

## Minutes

The City Council of the City of Leawood, Kansas, met for a Special Call Meeting at City Hall, 4800 Town Center Drive, at 6:00 P.M., on Monday, May 5, 2014. Mayor Peggy Dunn presided.

**Councilmembers present:** Debra Filla, Lou Rasmussen, Carrie Rezac, James Azeltine, Tom Robinett, Jim Rawlings, Julie Cain and Andrew Osman.

**Councilmembers absent:** None

**Staff present:** Scott Lambers, City Administrator  
Dawn Long, Finance Director  
Richard Coleman, Comm. Dev. Director

Patty Bennett, City Attorney  
Joe Johnson, Public Works Director  
Deb Harper, City Clerk

**Others Present:** Henry Klover, Klover Architects  
Garry Hayes, MD Management  
Jim Harpool, MD Management  
Amy Grant, Paralegal, Polsinelli  
Dave Meek, resident  
Carol Beesla, resident

Brian P Forquer, Lutjen  
Kevin Jeffries, Chamber of Commerce  
John Petersen, Esq., Polsinelli  
Teri Schaefer, KC Star  
Marianne Seals, resident

### **Continued discussion on Review of Community Improvement Development [CID] Application for Camelot Court Shopping Center, located at 119<sup>th</sup> and Roe Avenue**

Mayor Dunn called the meeting to order at 6:05 P.M. Introductions were made by those present.

#### **Opening Remarks – City Administrator Scott Lambers**

Mr. Lambers stated the reason for the meeting is a City Council directive to address a request for reimbursements for the Camelot Court CID application. The relevant topics are the proposed Schedule for Reimbursement for Camelot Court and also the schedule for Hawthorne Plaza. The document provided is meant to provide a basis for conversation and for the Council to come to a consensus as to what will be provided for reimbursement for Camelot Court. He will attempt to give the basis for the proposed percentage reimbursement. Site work would be common for any type of development. The landscaping and irrigation suggests a higher percentage because the area is going through an extensive landscape and irrigation improvement, part of which is required through the LDO. City Council, as part of the development of the CID policy, agreed to reimburse up to \$150,000 of the pre-CID approval of architectural and engineering services. He recommends 100% of that to be funded. The post-CID approval of architectural and engineering, which is soft costs, should only be 25%.

In the Schedule of Reimbursements, he started at 25%. His recommendation would be that if the Council receives an eligible reimbursement request, it is 25% minimum. Lighting improvements are required per the LDO.

The issue of a drive-through has caused concern; however, the Tide business model relies heavily on that; therefore, it is an eligible cost and is at 25%. The Roe entrance closure and parking expansion is providing better traffic management and better pedestrian safety and merits 50%. The exterior improvements, which are the most significant costs, are typical of a project of this age; however, some amenities go beyond, which is the reason for 35%. The drainage improvement is similar to the site work in terms of being necessary and hopefully will correct drainage across the sidewalk. The tenant signage is an important improvement, and is at 40%. Trash enclosures need to be done anyway, so that is 25%. The screening is required per the LDO but also provides an aesthetic improvement, which puts it at 45%. The pedestrian/bike amenities are being encouraged by the Council in all projects, so 60% is proposed. The total proposed is \$3.5 million and continues with the contingency provision requested at the same percentage amount, bringing the total to a little over \$3,850,000.

Mr. Lambers suggested reviewing these individually and discuss any potential for change.

Councilmember Rezac questioned how each of those categories was categorized under each of the items. For instance, in Site Work, it seems that it would fall under all of the factors.

Mr. Lambers stated the Site work has nothing to do with the LDO, and the first three categories do. Those would not come into play. Site work may come in to public right-of-way, but it's only a small portion because it is mostly on private property. He focused on the types of improvements and the Financial Schedule of Reimbursement. The focus is meeting/exceeding the LDO or providing those improvements and then putting a percentage to it. Site work has to be done, regardless.

