

## 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, April 19, 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; Mike Pelger, IS Specialist

**Others Present via Zoom:** Ben Thompson and Kevin Wempe, Gilmore and Bell

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

Scott Lambers reminded the Council that this is a continuation of a discussion over the last several months and that the Council has already approved an option for developers to pursue with the State being involved. He stated the City has now received an application under this Plan. Mr. Lambers stated that Path/Plan B is now under consideration, in which an applicant does not go through the State but directly to the City requesting public taxpayer assistance. He stated that with this option, the Council has control, while under State statute, to make the decision or not to award somebody using the criteria they have set out. He recognized that the Council has expressed the desire that a project under this Plan would have to be above and beyond the tradition project in order to be considered for some property tax relief or sales tax exemptions. He noted that how that is defined will be important because of the process.

Mr. Lambers indicated that the City Administrator will first determine if the project meets the criteria of the Council. He pointed out that his decision would be appealable to the Governing Body. He gave examples of what deems a project as special, such as structured parking and LEED certification, and that the Governing Body would determine a list of items that a developer could then chose whether or not to pursue any of those options for a property or sales tax exemption. Mr. Lambers stated that although there would be a list of options, it would not be limited.

Councilmember Harrison asked if the concept of higher density, single-family owned housing is unique to Leawood. Mr. Lambers replied that anything on the list would first have to be eligible by State law. Ben Thompson, Gilmore and Bell, addressed the Governing Body via Zoom. He introduced Kevin Wempe, Gilmore and Bell, also appearing via Zoom. Mr. Thompson answered that single-family

residential is not allowed under State statute. Multi-family residential has become more common, if it is a commercial operation or development. He stated that if a developer is building and selling condos, this is not allowed under the statute.

Mr. Lambers replied that it would depend on if it were eligible per state law. He expressed the desire to advance all ideas without being stuck on details. He asked Mr. Thompson to respond about the single-family housing.

Councilmember Sipple stated that in the policy proposal that the project has to be economically viable but expressed concern for public criticism in offering tax incentives. Mr. Lambers agreed but stated a common provision throughout the county is that it is a “but for”, in that it is a way for Leawood to compete with other municipalities.

Kevin Wempe, Gilmore & Bell stated that single-family is not allowed under the current statute. Multifamily Residential is allowed if it is part of commercial development or if there will be a single owner.

Councilmember Sipple asked if the project needed to be economically viable and then eligible for incentives if the City would be subject to the criticism that is being laid on the downtown developments, that these are giveaways for the developers.

Mr. Lambers replied that a common provision throughout the country is a “but, for,” meaning but, for the tax payments, this project would not work. He referred to major corporations that have the ability to make projects work but would rather spend other people’s money. The main reason the proposal is being presented is so that Leawood can compete with other cities.

Councilmember Azeltine commented that Path B is necessary to make sure that potential opportunities are not missed. He asked about the number of jobs to be created or retained as listed on the memorandum. Mr. Thompson replied that the number 25 was carried over from the original expedited policy. He indicated that the number of jobs is flexible and that it would be up to the Council on whether or not to diverge from it. Mr. Lambers remarked that if a developer created more than 25 jobs, the Council could decide to allow a greater benefit to the project or not. Councilmember Azeltine noted that he could not imagine an Economic Development Revenue Bond (EDRB) project that is considered special enough and that would not create more than 25 jobs.

Mr. Lambers added that a list of projects could be included as well as a caveat that the number of jobs created could equate to a certain level of credit.

Councilmember Azeltine asked about a project that did not provide any new jobs and had trouble imagining something special enough to warrant receiving the tax credit.

Mr. Lambers replied that the minimum number of jobs could be 25 with a higher incentive for more, with zero new jobs; it would not be special, affirming that the new jobs could come over time.

Councilmember Azeltine asked about the requirement for financial feasibility requirement without incentives. Mr. Lambers replied that the concern is that Leawood is not a capital venture business and should not be taking significant risks with taxpayer dollars, particularly with very limited return benefit to the community.

Councilmember Azeltine stated that he is skeptical when a developer says the only way a project can be done is with incentives, though it may be true sometimes. Mr. Lambers replied that it might not be worth the risk if success is contingent on the incentive.

