

DRAFT  
City of Lawrence  
Public Incentives Review Committee  
September 9, 2014 minutes

MEMBERS PRESENT: Mike Amyx, Linda Jalenak, Jeremy Farmer, Brian Iverson, Brad Burnside, Shannon Kimball, Mike Gaughan, Boog Highberger

MEMBERS ABSENT: None

STAFF PRESENT: Diane Stoddard, Britt Crum-Cano

PUBLIC PRESENT: Tony Krsnich and a few members of the public

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Mayor Amyx called the meeting to order. A motion was made by Mr. Iverson, seconded by Ms. Jelenak to approve the June 24, 2014 meeting minutes. Motion approved unanimously 6-0.

Mr. Iverson declared a conflict of interest related to the 9 Del Lofts request and sat in the audience. Tony Krsnich explained the project. He mentioned that the tax credit projects have a 15 year lifetime for rent restriction. The Poehler project leased up within several hours and it lost money the first year. He mentioned the Poehler project as an illustration of why he was requesting the NRA for the 9 Del Lofts project. The 9 Del Lofts won't have any historic tax credits due to it being new construction. Due to these factors, he is requesting a 15 year rebate period. He mentioned that the Cider Building received a national award for historic preservation. All of these projects result in significant investment in the area. He said that it is clear cut that the project needs the assistance for a 15 year period from the analysis. He said that without the 9 Del Lofts project, it will affect other development in the area.

Vice Mayor Farmer asked about whether there was a point that the City investment will make the area self-sustaining as it continues to grow and develop. Krsnich responded that he sees the next round of development being market rate, mixed use development.

Mayor Amyx asked about his statement that 9 Del Lofts is key to the ArtsPlace grant. Krsnich stated that the project was included in the grant application as an approved project because it had been through the planning process.

Mayor Amyx asked if nine of the units were going to be market rate. Krsnich confirmed that number, which was 20%. He also mentioned that there are some larger units for more of a family atmosphere.

Mr. Highberger asked about the notes about the new jobs created and the hourly wage levels provided in the application. The application listed 2 jobs at \$50,000 and \$15 per

hour. Krsnich clarified that he has already hired the two mentioned at \$50,000 or above.

Britt Crum-Cano, the City's Economic Development Coordinator, presented the analytical report. She covered the request, the eligibility, the analysis, recommendations, project considerations and next steps. The applicant is requesting a 15-year 95% NRA on the project. The City has made significant investments in the area. She explained that she ran two cost-benefit assumptions, one with the approved infrastructure grant provided to the project, and one without consideration of this approved infrastructure grant. Without considering the grant, the cost-benefit ratio is well above the threshold for all taxing jurisdictions. With the grant considered, the ratio for the city is negatively affected. Crum-Cano mentioned that the project also included a number of intangibles that are not captured in the number, such as the investment in the area and the need for affordable housing. Regarding the "but for" analysis, Crum-Cano said that the 15 year cash flow numbers for the project without NRA rebates results in a negative cash flow. With a 10 year rebate, the project will meet cash flow for the first 10 years, but not the next 5 years. With the 15 year rebate, the project met cash flow. In both cases, the return rates for the project were very low. She stated the project does meet the "but for" requirement. She mentioned the affordable housing factor, in-fill development, synergies with other area investments and transforming a vacant lot to a productive use. Staff concludes that the project meets eligibility, the "but for" test and the cost-benefit model if the infrastructure grant is not considered. Staff recommends a 15 year NRA participation based on these factors. She mentioned that the first public hearing would be September 23.

Ms. Kimball asked about the Cider NRA and whether the infrastructure grant was included in the analysis for that project. Crum-Cano mentioned that the timing of that information did not enable it to be incorporated into the analysis.

Mr. Highberger asked about the requirement for affordable units. Krsnich stated that there is a standard 15 year rent restriction period, but to be competitive, he elects to extend the restriction for a 30 year period. That is also congruent with Poehler. Krsnich said that at the end of 15 years, the project would re-enter into the program to keep it viable. Krsnich said that there would be no rent increases beyond the 60% area median income for 30 years. Some of the units are even lower.

Commissioner Gaughan said that the City had the decision to make regarding its participation for the project in light of the other infrastructure grant, but he supported the project and thought that the County would. He suggested that the infrastructure costs not be included in the analysis for this PIRC board if PIRC wasn't weighing in on the infrastructure grant.