Councilmember Rezac stated, for example, in the LDO, a certain number of trees are required. For that category, it would fall under Site work. She would assume it could fall under any of these LDO requirements. She also questioned sidewalks. Mr. Lambers confirmed It would fall under No. 2: Being in compliance with the LDO; as he would not consider trees to be site work, and sidewalks would be considered public improvements. Councilmember Rezac replied this seems cumbersome and asked if it could be simplified.

Mr. Lambers stated the Hawthorne development went through the same process and characterization of different types of improvements. He wanted to separate them out so if the Council felt that they wanted to emphasize an improvement being done and reward that, it could, rather than lumping them all together and disagreeing with two of them and denying the entire list.

Councilmember Filla stated she felt the drive-through is a business model; it is not repairing something or doing something they are being asked to do. It is not doing something for the community. Mr. Lambers clarified that it is an eligible cost, thus, the reason it was separated it out as the lowest percentage.

Councilmember Azeltine appreciated staff's effort to provide framework to start the conversation, however, he thought a great number of these percentages were arbitrary. The City began with the statute, which set the parameters for what was allowed. It should either be necessary to the project or not. He would be more in favor of taking a more aggregate approach. Going through every project item is a waste of time. He prefers a more formulaic approach, for instance, paying between 50% and 100% of the eligible project costs. Everybody can make a judgment as to what's important. Between this and the formulation of our CID policy, it has been fourteen months.

Mayor Dunn reminded Councilmember Azeltine that Scott was presenting what the Council had asked him to present. Councilmember Azeltine stated certain events since then have changed his thinking as to how much the Council should dig into, especially given the fact that these things are happening all around the area.

Councilmember Rasmussen asked if site work was included not only grading but standards for the paving. Mr. Lambers confirmed that the parking lot standards have to be met, as well as all Public Works requirements.

Councilmember Osman commented the City does things differently than other cities, and he prefers the City lead rather than follow. The City is comparing itself to Hawthorne Plaza; however, the shopping centers were built at two different times. They have different functions and components. One is anchored by a grocery store with outparcels; one is a strip center that has multiple tenants and no true anchor. Remodeling a shopping center such as this requires significantly more infrastructure. Grocery store models change to meet the community desires. Hen House is bringing a unique prototype, so the building façade needs to be changed. This takes relocation of tenants and changing the façade. Current LDO requirements include screening that wasn't required 25 years ago. The ownership can keep it at status quo or upgrade it to 2020 standards with LED light fixtures and new landscaping. This improves it for the community. He questioned the Tide drive-through and stated that is part of a business model. Changing parking lot structure and entrances accommodate the entire development. It is important to understand what a CID is and that 40%-70% comes from outside the city. It is a sales tax and a reimbursement to the project that sunsets after the goal is met. An applicant should have criteria as to what should be adopted. It appears that the rules have changed and the Council is now discussing landscaping and drainage, which will then become the business model as a city. However, then the City will put another stipulation that an arbitrary amount is allowed for reimbursement. He believes we are traveling down a slippery slope with differences in project reimbursement and subsequent differences in project improvements. With the exception of the Tide drive-through, these are all things that should be reimbursed through a CID.

Councilmember Cain stated having a matrix or set of criteria is a good way to do this. She viewed variables that are important that aren't coming into play yet. She parallels this to a home appraisal with categories and then items that meet the criteria. One important positive is the timing and phasing of this development; whereas, Ranchmart was piecemeal. This development is 29 years old. She's uncertain she agrees with the \$10 million, because this is a \$40 million project, whereas Hawthorne wasn't anywhere near that. She likes the percentage idea.

Mayor Dunn stated that the \$10 million cap was requested by the developer.

