City of Lawrence

CITY COMMISSION

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ROBERT CHESTNUT

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January 12, 2010

The Board of Commissioners of the City of Lawrence met in regular session at 6:35 p.m., in the City Commission Chambers in City Hall with Mayor Chestnut presiding and members Amyx, Cromwell, Dever, and Johnson present.

RECOGNITION/PROCLAMATION/PRESENTATION:

With Commission approval, Mayor Chestnut proclaimed the week of January 11 – 18, 2010 as Martin Luther King, Jr. week.

CONSENT AGENDA

As part of the consent agenda, **it was moved by Amyx, seconded by Cromwell,** to approve City Commission meeting minutes of December 8, 2009. Motion carried unanimously.

As part of the consent agenda, **it was moved by Amyx, seconded by Cromwell.** to receive minutes from the Sales Tax Audit Committee meeting of August 27, 2009. Motion carried unanimously.

As part of the consent agenda, **it was moved by Amyx, seconded by Cromwell,** to approve claims to 199 vendors in the amount of $1,980,141.56. Motion carried unanimously.

As part of the consent agenda, **it was moved by Amyx, seconded by Cromwell,** to approve the Drinking Establishment Licenses for Wildes Chateau, 2412 Iowa; Rudy's Pizzeria, 704 Massachusetts; Margaritas, 815 New Hampshire; Montana Mikes, 1015 Iowa; Oread Inn, 1200 Oread; and the Temporary Liquor License for The Lawrence Chamber Orchestra for an event to be held at Trinity Episcopal Church on Feb. 27, 2010; and the Cereal Malt Beverage Licenses for; Lawrence Food Mart, 3300 West 6th; Shop N' Go, 1000 West 23rd, Walgreens No.

03055, 3421 West 6th, Walgreens No. 03056, 440 West 23rd, El Matador Café, 446 Locust St.; and the Taxi Cab License for Jayhawk Taxi, P.O. Box 442198. Motion carried unanimously.

As part of the consent agenda **it was moved by Amyx, seconded by Cromwell,** to authorize distribution of Request for Proposals for the Public Library HVAC upgrade funded by the American Reinvestment and Recovery Act (ARRA) with a due date of February 10, 2010. Motion carried unanimously. **(1)**

As part of the consent agenda, **it was moved by Amyx, seconded by Cromwell,** to concur with the Planning Commission's recommendations to adopt on first reading Ordinance No. 8481, for rezoning (Z-10-17-09) of approximately 24 acres from UR (RO-1A/RMO pending) to Commercial (CC-400), for the Mercato project, located at the northeast corner of K-10 & West 6th Street (Hwy 40). Motion carried unanimously. **(2)**

As part of the consent agenda, **it was moved by Amyx, seconded by Cromwell** to adopt on first read, Ordinance No. 8486, amending Chapter 16, Article 12, Section 16-1201, Access Management Requirements for west 6th Street. Motion carried unanimously**.** **(3)**

As part of the consent agenda, **it was moved by Amyx, seconded by Cromwell,** to approve Text Amendment (TA-10-21-09) and adopt on first read, Ordinance No. 8483, a text amendment to various articles to correct inconsistencies regarding the uses identified as 'Communications' and 'Communications Service Establishments.' Motion carried unanimously.

(4)

As part of the consent agenda, **it was moved by Amyx, seconded by Cromwell,** to authorize the City Manager to execute a Memorandum of Agreement with the University of Kansas regarding the sharing of costs to meet the local match requirement for the transit services contract with Olsson & Associates for coordinated transit routes. Motion carried unanimously. **(5)**

As part of the consent agenda, **it was moved by Amyx, seconded by Cromwell,** to authorize the Mayor to sign a Subordination Agreement for Shala Stevenson, 1238 Prairie. Motion carried unanimously. **(6)**

CITY MANAGER'S REPORT:

During the City Manager's Report, David Corliss said the report included the 2009 Building Permit Report; a rehabilitation update on 617 West 4th; a report on the free shuttle service from downtown to KU's Memorial Stadium; the third quarter Barometer Report; a Transit Facility update; transit service recommendations between the City and KU; an Energy Efficiency and Conservation Block Grant update; Bowersock Dam update; and the 2nd and Locust intersection improvements update.

Vice Mayor Amyx asked regarding the 2nd and Locust improvement, if there were core samples drilled and if not drilled, why not.

Chuck Soules, Public Works Director, said core samples were not done all the way down to where they identified the concrete structure. There were a few core samples drilled toward the north end intersection because that was where the pavement failed. He said staff could provide additional information to the City Commission.

Mayor Chestnut said unfortunately, the timing of this season was driven a lot more by the availability of federal funding and the City probably would have chosen a different season to start if that option was available.

He said to dovetail off the Vice Mayor's comments, a postmortem on the engineering needed to be done because there had been some misses. **(7)**

REGULAR AGENDA

Consider authorizing the City Manager to execute a Land Lease Agreement and Job Creation Credit Agreement with LWC Partners, LLC. Consider approval of airport improvement projects (taxiway, site preparation, and parking lot) estimated at $135,000.

