

## 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, September 20, 2021. Mayor Peggy Dunn presided.

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

**Councilmembers Absent:** None

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

**Others Present:** John Peterson, Developer; Ben Thompson and Kevin Wempe, Gilmore & Bell

### **Discussion of Development Agreement for 135<sup>th</sup> & Roe**

John Peterson, 11817 Norwood Dr., Leawood, addressed the Governing Body. He stated that he is a resident of the City, but explained that he is speaking on behalf of a development group as a proposed applicant for property located at the southeast corner of 135<sup>th</sup> and Roe. He explained that the property has very complicated financial burdens tied to it, but their group is prepared to move forward with the exact terms that were recommended by staff and presented to the Governing Body last December 2020. He stated that the term sheet he provided to the Governing Body has been reviewed by the City's Legal Department and the City's Bond Counsel for the terms and conditions. He stated that the development group is seeking guidance from the Governing Body to move forward.

Mayor Dunn noted there are differences from what the previous developer presented last fall, who Mr. Petersen represented. Mr. Petersen stated that it is different than what the previous applicant was willing to agree to, but not different from what staff and Bond Counsel are recommending. He stated that he has the property under contract.

Councilmember Harrison asked to clarify if Mr. Petersen is a shareholder under this development group. Mr. Petersen stated he is not a shareholder for Polsinelli, but is on his own accord as an investor.

Councilmember Cain stated that she did not support the previous financing proposal because it did not meet the percentage requirements for retail, commercial, and residential in the 135<sup>th</sup> Street Corridor Master Plan. Scott Lambers, City Administrator, reminded the Council that the purpose of this work session is to discuss the financing aspect of the project. Mr. Petersen replied that the Council should be aware that there is an actionable land-use plan and an upfront expenditure of \$4-5M. Mayor Dunn stated that the Council will not make a final determination on the financing without seeing a plan. Mr. Lambers stated that Mr. Petersen, based on his assurances, intends to comply with the City as it stood when the previous developer walked away. Mr. Lambers recommends that this go forward and through the proper process.

Councilmember Azeltine asked if the financing runs concurrently with the final plan. Mr. Lambers stated that it would run concurrently. Mr. Petersen stated that their intent is to present the preliminary and final plans, and preliminary and final plats before the Council at the same time, along with the financing plan, in an effort to use time wisely.

Mayor Dunn pointed out there are some differences in the plan. Mr. Petersen stated that the plan is the same as before with the exception of some of the amenities.

Councilmember Sipple asked if there are any guarantees from the investor group on the outstanding obligations. Mr. Petersen responded that according to the terms and conditions, within 30 days of approval of the development agreement (DA) the developer would be required to close on the property, pay off the back ad valorem property taxes, and pay the City approximately \$1.1M in assessments. In addition, the outstanding Transportation Development District (TDD) bonds are purchased by the developer within 30 days. Councilmember Sipple asked if the investor group would make it whole if only 50% of the lots were sold. Mr. Petersen replied that pursuant to City policy and the DA, they are required to guarantee the Special Benefit District (SBD) assessments up to 50% of building permits issued on the lots for the term of the SBD.

Councilmember Sipple asked if their intention is to develop the property into high-end, single-family homes. Mr. Petersen stated that it will be driven by the market demand but to gain financing, it will be 63 villa lots for sale. He stated they will go through the zoning process. Councilmember Sipple asked if the balances in Mr. Petersen's term sheet are the same balances the Council reviewed last year. Mr. Petersen stated that it has been updated since then. Councilmember Sipple asked if there will be any negotiations to pay down the balances. Mr. Petersen stated that the primary negotiations have been done with the County in terms of outstanding penalties and interest, and that they have already been vetted. Councilmember Sipple asked how large the investment group is. Mr. Petersen replied that there are three persons in the group.

Councilmember Filla noted that the ad valorem taxes will be paid so that the taxing entities will receive their money. Ben Thompson, Gilmore & Bell, confirmed that those taxes are paid to the County, who will then disperse the funds to the entities. Councilmember Filla asked if the developer would agree to have the City do the work on the streets and additional infrastructure needed. Mr. Petersen confirmed that they have agreed to all the conditions as proposed by the City staff. Councilmember Filla asked if it is typical that 50% must be sold to outside investors as a trigger point. Mr. Petersen stated that is in reference to lot sales and the original developers had security against the future SBD assessment that can only be released when there are 50% of certificates of occupancy.

Mayor Dunn asked what the price point of the homes had been in the discussions last year. Mr. Petersen stated that it was between \$800,000 and \$1.3M.

Councilmember Harrison expressed concerns with the SBD creating large HOA dues and possible issues with amenities, such as fountains. She stated that she prefers to see homes built that are more approachable to more people. Mayor Dunn noted that she expected that Mr. Petersen and his team have already discussed the HOA dues and price point. He replied that they did discuss it and also spoke with builders on what would be acceptable to buyers. Mr. Petersen pointed out that the fountains will not be included in the new plan.