Councilmember Filla said for the benefit of our audience, the criteria established for CID included one or more of the following:

1. *Attract and promote Mixed-Use Development*
2. *Unique site constraints, making development more difficult and costly*
3. *Would substantially promote economic development*
4. *Would incorporate higher standards for design*
5. *Encourages redevelopment and renovation*
6. *Incorporates construction of public infrastructure*

In that context, it really is a healthy and vibrant shopping center, which will be improved with consumers' money. The question is if they benefit from that and if the City should capitalize on this time when the center is prosperous. She understands it will be hard to redevelop this. On the other hand, is the City increasing economic development, and should the City get involved in the developer's lease rates to see whether it is justified. Lease payments could negate a sales tax increase. This sets a precedent, so it is worth the time to consider all the details.

Councilmember Robinett stated he agrees with Councilmember Osman's comments. His comment is more on high standards and leadership that has been mentioned. He concurs with being a leader in the in the metropolitan area, but wants to be careful where the City is leading. Kansas is being a leader in policies currently, and most would agree that the outlook is not particularly good. As far as economic development and what patrons would get for the extra one cent, it is their election to spend it. The City also needs to look at long-term viability. It may be vibrant now, but it is older and things are changing. Hawthorne Plaza was offered as a smaller example with less than half the cost of Camelot's proposed cost, and yet their reimbursement is greater than what he sees on this proposal. He is concerned that the City is not cognizant enough of what will happen and what constituents will experience 15 years down the road. He wants to be careful about being so conscious about being in front of everyone else without recognizing long-term impacts.

Councilmember Azeltine clarified his earlier comments, regarding proposed reimbursement percentages on each category. The question is if these are going to be good for all future CID proposals, or with each one that comes through, will the City have to start back at square one. If it the latter, he believes it is a massive waste of time, and developers need to know what to expect for reimbursement rates in Leawood. If the goal is to set a precedent, he would be in favor of that.

Mayor Dunn stated the City has not heard the CID yet, so this will set a precedent, and believes it should be seriously discussed.

Councilmember Azeltine asked if the 50% for drainage was included, would that mean it would be included in all future CIDs. He feels the Council is getting bogged down. The Council needs to determine what is valid and necessary to set a precedent. Otherwise, the Council will have to conduct a work session every time a CID application is received.

Mayor Dunn reminded the Council that a commercial project has to be 20 years old or older in order to submit a CID application.

Mr. Lambers suggested rather than saying it is a precedent with the individual percentages, the Council could make it clear that the aggregate is what is being considered and would be what a developer could anticipate receiving. He confirmed with Councilmember Azeltine that the City would go through this to reach the aggregate for all three eligible developments: Ranchmart, Leawood Plaza and Camelot Court. Mr. Azeltine felt this would hinder applicants who are looking at redevelopment as to what the City's expectations would be. Mr. Lambers stated the aggregate could be stated in the policy. If the City is only going to pay 25% for reimbursable items, it should be determined if that is going to be in the policy.

Mayor Dunn stated Mr. Lambers didn't go lower than 25% for anything that was an allowable cost. Then he went up based on how he thought the Council would feel about the item. This is the appropriate time to share opinions.

Councilmember Osman feels it is important to understand how the CIDs are reimbursed; when developers make money and when they don't. Out of the five areas: land, industrial, multi-family, office and retail, retail is one of the toughest because unlike an office building where businesses come and go, retail serves the community and individual businesses. What is good for a business today might not necessarily be good for a business 10-20 years from now. The Earl May area is obsolete from a real estate standpoint; yet, the owner is still paying property taxes that are not charged to the tenant as well as paying deferred maintenance for the overall property. Additionally, when a retailer comes into the shopping center, how much money should the landlord fund for interior improvements? The City is just trying to establish what is reimbursable by the City. He feels the City should have stated they would come up with 50% over a year ago. Now, that is not the case. In an arbitrary situation with 45% of the improvements as Site Work and then Ranchmart, who has to determine utility burying and potential cost, may get reimbursed 55%-60% because of that. He feels the majority of these should be 100%.

Councilmember Rezac stated the purpose of the CID policy is economic development and visual enhancement. With those two thoughts in mind, she can still look at this and see these different categories in those chunks. What is important to her is that the CID is a partnership between the owner and the City. She would like to see true cost-sharing. Based on the basic level of the CID, she can support funding a percentage of the costs being suggested.

