

**City of Westwood, Kansas  
City Council Meeting  
September 14, 2023 – 7:00 p.m.**

Council Present: David E. Waters, Mayor  
Andrew Buckman, Councilmember  
Jeff Harris, Council President  
Jason Hannaman, Councilmember  
Laura Steele, Councilmember  
Holly Wimer, Councilmember

Council Absent: None

Staff Present: Leslie Herring, City Administrator  
Curtis Mansell, Police Chief  
John Sullivan, Public Works Director  
Ryan Denk, City Attorney  
Abby Schneweis, City Clerk

**Call to Order**

Mayor Waters called the meeting to order at 7:00 p.m. on September 14, 2023. The City Clerk called the roll. A quorum was present. The evening's meeting was held in a hybrid manner, with attendees joining both in person and via Zoom.

**Approval of Agenda**

Motion by Councilmember Harris to approve the September 14, 2023, City Council meeting agenda as submitted. Second by Councilmember Buckman. Motion carried by a 5-0 voice vote.

**Public Comment**

Mayor Waters noted that during its September 11<sup>th</sup> meeting the Planning Commission considered the rezoning of 5000 Rainbow, 5050 Rainbow and 2511 W. 50<sup>th</sup> Street, and reviewed a preliminary plan submitted by Karbank Holdings LLC, and said these items are anticipated to be considered by the City Council during the October 12<sup>th</sup> meeting.

Rod Bell, 2820 W 50<sup>th</sup> Street, said he would not be able to attend the October 12<sup>th</sup> City council meeting to comment on the Karbank proposal. Mr. Bell said he believes that the proposal is fiscally sound and can help improve infrastructure in Westwood. Mr. Bell noted that there were concerns and opposition to building the new Westwood View building, and said he believes the school has brought new families to the area and helped property values. Mr. Bell said he thought that having a new park and shops and restaurants to walk to appeals to many in the community.

Nikki Dupont, 1930 W 50<sup>th</sup> Terrace, Westwood Hills, joined via Zoom. Ms. Dupont cited the 2021 Urban Land Institute Technical Assistance Panel (2021 ULI TAP) and the 2022 Facilities Assessment for redevelopment of 5000 Rainbow, 5050 Rainbow and 2511 W 50<sup>th</sup> Street and said neither suggested rezoning of the properties. Ms. Dupont said both studies recommended that commercial development stay at the 47<sup>th</sup> and Rainbow corner and said she was perplexed that the recommendations were being ignored. Ms. Dupont asked the Council to table the Karbank proposal and to develop land that is

currently zoned for commercial first, and if additional revenues are needed after the development then and only then should rezoning of residential areas be contemplated.

### **Presentations and Proclamations**

#### **Proclaim September as National suicide Prevention Awareness Month**

Nathan Carter, Community Relations Manager for the Johnson County Mental Health Center, provided an overview of the Suicide Prevention Month and thanked the City for the proclamation.

Mayor Waters proclaimed September 2023 National Suicide Prevention Awareness Month in Westwood.

#### **Fiscal Year 2024: Budget Presentation**

Ms. Herring provided an overview of the Fiscal Year 2024 Budget. During the May 11, 2023, City Council work session the Governing Body gave staff guidance on its priorities for the 2024 fiscal year budget which included addressing deferred maintenance needs, accelerating the implementation of the streets, sidewalk, stormwater and streetlight program, and increasing the City's competitiveness in the labor market with employee wages and benefits.

In response to the Governing Body's guidance, staff developed a ten-year street construction plan by working with a third party contractor to map out and cost out streets projects. The ten-year plan is as accelerated as possible, and the City does not currently have the Capital Improvement Funds to complete the plan in ten years. The plan can be used as a guide to help the Governing Body decide if the City should have a different timeline for the projects, raise more revenue to try to adhere to the ten-year timeline, or scale down the suggested projects.