Councilmember Osman stated that he appreciated Mr. Petersen coming before the Council but that they needed to know who the other investors are in the agreement because this is a partnership between them and the City. Councilmember Osman indicated that he was looking for some type of mixed-use development for that property, because he believes there are a number of retailers who desire to be surrounded by neighborhoods, like Meadowbrook (in Prairie Village, KS.) Councilmember Osman expressed concern over a precedent being set for future development along 135<sup>th</sup> St. if this property is developed only as residential. Mr. Petersen agreed that if they file the application, the Council will be aware of the development team, and he clarified that they are not asking for any money from the City but for a request of an SBD. He stated that mixed-use is challenging when there is not already debt on the property to clear up first.

Mr. Lambers stated that the property is very unique and the City would like to see it developed, but a commercial portion is unlikely. He pointed out that one of the Governing Body's goals was to have a diversity of price points of homes within the City, and indicated that instead of office/commercial, there be a mixture of residential types.

Councilmember Filla asked about the process if an investor defaults. Mr. Lambers explained that the County would be obligated to foreclose on the property if the taxes are not paid.

Councilmember Azeltine commented that he has a bad taste in his mouth from the last group who wanted to develop the land. Mr. Petersen replied that he represented the previous developers and understands the comment, but that this is a totally new group of investors.

Patty Bennett, City Attorney, stated that if this development does not go forward the County intends to foreclose on the property next year, which will be up for bid on the courthouse steps. Mr. Petersen stated that the bid amount would not just include the ad valorem taxes, but also the SBD assessment payments that are in arrears, plus penalty and interest.

Mr. Thompson stated that they worked with the developer to update the term sheet, included a timeline, and the 30-day conditions. Mayor Dunn mentioned that Mr. Petersen is not guaranteed approval and asked why he would present a preliminary and final plan together. Mr. Petersen replied that it is due to the timeline for the financing.

Councilmember Cain remarked that the 135<sup>th</sup> St. Corridor Master Plan with mixed-use has worked well for the City, but she is in favor of single-family homes that are owned, not rented. Mr. Petersen mentioned that the Council approved the zoning last December, but it was rescinded when the previous developer could not come to terms with the development agreement. Mayor Dunn stated that the City has dropped the percentage of retail (in mixed-use) to 5% and referenced Meadowbrook. Mr. Petersen replied that 5% is so low that they cannot support themselves unless there is a high-rise hotel, senior living center, or multi-family, as in Meadowbrook, but cautioned that they are not looking for high density in their development.

Councilmember Larson agreed with Councilmembers Cain and Harrison's viewpoints. She stated that she liked the idea of the residential, single-family homes, but acknowledged that this is a unique property and does not worry about setting a precedent because of its unique nature. She stated that she liked the previous proposal but had objections to the financial terms.

Councilmember Filla stated that she appreciated the dialogue with Mr. Petersen. She remarked that row houses could be an affordable option.

Councilmember Azeltine agreed that the property is a burden, but has qualms about the preliminary plan, final plan, and DA presented at the same time. He stated that the City needs to do a deliberate planning process. Mr. Petersen agreed and noted the items will be sequential and are done at different steps, only to come to the Council in one meeting.

Mayor Dunn asked if the preliminary plan could be presented the first Monday of the month and a final plan on the third Monday. Mr. Lambers replied that this possibly involves rezoning, so it is not possible to schedule both in a month. Ms. Bennett confirmed that there would need to be a protest period. Councilmember Azeltine reiterated the timing for the planning process and what can be expedited should be done. Mr. Petersen agreed.

Councilmember Rawlings asked how many acres the property is. Mr. Petersen replied that it is approximately 30 acres. Councilmember Rawlings questioned that if the Council approves this plan, going outside of the 135<sup>th</sup> St. Corridor Master Plan because of the uniqueness of the situation, does the Council still has the ability to deny other future plans that are not in line with the Plan. Mr. Lambers replied that this property, due to the tax liability, is unlike other tracts of land within the City and therefore, can be distinguished from other tracts of land in terms of what the Council decides to do. Councilmember Rawlings stated that he is in favor of allowing it to move forward.

Mayor Dunn asked to clarify the timeline. Ms. Bennett replied that in some cases, if there are not many changes, staff will allow the plans to run concurrently, but be listed separately on the agenda as two cases. Mr. Petersen recapped the steps and timeline to present to the Planning Commission and Governing Body. Mr. Lambers cautioned the Council about any possible changes to the preliminary and final plans. He stated that the preliminary plan and rezoning would stay in place. Councilmember Azeltine stated he wants to make sure the public is involved. Mr. Petersen stated there will be the required Interact meetings. Councilmember Osman suggested that Mr. Petersen disclose to the lender explaining the timeline. Mr. Petersen stated that it is a very complicated process with the lender. Mr. Lambers suggested that Planning Commission have a Special Call meeting in November. Mayor Dunn agreed.

Councilmember Cain asked that the minutes of this work session be made available to the Planning Commission. Mayor Dunn replied that they will be provided to them. Mayor Dunn thanked Mr. Petersen, Mr. Thompson and Mr. Wempe.

*The meeting adjourned at 7:18 p.m.*