Councilmember Azeltine pointed out that Preliminary and Final Plans must be approved prior to submittal of an application and asked what could prevent an applicant from mentioning it during the process.

Mr. Lambers replied that it should be modified to state that once a Preliminary Plan is approved, concurrent with the Final Plan, a request for property tax abatement or sales tax exemption could proceed. Both issues could be considered in the same meeting.

Councilmember Azeltine asked about promoting development or redevelopment projects that meet and exceed the standards of the Leawood Development Ordinance (LDO.) He said he would be more comfortable with it saying, “meet or exceed” in case a very special project is presented that meets but does not exceed standards. He also asked about the sound financial base of the applicant and the determination based on recommendations of the City’s financial advisor to the financial team. He asked if a report would be presented with that information.

Mr. Lambers assumed it would be public.

Mr. Thompson stated that since this is not an expedited process when the application is filed, the applicant will meet with the finance team, including the City Administrator, Director of Finance, City Attorney, Planning Director, Bond Counsel, and Financial Advisor. The team will review project expectations in terms of jobs and wages.

Mr. Lambers pointed out that any matter that comes to City Council becomes part of public record. Councilmember Azeltine asked if it had become a problem in other cities. Mr. Thompson replied that other cities do not typically have this type of requirement and there is typically no published report at City Council level.

Mr. Wempe stated that the provision for the financial report or credit enhancement related to bonds is included in the event that there is a bond that will be purchased by a third-party financier, though that possibility is rare; the company itself purchases most where the company is solely responsible for the payment of the bonds. Unlike General Obligation Bonds that the City issues, the City is not, undertaking any credit risk, and the General Fund isn’t at risk for repayment of those bonds.

Councilmember Azeltine asked about Section 2D, which stated that projects must be environmentally acceptable for the location intended as well as in surrounding areas and that applicable regulations apply, which would have to be complied with anyway. He was concerned about the vagueness of it.

Mr. Lambers replied that he was envisioning a project that wants variances, exceptions, and deviations from the ordinances and then wants a tax break. He suggested separating out environmental considerations.

Councilmember Azeltine pointed out that it also states that applicants would be responsible for, at a minimum, Phase 1 environmental audit. He asked about the costs involved and who would be

responsible. Mayor Dunn replied that some of them are required and that homeowners have to do them. Mr. Thompson was not sure about the costs but stated that the City would not be responsible for them. Councilmember Azeltine stated that it goes on to say that the City could require additional audits and asked if that was standard as well. Mr. Thompson replied that such a provision covers deviations that may occur in Phase 1 and raise red flags. Mr. Lambers stated that such provisions are important.

Councilmember Azeltine asked for an explanation of the FF&E and other elements of Section 3. Mr. Thompson stated that if an applicant requests a sales tax-only exemption, the City would consider IRBs or EDRBs to provide a sales tax exemption certificate on building materials, FF&E, if the capital investment is at least \$5 million.

Councilmember Azeltine asked about the City's right to approve the Cost Benefit Analysis Model and who that would include. Mr. Lambers replied that it would probably be his recommendation with City Council approval.

Councilmember Azeltine asked about the Pilot Performance Agreement with payment in lieu of property taxes that may accompany a policy. Mr. Thompson replied that the Pilot Performance Agreement is a grant set forth when a tax abatement request is made. If an applicant wanted both sales tax and property tax abatement, a Pilot Performance Agreement would establish benchmarks, which the City could use to uphold or remove the abatement.

Councilmember Rawlings asked how the policy would affect projects currently in the pipeline. Mr. Lambers replied that applicants could come to him to make a determination.

Councilmember Harrison said that she has heard from many sources that Leawood's expectation of developers to bury power lines and/or widen streets is the City's way of getting infrastructure work done without taxpayer funding. She asked about a case where developers said it was not affordable to do the project with those expectations but instead asked for the tax abatements and if it is just a different way that the taxpayer is helping to fund the infrastructure improvements. Mr. Lambers agreed and said that there is little development left in Leawood. He talked about power lines on 135<sup>th</sup> Street being the burden of the owners. Councilmember Harrison recalled that Ranch Mart North had issues with that. Mayor Dunn pointed out that it is being done with taxpayer dollars through the Community Improvement District (CID) which will pay for all of it.