The Capital Improvement Fund budget for 2024 includes design costs for a potential park, and design and engineering for a Mission Road street project which will be a shared project with Roeland Park, Kansas. The 2024 Capital Improvement Plan reflects expenses outpacing revenues in FY2026 if there are no additional revenue streams.

Staff recommends increasing the Stormwater Utility fee beginning in 2024 to help offset capital outlay in the Stormwater Utility Fund for the purchase of a new leaf vacuum and future increased revenue will be directed to the CIP to help offset the costs of new curb, gutter and sidewalks. The current average Stormwater Utility Fee for each residence is less than \$95 per year. Average fees of neighboring cities including Fairway, Mission Hills and Mission are between \$240 and \$340 per residence per year. Staff recommends increasing the Stormwater utility Fee twice its current value, to an average of less than \$200 per year per residence.

Staff recommends budgeting \$50,000 of CIP expenditures from the Special Highway Fund for 2024 and the preceding five years to help offset the increasing cost of pavement management projects.

The City plans to purchase a new vacuum truck for leaf pickup operations, a water wagon to aid in watering City landscaping, a new police vehicle and a system to integrate police body cameras with their dash cameras.

**Fiscal Year 2024: Revenue Neutral Rate Public Hearing – Consider Resolution No. 122-2023 Approving a Tax Rate in Excess of the Revenue Neutral Rate for 2024 Budget Year**

Over the last several months the Council and staff have worked to develop the 2024 budget. The Governing Body reviewed the recommended budget on July 13th and approved the notice to exceed the Revenue Neutral Rate on that same date.

The Revenue Neutral Rate is the tax rate in mills that will generate the same property tax in dollars as the previous tax year using the current tax year's total assessed valuation. In Westwood, the Revenue Neutral Rate would be 18.69 mills. The 2024 recommended budget requires a total mill rate of 21.198, flat with the 2023 rate.

Per Senate Bill 13, the recommended budget requires a Revenue Neutral Rate hearing to exceed the revenue neutral rate provided by the County Clerk. Notice of intent to exceed the Revenue Neutral Rate was provided to the County Clerk before July 20th and the notice of public hearing was published on August 29, 2023. The public hearing will occur at the beginning of the September 14, 2023 meeting. The adoption of the 2024 budget will occur following the adoption of the Revenue Neutral Rate resolution.

The budget maintains the same level of services as the 2023 budget. Funding the budget with existing services does not require an increase to the mill levy rate, however it does exceed the Revenue Neutral Rate due to revenue that will be received from increased property valuations. The 2024 recommended budget has a total mill rate of 21.198, flat with the 2023 rate.

Mayor Waters opened the public hearing at 7:40 p.m.

Stephen Platt, 4910 Glendale, Westwood Hills, shared his calculation that the mill levy proposed for the 2024 budget is a 13.4% increase from the revenue neutral rate.

David Gomoletz, 2427 W 48<sup>th</sup> Street, said he understands the difference between the revenue neutral rate and the mill levy changing. Mr. Gomoletz said is concerned about the increase in cost of living in Westwood. Mr. Gomoletz said he hoped the City would exercise scrutiny when spending taxpayer money.

No other statements were made. Mayor Waters closed the public hearing at 7:45 p.m.

Motion by Councilmember Hannaman to approve Resolution No. 122-2023 approving a tax rate or mill levy rate in excess of the Revenue Neutral Rate for the 2024 budget year. Second by Councilmember Harris. The City Clerk performed a roll call vote. Motion carried by a 5-0 vote.

**Fiscal Year 2024: Budget Hearing – Resolution 123-2023 Adopting the Fiscal Year 2024 Annual Budget**

Over the last several months the Council and staff have worked to develop the 2024 budget. The Governing Body reviewed the recommended budget on July 13th and approved the notice to exceed the Revenue Neutral Rate on that same date.

The City will hold the required Revenue Neutral Rate and 2024 budget hearing on September 14th, prior to adopting a Resolution to Exceed the Revenue Neutral Rate. Both steps must occur prior to budget adoption. Once submitted to the County Clerk, the budget sets the budget authority for each fund. The City is authorized by K.S.A. 79-2929a to amend the budget before December 31st to spend money not in

the original budget. The additional expenditures have to be made from existing revenue and cannot require additional tax levies.

