not at the Work Session. Mr. Lambers pointed out that Kevin Jeffries, Leawood Chamber of Commerce, has also requested to speak on this topic at the City Council meeting.

Councilmember Azeltine stated that he has no problem with Plan A as long as it does not preclude Plan B. He opined that the City needs both avenues. Councilmember Azeltine stated he does not understand the hurry to vote on Plan A and believed that both policies should be considered together. Mr. Lambers replied that if the policy is approved tonight, he can provide a better explanation to Councilmember Azeltine's timing concern in the next couple of days.

Patty Bennett, City Attorney, explained that it makes sense to discuss both plans at the same time because they are very similar with the exception of the vetting process and Leawood Development Ordinance (LDO) approval. She directed questions to Mr. Thompson.

Ben Thompson, Gilmore & Bell, addressed the Governing Body via Zoom. He explained that he and staff put together two policies. He stated the language on both policies are very similar, but one is expedited and the other is a standard, non-incentive policy that is more intensive as far as the application process and requirements needed in order for the applicant to pass approval with the Finance team and Governing Body.

Councilmember Rawlings asked about the employment opportunities, above-average wages and how those are determined. Mr. Thompson stated that 25 jobs, as stated in the policy, was a starting point but could be adjusted, and that the wages are determined as part of the vetting process.

Councilmember Harrison commented that it is sometimes difficult to read and comprehend emails that come to the Council late the day of a meeting. She shared concern that she is being asked to make a decision on items that may have had last minute changes to them. Mr. Lambers stated that he does not disagree with her, but the recent comments from Mr. Petersen are related to Plan B that is not in front of the Council tonight. Ms. Bennett confirmed that Mr. Petersen will address some concerns regarding the Expedited Policy in the City Council meeting, but most of his comments via email were related to Plan B that the Council is not hearing tonight.

Councilmember Sipple asked about the funding agreement and a payment in lieu of taxes, and how those are determined. Mr. Thompson replied that in Section 3, it states that projects that are eligible for tax abatement would receive up to 50% property tax abatement. The 50% that the developer would pay would be dispersed to the taxing jurisdictions but it is technically a payment in lieu of taxes, since the property tax is abated. Councilmember Sipple asked which other municipalities have a blanket prohibition of this kind of financing for multi-family development. Mr. Lambers stated he is unaware of the neighboring cities' policies, but if the Council wished to move forward, the staff would survey what other cities allow. He stated that the State of Kansas does not allow this financing for multi-family development.

Councilmember Osman asked that if the Council deviated from the Expedited Policy, would it affect the standard policy. Mr. Lambers stated that at this time, the discussion is only for the Expedited Policy and that there will be another work session for the non-expedited policy. Councilmember Osman asked if the Council can still object to Plan B, if they approve Plan A. Mr. Lambers stated yes, and that the policies will not be consistent because Plan A will have the State's review as part of the requirement, and Plan B will not.

Councilmember Osman was unable to remain in the meeting due to illness and excused himself from the Work Session.

Councilmember Azeltine asked if the AMC Headquarters received PILOT (payment in lieu of taxes) incentives. Mr. Lambers stated a PILOT is typically what a developer pays to another entity, rather than a city. He did not recall that they were required to make any payments, but they did receive significant State incentives. Councilmember Azeltine asked about the Design Criteria under Section 2 in Plan B and if the LDO will need to be changed. Mr. Lambers stated that if an applicant applies for a Transportation Development District (TDD) or Community Improvement District (CID) funding and they have a preliminary plan approval, then as part of their final plan they would request TTD or CID financing at that time. He cautioned that the applicant may not want to go forward with any planning process until they know they have the incentives from the City. Mr. Lambers noted that the question is whether the City will follow the same process for the applicant to at least get the preliminary plan approved, or if the Council is willing to accept an application without having the plan presented to them. Councilmember Azeltine suggested that it be done like the other incentives, in that it runs concurrently with the final plan. Mr. Lambers explained that special standards should be written into the plan.

Councilmember Azeltine asked about the section stating the preference given to businesses that exceed applicable environmental regulations and energy efficiency standards and if an example could be given. Mr. Lambers stated the City could ask for a LEED certification. He noted it is considered to be a bonus and not a requirement of an application. He added that the certification would be done by an outside agency and is the responsibility of the applicant. Councilmember Azeltine stated the section notes that proposals should not result in an unfair business advantage over existing local businesses. Mr. Lambers suggested that language be removed from the policy.

Councilmember Azeltine asked about the section that noted “excluded businesses.” Mr. Thompson explained that the Kansas Legislature has a list of excluded businesses, such as rabbit and poultry confinement. Councilmember Azeltine asked how the City would determine if a project is financially feasible. Mr. Lambers stated that the City would require a statement from the company stating that they can proceed without incentives. Councilmember Azeltine asked who determines the approval of the cost benefit analysis model of the financial impact to the City and other taxing jurisdictions. Mr. Lambers stated the applicant submits the name of a reputable firm that would do the analysis. Mr. Thompson noted that in some instances the City will contract for the cost benefit analysis and then be reimbursed by the applicant. He stated that for a sales tax exemption only, a cost benefit analysis is not required. Councilmember Azeltine asked about the payment in full within 12 months item. Mr. Thompson stated that part of the policy notes that when the City issues a sales tax exemption only bond, that it would be structured to run the length of the project.