Mr. Lambers confirmed with Councilmember Azeltine the total cost of the project is \$35 million with construction costs, input costs and soft engineering and architectural costs.

Councilmember Rezac stated, even though it is real cost to the owner, she would not consider permanent loan interest as a cost for community beautification versus what the City is bringing. She is interested in looking at an approach that is not as cumbersome.

Councilmember Osman stated over an 18-month period, the Hen House in Prairie Village lost a significant amount of business because they went through a redevelopment of the center, bringing new restaurants, amenities, lighting and access points. It ultimately brought a community together with public events and increased sales. The tenants in Ranchmart have advised him the demographics are some of the best in the area, and yet, they are not willing to commit to the site because the shopping center has not been updated. That is a direct economic impact. The restaurants in Prairie Village are fearful that development is occurring on 119<sup>th</sup> and 95<sup>th</sup> Streets because they understand it will affect their business. Whatever percent is allowable will create an economic benefit. If this is not approved, will businesses like Tide come in? Will Hen House be there because the new prototype is not economically viable? This needs to be looked at long-term.

Councilmember Filla commented it is important to consider the difference between Hawthorne and Camelot Court. Camelot Court is \$12 million in interest and carrying costs, which is not part of Hawthorne. Subtracting that out, their total is \$24 million with a private of \$14 million. That is a dramatic piece that was not part of Hawthorne. In terms of the total investment comparison of \$9 million to their \$14 million, the percentage is much higher than what approved in Hawthorne, which is 5% versus 11%. Mr. Lambers confirmed that Hawthorne is a pay-as-you-go instead of a bonded project.

Councilmember Rezac stated that underscores her point. That is one item she would consider. She would probably push that \$12 million off the table and look at the real investment. With Hawthorne Plaza, there is something in private investment for each CID item. As a partnership, what is the owner bringing to the table, and then what is the City adding? Camelot Court is not bringing much in the private investment for all the items the City is being asked to fund.

Mr. Lambers stated The Hawthorne CID has The Container Store as a draw. Unless that project goes forward, everything else goes away. Hen House would be the magnet in Camelot, so if they do not come in, the CID would not go through.

Councilmember Rezac asked if the CID is approved, would the Hen House expansion and drive-through subject to the developer's ability to secure a lease. Mr. Lambers stated if they have anticipated costs to be incurred for those improvements if they occur, and they would be certified to be reimbursed. If those costs don't occur, there will be no reimbursement.

Councilmember Rawlings questioned if comparing Hawthorne Plaza to Camelot Court was a good comparison. He would like to reach a consensus on some number for this project only.

Councilmember Rasmussen asked if the Tide drive-through does not occur, could the developer use that money on any of the other line items. Mr. Lambers stated the development agreement states there is not line item integrity. The dollar amount approved is not tied to a specific cost; it is aggregate capital amount. If the Council wants to select the percentage amount in aggregate and not go through line items, that is possible. A decision for tonight is, if there is a reimbursement that is a certain percent, the basis for the allocation is either arbitrary or set out in the policy so the meetings won't be necessary.

Mayor Dunn stated Mr. Lambers' chart was based upon on the developer's Exhibit D. It was necessary to get an understanding around what was being requested. A percentage amount cannot be achieved without detail. She would feel very unsure on this if the detail information was not provided.

Mayor Dunn stated she would like to obtain a consensus before going ending this meeting.

Councilmember Osman stated he is in favor of 100% except for the Tide drive-through. Councilmember Robinett concurred with Mr. Osman.

Councilmember Rezac stated she could agree with 50% for any items she would consider exterior work, other than the building improvements themselves. Some of that is business as usual, similar to interior improvements. She would give 0% or 25% for fees.