Mr. Krsnich also mentioned the density that the project will bring to the area, helping surrounding businesses.

Burnside made a motion to recommend the 15 year 95% NRA. Highberger seconded the motion. The motion passed unanimously. Commissioner Gaughan left the meeting.

Mayor Amyx thanked Mr. Krsnich. Mr. Highberger appreciated the inclusion of affordable housing component with this request. Krsnich mentioned the importance of supporting affordable housing project.

Mr. Farmer mentioned the City of San Francisco policy developed in the last year a fast track development and incentive process for affordable housing if it contains a certain percentage of rent controlled apartments. He was interested in looking into this policy change for the city. He requested City staff look into this and bring it back to PIRC for consideration.

Diane Stoddard, Assistant City Manager, introduced the next PIRC item for discussion: The policy issue related to possible inclusion of public nuisance performance criteria in public incentive performance agreements. The City Commission had asked PIRC to weigh in on this issue as a result of recent circumstances related to a business located within the Oread Hotel.

Toni Wheeler, City Attorney, said the legal Staff had previously proposed adding detailed language within incentive agreements to aid in restricting nuisance behaviors. Ms. Stoddard mentioned that there are laws currently in place to deal with some nuisance behaviors. Ms. Stoddard also mentioned a developer may have difficulty controlling tenant operations within a lease agreement.

Ms. Kimball stated she thought the Oread instance was a law enforcement issue. City Manager, Dave Corliss, clarified that the issue for PIRC was to weigh in on if public incentives should be claw-backed in instances of certain nuisance behavior. He also mentioned that clawbacks tied to nuisance behavior within agreements may have developer financing consequences.

PIRC discussion regarding incentive clawbacks in instances of nuisance behavior included the following:

- Mr. Iverson stated that incentives for the Oread Hotel impacted the entire project, even though there was only one business that had experienced nuisance problems.
- Rather than penalizing the entire project, he asked if the City has a business license that could be revoked for a particular business having problems. Mr. Corliss stated the City does not have a business license that could be revoked. He mentioned the City can request a hearing from the Kansas Department of Alcohol Beverage Control to get a liquor license revoked. In addition, State nuisance laws can allow a City to shut down problem businesses. However, it is not a simple issue to shut down a business.
- Mr. Burnside stated he believes this is a law enforcement issue. He said he can't envision how to manage regulating nuisance behavior through an incentives agreement with the City.
- Ms. Kimball stated the best way to deal with this type of issue is through a use restriction placed on the front end.
- Ms. Jalenak stated she didn't know how it could be enforced without being too overbearing on businesses.

- Mr. Highberger agreed with Mr. Burnside that incentive clawbacks in these issues introduces uncertainty in enforcing the agreement.
- The Mayor asked if the City Commission should consider types of project uses eligible to get incentives. Ms. Kimball stated they probably should not.

Ms. Kimball made a motion that PIRC recommend no action be taken by the City Commission to include clawback language in incentive agreements related to nuisance behavior. Mr. Iverson seconded the motion. Motion passed unanimously.

Ms. Stoddard introduced the next PIRC issue for discussion. The City Commission is seeking feedback from PIRC and others related to property tax abatement eligibility thresholds for smaller businesses.

Ms. Kimball stated she supports providing more flexibility to home-grown, small business within the policy, but would not want to extend it to new businesses coming in to the community. Ms. Kimball left the meeting.

There was a question as to the history of eligibility thresholds and why they were changed in the past. Ms. Stoddard mentioned that thresholds were reduced in 2009 to help accommodate smaller businesses.

Mr. Farmer stated he thought the issue was broader than just threshold minimums and suggested all the City's economic development policies might need revision in order to consider the intangible effects of projects. Farmer stated that in addition to using the City's current tools, which are primarily designed to evaluate primary job creation and capital investment impacts, other tools may be needed to help evaluate investments in light of intangible benefits.

Mr. Iverson suggested trying to design something that would help small business. He also mentioned that the bank has policies, but they use them as a tool, not a rule. For his industry, additional project circumstances are always considered when evaluating funding requests.

Mr. Highberger suggested that they help small businesses, but don't set the threshold too low.

Mr. Burnside stated that the City & County have really stepped up in assisting businesses.

Ms. Jalenak made a motion to adjourn with Mr. Burnside seconding the motion. The motion passed unanimously with the meeting adjourning at 5:30.