Councilmember Azeltine asked what a PILOT Performance Agreement was. Mr. Lambers replied that if there were going to be a significant impact on the school district, for example, there would need to be a separate agreement so the abatement percentage may be adjusted. Councilmember Azeltine remarked that the PILOT Performance Agreement annual report is to be filed with the City Clerk by

January 15<sup>th</sup>. Mr. Lambers agreed that is early in the year and suggested it could be changed to February 15<sup>th</sup>.

Councilmember Azeltine asked if the City will require the applicant to buy the entire issuance of bonds. Mr. Lambers stated this is a topic that Mr. Petersen requested to discuss, as he contends that 99% of the circumstances are where the owner of the project buys the bonds themselves. Mr. Lambers stated that the City should have a disclaimer stating that unless the developer of the project buys the bond then you have this requirement. Mr. Thompson replied that most of the IRBs are “paper deals” and the applicant buys their bonds in order to receive a sales tax exemption ability and/or the property tax abatement. He stated in some circumstances there could be a bank purchase financed bond where the applicant would receive funds to construct. Mr. Lambers stated that the issue with the bank financing is that it brings the City into the process. Councilmember Azeltine asked what the difference is between procedure and policy. Mr. Lambers stated that the policy would outline a specific number of jobs, but there is some flexibility in the review and approval process. He stressed that the original intent of the policy is to create skilled jobs in the area. Mayor Dunn remarked that the Governing Body has the right to deviate from the policy when such action is considered an exceptional benefit to the City, but cannot deviate from Kansas law.

Mr. Lambers reminded the Council that from the beginning of the discussion, it was made clear that this is for exceptional projects. He suggested that language regarding the prohibition of receiving other tools be removed from the policy, such in the case of using TDD funding for structured or covered parking.

Councilmember Filla asked about the financial viability and why it would be included in the policy. Mr. Lambers stated it is to show that Leawood is competitive with other cities. Councilmember Sipple asked how developers and businesses know that Leawood will have the financial policy option available. Mr. Lambers stated the City will give the approved policies to the State of Kansas, who has its own vetting process, and would notify businesses what Leawood offers. Councilmember Sipple asked if any companies did not chose Leawood because a policy was not in place. Mr. Lambers stated that he was never approached by the State, so he is unable to answer that question.

Mayor Dunn asked if the Council would like to discuss the Expedited Policy at this work session. Mr. Lambers recommended that it be discussed at the City Council meeting tonight, as listed on the agenda.

Councilmember Cain commented on the correspondence staff received from Mr. John Petersen stating that he believes the City is advocating for a new policy whereby multi-family will be deleted from being considered for a sales tax exemption. Mr. Lambers responded that is not true and that the State does not allow multi-family incentives. He affirmed that all the Council is considering is that which is approved by the State of Kansas, but that there has been no conversation about deleting that item.

Mr. Lambers asked if the Council wishes to have the policies differ, and if on the second policy, does the Council want to provide tax paying subsidies for multi-family consideration. He stated that the Plan B policy needs to be very explicit.

Councilmember Azeltine asked what would happen if the City received a Mixed-Use Development (MXD) application requesting an IRB and part of the MXD is multi-family. Mr. Lambers stated that under the State proposal only the commercial aspect would be eligible for an IRB. He suggested that if the MXD percentage requirement is met, it could be considered.

Councilmember Cain stated that she does not agree with the MXD formula for multi-family because of the recent approval to reduce the percentages. She expressed concern that a project could potentially have 80% multi-family development. Mr. Lambers replied that the intent of the State's IRB statute was focused on industrial, manufacturing, and high-paying jobs in rural communities, then it morphed into commercial buildings and warehouses. Councilmember Cain remarked that the Council should be very careful when considering future projects. Mayor Dunn agreed. Mr. Lambers stated that it is up to the Council's discretion on what the language in the policy should be to define what is considered extraordinary.

Councilmember Filla stated one reason why the Council should approve Plan B is the affordability of rental prices compared to home prices. Patty Bennett, City Attorney, reminded the Council that the IRB in the statute is only for commercial use, so multi-family rentals would qualify, not home that are for sale. Councilmember Filla stated she does not want to be in the business of "let's make a deal" with Plan B. Mr. Lambers stated that to review future applications for extraordinary projects, the Council will have more specific items in the policy, but many developers will want to ask anyway.

Councilmember Harrison stated her concern with optics and how the residents will perceive the City giving out tax breaks to developers. She mentioned that she has learned that parking spots for multi-family development is very expensive. She stated that she feels parking garages are considered exceptional or extraordinary in a project.

Councilmember Azeltine pointed out that there are two processes: the planning process and the incentive process. He felt it is important to explain to the developers that if plans are approved it does not necessarily mean the financing plan will be. Mr. Lambers pointed out that the structural parking aspect of a project could be the demarcation of approval or not.

Mayor Dunn stated she was happy with the discussion and summarized that it focused on the Council's idea of sole discretion for consideration of a project, as stated in the policy. Mayor Dunn asked to schedule another work session to discuss Plan B, which Mr. Lambers stated he will do.

*The meeting adjourned at 7:21 p.m.*