Councilmember Rasmussen stated he would prefer the line item and ask staff to take another look at the items discussed tonight, including pedestrian/bike amenities, Roe entrance and pavement. The pedestrian/bike amenities should be 100%. The Roe entrance and parking expansion should be 100%, and drainage should be 100%. He would be comfortable with Councilmember Rezac's comments about the building exterior up to 50%.

Councilmember Rezac wanted to clarify her comments were not based upon her professional background. She does not want to reward owners for expecting to have to update or improve the exterior of their building at any point in time. She believes in a partnership.

Councilmember Filla stated she would favor 45% on site; 50% on landscaping; 100% on pre-approval; 25% on post-approval; 100% on lighting; 0% on Tide; 100% on the Roe entrance; 35% on building; 100% on drainage; monument signs; 25% on trash; 50% on screening; and 100% on pedestrian/bicycle. She hoped this works out to 45%, no higher than 50% aggregate.

Councilmember Cain said she would be in favor of something between 50% and 100%. Her aggregate amount is closer to the 50% than the 100%, but willing to consider something between the two.

Councilmember Rawlings states he doesn't see the partnership from Camelot Court. He feels it's important to review by line item. Reviewing the other applications will be different. There are only three potential projects. He would favor anything from 50% up if there is a partnership.

Mr. Petersen stated the applicant has an approved Final Plan. It will not occur unless the economic package is put together to bring Hen House. If they can't obtain a reasonable percentage of costs, Hen House won't happen because they are putting tens of millions of dollars into the Hen House expansion that is not reimbursable. Hen House is willing to put in \$10 million. They don't need to do it. If they can get a fair percentage recovered through a CID, they'll do it. Hawthorne spent \$16 million and would build a Container Store with 31%. If there's a comparison, the City should compare the 31% to their 25%. He believes 25% is reasonable.

He is not aware of a CID that has been approved in Johnson County that has been less than 30%. The unfair part is they started with a policy that said they would not have the right to develop a plan through planning, taking into consideration everything they could ask to be reimbursed under state statute, with nothing reimbursed for interior or for the financing. The applicant was cut down. The applicant returned and asked for 25% over a period of 22 years, and now they are getting sliced down half of that to 12%.

Mayor Dunn was asking for an explanation. A consensus has not been reached yet.

Councilmember Azeltine stated this is an economic development tool. If an applicant or an owner of a business has to go for 14 months for the City to determine what they are going to approve, the applicant/owners will do something else. Things are not getting any less competitive in Johnson County with all these incentives. To the extent that the rates get away from 100%, the City may need to consider if this should be in the policy if the City is only willing to reimburse 25%.

Mayor Dunn reminded all the Final Plan for this project was just recently approved.

Councilmember Rezac commented to Mr. Petersen regarding his remarks, since some of his comments were directed at her regarding her comparing this project to Hawthorne had to do with the CID versus Private Investment columns. She's does not know what those numbers are. Mr. Petersen replied the difference is they are required to spend the rest of the \$40 million because they have agreed to the Final Plan. These items cannot be separated.

Councilmember Rezac asked what the plan was ten years ago and if there was a funding mechanism in place then and what was the shopping center's long term plan. Mr. Petersen stated one of the plans ten years ago was to maintain a good center. There has been no issue of code violation other than a road owned by the City on the north side of Waterway, which the applicant has agreed to repair. Ten years ago, nobody anticipated that to keep a grocery store, it would have to increase from 40,000 to 70,000 square feet with all the amenities at the cost of the landlord with reduced rent. This spawned the need not just in Leawood or centers that haven't been maintained and are now looking for a lifesaver but in surrounding communities for shopping centers to make an overall investment and get a decent rate of return. It is a public-private partnership. They only get \$9 million under this proposal. This is a good public-private partnership.

Mayor Dunn stated this item will again be discussed at a June 2, 2014 Work Session.

Mr. Lambers stated there are four different positions on this, so he will present all four, and then the Council can decide how to proceed.

There being no further business, the work session was adjourned at 7:25 P.M.

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Deb Harper, CMC, City Clerk