The budget maintains the same level of services as the 2023 budget. Funding the budget with existing services does not require an increase in the mill levy rate, but it does exceed the Revenue Neutral Rate due to revenue that will be received from increased property valuations. The 2024 recommended budget has a total mill rate of 21.198, flat with the 2023 rate.

Mayor Waters opened the public hearing at 7:51 p.m.

No comments were made by the public. Mayor Waters closed the hearing at 7:51 p.m.

Motion by Councilmember Harris to approve Resolution No. 123-2023 adopting the 2024 budget as certified in the amount of \$5,836,605 with ad valorem tax in the amount of \$906,019. Second by Councilmember Wimer. The City Clerk performed a roll call vote. Motion carried by a 5-0 vote.

**Consideration of an Ordinance Making Findings and Establishing a Redevelopment District Pursuant to K.S.A. 12-1770 et seq., and Amendments Thereto**

Jeff White, the City's Financial Advisor from Columbia Capital Management, provided a presentation about establishing a TIF district.

Kansas law (KSA 12-1770 et seq.) permits cities to create tax increment financing (TIF) districts. A TIF district is a defined geographic area in which assessed valuations in the year in which a district is created are established as a base and for which property taxes generated on assessed valuation above that base value are captured and redirected for the payment or reimbursement of statutorily-eligible costs incurred within the district.

TIF in Kansas is a two-step process: the governing body may create a district by ordinance, subject to certain requirements, and then, within an approved district, the governing body may approve one or more TIF project plans. At the point at which a TIF project plan is in place, the City can begin to pay or reimburse TIF eligible costs within the district.

In order to create a TIF district—the first of the two creation steps—the governing body must adopt a resolution setting a public hearing no less than 30 and not more than 70 days following adoption of the resolution. The governing body adopted such a resolution on July 13, 2023, setting the public hearing for September 14th meeting. The City was obligated to and did provide direct notice to affected parties of the upcoming public hearing. After the public hearing concludes, the governing body may consider passage of the ordinance creating the TIF district.

In its action to pass the TIF district ordinance, the governing body must make a finding that the area proposed for inclusion in the district qualifies for TIF under Kansas law. Potentially eligible areas include: blighted areas; conservation areas; land designed before 1992 as an enterprise zone; an intermodal transportation area; a major tourism area; a major commercial entertainment and tourism area; or a bioscience development area.

The ordinance before the governing body would create a TIF district on approximately 8.72 acres with eligibility as a conservation area. A conservation area means any improved area comprising 15% or less of the land area within the corporate limits of a city in which 50% or more of the structures in the area

have an age of 35 years or more, which area is not yet blighted, but may become a blighted area due to the existence of a combination of two or more of the following factors: dilapidation, obsolescence or deterioration of the structures; illegal use of individual structures; the presence of structures below minimum code standards; building abandonment; excessive vacancies; overcrowding of structures and community facilities; or inadequate utilities and infrastructure.

The TIF district plan calls for redevelopment in one project area to include: a mixed-use development with uses consisting of some or all of general commercial and retail development, including development of up to approximately four (4) multistory facilities; recreational uses; associated public and private infrastructure; site work, including demolition; utilities; storm water and drainage; landscaping, plantings, fountains, shelters, benches, sculptures, lighting, decorations and similar amenities; parking facilities; and other items allowable state law.

Kansas law provides that, if any land within a proposed TIF district is currently subject to ad valorem property taxes, any county (Johnson, in this case) and school district (SMSD, in this case) impacted by the TIF district's creation would have a right to exercise a veto over the creation of the district. None of the land within this proposed TIF district is subject to ad valorem property taxes and, as such, neither Johnson County nor SMSD will have a statutory right to veto the creation of the district should the governing body determine to create it by ordinance following the public hearing.