Mr. Lambers talked about the Oddo project at 135<sup>th</sup> and State Line. Power lines have been buried to the north and across the street. It is possible that assistance could be requested to bury others, but it would be denied because it is not an overdue burden. Mayor Dunn added that without the policy, Leawood entered into a public-private partnership with the Lashbrook project to bury power lines.

Councilmember Cain did not have specifics to add to the list but stated that "special" means special to her. She talked about Google, who was going to bury power lines. Then, Leawood had to stand firm when they did not want to do it, angering many people. She felt that many people would be unhappy that others have been required to bury power lines.

Councilmember Osman stated that did not care for the policy or procedure for the applicant requesting the incentive. In the policy, it states that the applicant's plan is voted on, and then the incentive package is voted on. Mr. Lambers affirmed that the first step would be to get Preliminary Plan and Rezoning

approved and then have Final Plan, which has all the details, and the economic request be considered, in that order.

Councilmember Osman wanted to differentiate between CID, Tax Development District (TDD), and this particular application. In theory, a developer will come from outside Leawood and Kansas and request the State and City for incentives, which takes time, effort, and money. Unlike other municipalities, developers could see a barrier of entry as much higher with Leawood. CID or TDD requirements for a developer are the same. They spend the money for the preapproval and then Governing Body votes on the incentive package. In most cases, the property owner already owns the property, or they have tried to lay out a plan, asking the City to bridge the gap. In the current situation, something needs to work initially. They could go through the process of spending time and money and be denied. He would want to know about the approval upfront, contingent on stipulations.

Mr. Lambers replied that the project should be sufficient without the incentives so that they would be perceived as a bonus. Unfortunately, because of Kansas planning laws, there is no way for a developer to ask for the money before going through the planning process. In this manner, the planning process is not prejudiced.

Councilmember Osman asked about the AMC project. He knew it was heavily supported by the State and that the City was awarded where the building was built. He asked if they would have been unable to get incentives until the very end with the current proposal. Mr. Lambers replied that the state is not part of this process, which expedites it more. The process is the same for TDD, CID, property tax abatement, or sales tax exemption.

Mayor Dunn replied that the parking structure for AMC had been previously approved with Park Place as a placeholder for a commercial building. When the Park Place Master Plan was considered, the TDD was approved. The headquarters received PEAK dollars because it came from Missouri. The City did not offer any other incentives other than the TDD to do the parking structure. Other cities vying for AMC offered many incentives. Ultimately, they came to Leawood for the location.

Councilmember Filla appreciated the clawback if the development does not meet expectations. She asked about a time frame for new job creation and retention. Mr. Lambers replied that the company develops an employment schedule that is accepted by the State and City.

Councilmember Filla asked about apartment buildings being considered with structured parking. Mr. Lambers replied that it had been discussed and that City Council has the right to permit it and allow for only commercial development. He felt that apartments could be a bit of a stretch.

Councilmember Filla felt it was appropriate to consider CID, TDD and others to apply in those situations. She was hoping that green roofs, carbon footprint, and electric vehicles could all be considered as requirements. Mr. Lambers replied that the idea would be that developers could choose from a list.

Councilmember Filla asked if the determination would be made using a point system. Mr. Lambers wanted it to be more subjective and allow for flexibility. Job creation of 25 would be a bonus and 50 would be a bonus plus.

Councilmember Azeltine spoke about the difficulty of the process compared to other cities being favorable because it would be more likely to be a special project. He asked Mr. Lambers if he felt there was flexibility for him to negotiate and screen the project proposals properly. Mr. Lambers replied that he still needs direction on some items, including apartments and other items that are not currently on the list but that the Council would like to have included. He suggested bringing a draft to a meeting.

Councilmember Azeltine agreed with Councilmember Filla in general with the idea that a multifamily component could be considered. Once a developer has gone through the planning process, it is easier to leave the door open than to preclude a project that has Multifamily as a component but has other elements as well.

Councilmember Harrison commented on the border war from a few years prior, including discussions about AMC. She felt it was a state and not county issue. She did not want to be known for giving away tax dollars in order to take 80 jobs from I-435 and Holmes.

Mr. Lambers replied that it could be considered something like a demerit. He agreed that it should be considered. Kansas City, Missouri has more local incentives than Leawood has. He wanted to avoid playing a game.

Mayor Dunn added that sometimes businesses just move from city to city and do not even necessarily cross the state line. Mr. Lambers replied that he could include something to address the situation.

Councilmember Osman asked about Restriction of Transfer that states the property tax abatement can be rescinded if the business vacates. He talked about a project that commits to Leawood but then is bought out. In the meantime, the landowner finds another major business and asked if the new owner would have to go through the application process again. Mr. Lambers replied that the new owner would.

Councilmember Cain stated that a CID is 20 years with public improvements. She asked if some of the bonuses could be ones that benefit the public at large. She disagreed with Councilmember Azeltine's comments about Mixed-Use because the percentages were just lowered.

Councilmember Azeltine pointed out that he agreed with her. Mr. Lambers confirmed that they were both saying the same thing. He proposed that a developer who increased the minimums to provide more of a balance would be a positive. Councilmember Azeltine agreed that it should be an option. Councilmember Cain agreed as well. She felt something that could be a positive would be amenities that benefit the public.

Mr. Lambers stated that retail and restaurants benefit the City the most, so projects that exceed the minimum in that category would be beneficial because of the revenue and the synergy aspect.

Councilmember Cain agreed and expressed the need for walkability, livability, and desirability that can be met with restaurants, coffee shops, and ice cream parlors. All of that is the opposite of what is being proposed currently.

Mayor Dunn stated that an amendment is going through the planning process to increase the allowable units per acre in Multifamily. The Planning Commission is looking at adding a bonus structure. Councilmember Cain asked if that was tied to the acreage of seven acres or fewer. Mr. Lambers replied that it is. Mayor Dunn stated that it is a citywide application, which is another perk for developers.

Councilmember Cain thought the idea was paused when talking about smaller parcels. Mayor Dunn stated that it has not been approved. Mr. Lambers added that the limitation is if it is an infill project.

Councilmember Cain asked if it was an infill project of seven acres, which is what developers wanted. She felt that it was not agreed upon. Mr. Lambers clarified that percentages were reduced even more for infill, but he did not recall an acreage limitation.

Councilmember Filla asked if a bonus would be granted for Multifamily. Mayor Dunn replied that it would not but that structured parking could warrant a bonus.

Councilmember Filla stated that she was reconsidering apartments because underground parking would be a value, as well as thermal or solar elements, or lease-to-purchase. Mr. Lambers replied that lease-to-purchase is not allowed.

Councilmember Filla stated that it could be constructed for potentially becoming condominiums in the future. Mr. Lambers replied that if it becomes platted during the abatement period, it would not be eligible.

Councilmember Filla spoke about public amenities such as green space, gardens, and growth orchards and how they could be included if they improve the quality of the complex. She asked if there was a way to achieve the same results with other planning instruments. Mr. Lambers felt that it should be treated as a bonus and not part of a requirement.

Councilmember Filla rephrased the question and asked if there was another vehicle to get credit for the elements to make the project of higher quality.

Councilmember Cain replied that a TDD is available for parking structures. Mayor Dunn added that the TDD could be paid for by both retail sales tax and property tax dollars.

Councilmember Filla asked about an infill situation that does not allow for the option of more than 5% retail. Mayor Dunn replied that it would have to be property tax at that point.

Councilmember Filla stated that it would go back to the renters, then. She asked if there is a reason to add apartments to the document and if there is anything that would increase the quality of apartments that cannot be done with other vehicles.

Mr. Lambers replied that it enhances the Mixed-Use activity by providing dense Residential and makes the Commercial more viable. There is a positive effect of having apartments. Standalone apartments with surface parking would not be part of the conversation.

Councilmember Filla asked if carports would get special consideration. Mayor Dunn replied that enclosed parking is required, and she would not be in favor of Tax Abatement for Multifamily. She would entertain the idea of structured or underground parking. She has heard from residents that ownership is preferred to renting.