The creation of a TIF district would not have any immediate budgetary impact. No TIF increment may be spent unless and until the Governing Body concludes the process to create the TIF project area by adopting a subsequent ordinance doing so.

Councilmember Hannaman asked if there would be an opportunity to reset the TIF base year to a future date after the district is established. Mr. White said the City would be required to restart the process by rescinding the TIF district and establishing a new one, or to modify the TIF district enough to trigger the recreation of the district.

Councilmember Wimer asked Mr. White if additional staff were hired at the City and such staff would perform job duties within the TIF district, could the TIF revenues be used to pay for the staff member's wages. Mr. White said Kansas laws prohibit this type of TIF revenue expenditures and noted that TIF expenditures are limited to acquisition of property, preparation of property, underground utilities in the public rights of way, and related public infrastructure. Mr. White said TIF revenues cannot be spent on privately owned vertical structures.

Mayor Waters opened the public hearing at 8:12 p.m.

Ben Hobert, 2208 W 49<sup>th</sup> Street, Westwood Hills, said that an area must meet two of the five criteria to be considered blighted. Mr. Hobert noted the former Westwood View building is listed as meeting the criteria of (1) dilapidated, obsolete or deteriorating and (2) presence of structures of not meeting minimum code standards. Mr. Hobert said Kansas laws require a conservation area to contain more than one structure and argued that he doubts the structure does not meet minimum code requirements since it is safe enough for children and staff to be actively using it now, Mr. Hobert said he questions if the TIF would be valid if adopted.

No other statements were made. Mayor Waters closed the public hearing at 8:15 p.m.

Mr. Denk noted that the former Westwood View building was built in the 1960's under different code standards and does not meet present-day building codes. Mr. Denk noted that SMSD is vacating the building because it is dilapidated and obsolete, otherwise a new school building would not have been constructed down the street.

Councilmember Harris noted that SMSD has been very clear for a while that once the Rushton students move into their new school building there are no future plans for the property and intend to sell it. Mr. Denk confirmed Councilmember Harris's statement and noted that the City and SMSD are under contract for the property and SMSD has expressed contractual intent to abandon the school building.

Motion by Councilmember Buckman to pass Ordinance Number 1037, making findings and establishing a redevelopment district pursuant to KSA 12-1770 et seq. and amendments thereto. Second by Councilmember Hannaman. The City Clerk performed a roll call vote. Motion carried by a 5-0 vote.

### **Consent Agenda**

All items listed below are considered to be routine by the Governing Body and will be enacted in one motion. There will be no separate discussion of these items unless a member of the Governing Body so requests, in which event the item will be removed from the consent agenda and considered separately following approval of the consent agenda.

- A. Consider August 10, 2023, City Council Meeting Minutes
- B. Consider Appropriations Ordinance 754

Motion by Councilmember Harris to approve the Consent Agenda as submitted. Second by Councilmember Wimer. The City Clerk conducted a roll call vote. Motion carried by a 5-0 vote.

### **Mayor's Report**

Mayor Waters shared the news of the recent passing of longtime resident Linda Horn. A celebration of life for Ms. Horn will be held at City Hall on Sunday, September 17<sup>th</sup>.

Mayor Waters shared a report of events he attended and plans to attend as Mayor.

### **Councilmember Reports**

Councilmember Harris said he wanted to make a comment on the discussion surrounding the Karbank proposal during the August and September Planning Commission meetings. Councilmember Harris said during the public hearing process not only was he listening to the comments made, he was listening for questions he had not thought to ask and for problems he had not thought about. Councilmember Harris said he left the September 11<sup>th</sup> Planning Commission meeting with six items he wanted to consider further.

Councilmember Harris said he was bothered by some of the comments made by the public that insulted the integrity of the Planning Commission, Governing Body and members of the City Staff.