Councilmember Azeltine agreed with the Mayor's sentiments on Multifamily but felt they should not be precluded from the document because it limits what could potentially be proposed. All the incentives will be considered in the planning process. He wants the incentives to be difficult and exclusive.

Mr. Lambers talked about the consideration of whether a project gets both benefits. The threshold would be less for Sales Tax Exemption, and it provides incentives that do not exist currently.

Councilmember Azeltine pointed out that the Governing Body has the ability to choose at the time of consideration. Mr. Lambers replied that the threshold needs to be considered because the City gives up a very small portion of the Sales Tax Exemption.

Councilmember Larson added that she favored the Mayor's sentiments. She has received over 100 emails complaining about apartment proposals and very few in favor. Considering the limited land and the potential projects at 135<sup>th</sup> Street, she hoped for something of higher use than apartments.

Councilmember Sipple clarified that the companies that will go through the petition process will not receive aid from the State. Mr. Lambers replied that the intention is that they would not.

Councilmember Cain revisited the idea of incentivizing people for what is good for the many as opposed to the few and suggested larger setbacks. She is also happy to welcome local developers.

Mayor Dunn told Mr. Lambers that she envisions another work session with a list of potential items to be analyzed. Mr. Lambers agreed and said that he expected more options to be presented and that demerits were not discussed at length. The next work session would include a draft of the proposal.

Mayor Dunn asked if it would go to the Planning Commission. Mr. Lambers affirmed that it does not.

Councilmember Cain asked if a decision was made about Multifamily. Mayor Dunn asked if they should seek a consensus.

Councilmember Azeltine said he meant for it not to be taken out of a plan and that not everything in a plan needs abatement.

Mayor Dunn clarified that she was talking about Multifamily on its own. Councilmember Azeltine agreed. Mr. Lambers clarified that it would have to be part of a Mixed-Use plan that meets the City's requirements.

Mayor Dunn added that the apartments should not be abated. Councilmember Cain replied that if City guidelines are being met, a development could be 80% apartments and still be eligible. Councilmember Azeltine replied that it would be unlikely that anyone would vote for incentives for a development that included 80% apartments. Councilmember Cain replied that it would not be ineligible if it is meant to be special; it should have a different percentage allowed to qualify.

Councilmember Azeltine stated that the LDO must be followed in planning obligation, but in this situation, it is much more subjective and can be denied more easily.

Mayor Dunn stated that there are cities who will not incent Multifamily, period. She asked for clearer direction. Mr. Lambers replied that a Mixed-Use project with apartments would need a lower

percentage of apartments to be considered for an incentive. The question is if they could be eligible for both incentives or just one.

Mayor Dunn would like to consider only Sales Tax Exemption. Councilmember Azeltine agreed.

Councilmember Filla did not know the pros and cons of it. Mayor Dunn replied that it needed to end, to be revisited at another meeting.

Councilmember Filla stated that infill might be a bit different as far as percentages.

Councilmember Cain stated that a number presented as true infill made sense. Mr. Lambers replied that the definition of infill is that it is surrounded by existing development. Mayor Dunn stated that the percentages were lowered to 5%, 5%, and 5% for infill.

Councilmember Filla pointed out that office buildings and retail surround the parking lot at Ward Parkway, so it is different. Mr. Lambers added that residential homes are to the west.

Councilmember Cain asked if 135<sup>th</sup> Street is considered infill and not green space. Mayor Dunn replied that it is considered green field and not infill.

Councilmember Cain said that she hoped ultimately a percentage that sends a message about expecting lower percentages of apartments is determined.

Councilmember Azeltine said that if somebody comes in with 80% Multifamily and there will be no Tax Abatement granted, this will not be an issue.

Mayor Dunn reiterated that there is very little land left and that people have been coming to Leawood because they want the location. They have come with very few incentives, but the City has done SBD, CID, and TDD. She is proud of the fact that Leawood has not done Tax Abatement. She does not object to other cities doing it, but Leawood has not needed it.

*The meeting adjourned at 7:19 p.m.*