Councilmember Harris said he has been elected to City Council twice, and each time he has sworn to uphold the Constitution of the United States and the Constitution of the State of Kansas, and his motivation is to live up to that oath and participate in representative democracy that is being conducted in the City of Westwood. Councilmember Harris acknowledged that members of the community still have good faith questions about the Karbank proposal, and they would do well to put some distance



between themselves and those who use words to alarm people and hurl public accusations without evidence, because those individuals are not helping their argument.

Mayor Waters noted that all the members of the Governing Body have completed Statements of Substantial Interest with the Johnson County Election Office when filing to run for office and invited anyone interested to visit the Johnson County Election Office's website to review those documents.

Councilmember Wimer said she agreed with Councilmember Harris's statement. Councilmember Wimer invited members of the public to reach out to the Governing Body with questions or to have a conversation about the Karbank proposal. Councilmember Wimer said she has spent a lot of time in the redevelopment area and challenged members of the public to listen and note the sounds that occur in the current park space, and to take the time to walk over to the area where the proposed park would be and listen to the sounds in that space and then ask themselves where the City would want a park.

Councilmember Hannaman said roughly two dozen people spoke at the September 11<sup>th</sup> Planning Commission meeting and he did not hear ideas for the redevelopment area that have not been previously considered and evaluated by the City in one capacity or another. Councilmember Hannaman said he believes the City has two choices regarding the former Westwood View building which would be to find some way to acquire it, or do nothing and let someone else purchase it. Councilmember Hannaman noted in the Summary of Findings section of the 2022 Facilities Assessment by multistudio lists purchasing the former Westwood view property and selling the current park frontage along Rainbow Boulevard may be the most cost effective way to build a new park.

### **Staff Reports**

#### **Administrative Report**

Ms. Herring provided an overview of the September 2023 Administrative Report included in the agenda packet and offered to answer questions.

#### **Public Works Report**

Mr. Sullivan provided an overview of the August and September 2023 Public Works Report included in the agenda packet and offered to answer questions.

#### **Public Safety Report**

Chief Mansell provided an overview of the August 2023 Public Safety Report included in the agenda packet and offered to answer questions.

#### **Treasurer's Report**

The August 2023 Treasurer's Report was included in the agenda packet, no questions or comments were made about the report.

#### **City Attorney's Report**

Mr. Denk did not have any items to report.

### **Old Business**

No Old Business items were considered.

## **New Business**

### **Review Development Agreement, Donation Agreement, and First Rights Agreement Relating to Redevelopment of 50<sup>th</sup> & Rainbow Boulevard**

On March 9, 2023, the City and Karbank Real Estate entered into a Funding and Exclusivity Agreement to explore Karbank's proposal to the Westwood City Council for redevelopment of the Rainbow Blvd. frontage between 50th and 51st Street, which property is owned by the City of Westwood. Following that initial presentation and Agreement execution, on June 8th, the Shawnee Mission School District and the City of Westwood entered into a Purchase Agreement the City to leverage its option to purchase the former Westwood View Elementary School located at 2511 W. 50th St. and, that same night, the City of Westwood and Karbank entered into a Purchase Agreement for Karbank to acquire the City's Rainbow Blvd. frontage property parcels, subject to the terms of those agreements.

Since that time, Karbank has submitted an application for and received a recommendation of conditional approval from the Planning Commission of the rezoning and preliminary development plan necessary to construct the mixed-use redevelopment project. This development plan was presented and reviewed by the Planning Commission at three separate public meetings (July 10th, August 7th, and September 11th) before the Planning Commission issued its recommendation to the City Council on September 11, 2023. The applications for rezoning and preliminary development plan approval for this project will come before the City Council for final action at its regular meeting on October 12, 2023.

Related to Karbank's proposal are several documents setting out terms and conditions for the agreement between the City of Westwood and Karbank. These agreements include:

- a. Development Agreement;
- b. Donation Agreement (Covenants & Restrictions are set out in an exhibit to this document); and
- c. First Rights Agreement. Staff Comments/Recommendation

Staff recommends that the City Council review and consider these documents and the terms therein prior to taking action in concert with the rezoning and preliminary development plan consideration set for action on the October 12th City Council meeting agenda. These documents have been negotiated to this point by and between Karbank and a team of City Officials and representatives including:

- Mayor David E. Waters,
- City Administrator Leslie Herring,
- City Attorney Ryan Denk,
- Financial Advisor Jeff White (Columbia Capital Management), and
- Bond Counsel Kevin Wempe (Gilmore & Bell).

This team was available at the meeting and will be thereafter to respond to any questions the City Council may have regarding the documents and to address any items not included or requested for inclusion by the City Council.

All expenses to date and hereafter relating to the drafted documents included in the meeting packet are reimbursed by Karbank pursuant to the Funding & Exclusivity Agreement.

Mr. Denk provided an overview of the drafted documents and offered to answer questions from the Governing Body.



Councilmember Wimer asked if there was language that prevents Karbank from selling or leasing the property to a non-profit organization. Mr. Denk said that there is language precluding the sale of the property to a non-profit organization, and language to allow the City Council to consider accepting payment in lieu of taxes if Karbank were to lease to a non-profit organization.

Councilmember Harris asked Mr. Denk about the commencement of construction and if the City would have any recourse if Karbank were to not adhere to the proposed commencement date of the development. Mr. Denk said the City's development team has discussed what could be done to enforce construction milestones for the project, but Karbank is not asking for financial incentives beyond a sales tax exemption on construction materials and so has limited leverage to require certain terms like building timelines. Mayor Waters noted that if for some reason construction did not start when outlined, then in a worst-case scenario the City would still own the former Westwood View property and have the debt for the property at 5050 Rainbow Boulevard paid off.

No action by the Council was taken.

**Consider Interlocal Agreement with the city of Roeland Park, Kansas for Public Improvement of Mission Road from 47<sup>th</sup> Street to 53<sup>rd</sup> Street**

The Mission Road corridor is the City boundary between Westwood and Roeland Park. Both cities desire to construct public improvements to Mission Road to include public sidewalks where required, curb & gutter improvements where required, a mill & overlay within the project limits, pavement marking, stormwater improvements, street lighting and other related work. The City of Westwood staff has considered the "Complete Streets Policy" and is considering the addition of bicycle lanes and pedestrian lighting and sidewalk modifications where needed to be ADA compliant.

The estimated project cost of construction and engineering is One Million Eight Hundred Sixty-Nine Thousand Three Hundred Eighty-Nine Dollars and Fifty Cents (\$1,869,389.50).

The project is eligible for CARS Funding and as such the Cities expect receipt from the program in the amount of Eight Hundred Forty-Two Thousand Dollars (\$842,000.00) to help pay a portion of the costs of the improvements.

The remaining cost of making the improvements shall be distributed between the Cities with each City responsible for \$513,694.75, estimated as of the date of this agreement after application of County CARS funds.

Currently, \$716,473 is budgeted in the Capital Improvement Plan (Fund) for this project between 2024 design engineering and 2025 construction. As the \$513,694.75 figure stated in the agreement for the project cost to the City of Westwood is an estimate, there is room for the cost of the project to increase when actual – or more accurate and updated – future costs are known without disrupting the CIP.

Motion by Councilmember Steele to authorize the Mayor to execute an agreement with the City of Roeland Park, Kansas to memorialize the relationship between the jurisdictions as relates to funding for improvements in the Mission Road corridor subject to final review by the City Attorney. Second by Councilmember Buckman. Motion carried by a 5-0 voice vote.

**Announcements/Governing Body Comments**

No announcements were made.

**Executive Session**

No matters required Executive Session during this meeting.

**Adjournment**

Motion by Councilmember Wimer to adjourn the meeting. Second by Councilmember Hannaman.  
Motion carried by a 5-0 voice vote. The meeting adjourned at 9:27 p.m.

APPROVED: \_\_\_\_\_  
David E. Waters, Mayor

ATTEST: \_\_\_\_\_  
Abby Schneweis, City Clerk

DRAFT