David Corliss, City Manager, said this was the first private development at the airport in a dozen years. The community wanted to provide additional infrastructure to the airport regarding the water and sewer lines. The water work was already started and was slowed down by the winter.

Next week, the City Commission was likely to receive the consultants report regarding the sanitary sewer options and staff would be asking City Commission direction on how to proceed.

He said this was a unique project in that the City was providing some public improvements at the site and reducing the land lease at the airport. There were Federal Regulations that required the City to maintain ownership of all the property at the airport even though there was some private use. He said there were land uses where it was a full municipal use and land use when it was a private use and how it impacted property taxes into the future. The City was not providing property tax abatement, but there was the opportunity under the lease, if the property owner could indicate to the State Board of Tax Appeals that the use was essential for airport operations, they could receive a property tax exemption on the property at the State level which impacted the cost benefit to the community.

Mayor Chestnut said this was an educational process about the way the property ownership worked at the airport and the potential for that to happen.

Corliss said the use on this lease was private and they would be able to use the parking lot, but the hanger structure itself was going to be devoted to Hawkeye and First Management Inc. and it would be difficult to say it was essential for airport operations. There were some covenants in the lease agreement that were part of the negotiations.

Toni Wheeler, Legal Services Director, said the City was leasing approximately 1.62 acres of property at the airport to LWC Partners LLC. One of LWC's Co-Manager's was also the owner and operator of Hawkeye Helicopters Inc., a company that provided transmission line inspection services.

Under the terms of this agreement, LWC could use the leased premises for aviation purposes including maintenance, operation, repair, and storage of aircraft and related activities. Under this lease, they had the opportunity to use common areas at the airport, runways, taxiway, aprons, etc. They had the right to egress and ingress to the property, to the leased premises and could use the airport and parking lots. They could also construct a hangar at the airport, subject to the City and FAA's approval.

The term of the lease was 20 years and had 4, 5 year option periods for a total of 40 years. The rent under this agreement for the first year was $10,585, on an annual basis, payable in 12 equal installments, however, as earlier referenced, it was subject to a job creation credit agreement. Also, the annual rent was adjusted, based upon a consumer price index.

On the Job Creation Credit Agreement, in years 1-10 of the lease, the rent would be subject to this separate agreement and for the first 5 years the company would receive a credit on its monthly rent of $1,350 for each full-time employee at the airport, up to a maximum of 98% of the annual rent. In years 6-10, that maximum job credit allowed was equal to 50% of the annual rent. After the tenth year of this agreement, the job credit would expire and the company would pay the fair market lease rate that was set forth in the lease agreement.

The lease agreement did provide the tenant would pay all property taxes on the leased premises and on its hanger which were not otherwise exempt by law. This agreement did provide the company had the right to contest the amount of its taxes to seek a reduction in the valuation of the property or to seek and exemption of any taxes.

She said K.S.A. 79-201(q) which was a State Statute that provided an exemption from payment from property taxes on property that was owned and primarily operated as an airport by a political subdivision, including property that was leased by the subdivision for purposes essential to the operation of the airport.

Under the terms of this lease agreement, there was language stating the leased premises in the hanger were deemed essential to the operation of the airport. While the City was not granting tax abatement, as part of this agreement, this agreement did not foreclose the possibility or the opportunity of the company LWC to seek an exemption from the payment of the ad valorem property taxes under that statute 79-201(q) at some future date. City staff was not expecting the company to seek that exemption under the statute, but the lease agreement would permit them to pursue such an exemption.

If LWC did make that request, that request would be subject to the review of the Douglas County Appraiser who would make a recommendation on their request for such an exemption. The application for the exemption along with the County Appraisers recommendation was then forwarded and decided by the Kansas Court of Tax Appeals, formerly the Board of Tax Appeals.

Under other provisions of the lease agreement, the utilities were paid for by this agreement and the Public Works Director would explain some of the public improvements were proposing to provide. The City would pay to extend sanitary sewer and water sewer to the property.

Under the maintenance provisions, LWC would maintain the leased premises, including mowing and landscaping and the City would take care of removing snow from the runways, taxiways, and the tie down areas in maintaining the airport facility.

A hanger would be permitted to be constructed on the property and would be approved by the City. At the end of the lease, the City had a first right to buy the hanger from the owners at fair market value and the lease did spell out how the fair market value would be determined.

The agreement contained a number of additional standard lease terms, including provisions required by the FAA, provisions that dealt with default, insurance and indemnification.

Mayor Chestnut said the agreement stated the LWC would pay all of the ad valorem property taxes which would be real estate and asked if there was an estimate.

Corliss said the property taxes from the firm to the City were estimated at $4,600, to the County $5,700, to the School District $10,000 which was approximately $20,000 in property taxes on an annual basis and was based on the estimated cost of the construction, subject to actual appraisal.

Commissioner Cromwell said he was confused on the status of the airport being non-taxable. If the applicant chose to go for that exemption, would they discuss it with the appraiser's office?

Corliss said LWC had that right, under the lease, to apply for exemption. He said as staff viewed it, they had not seen the private hanger facility as essential to airport operations, although, it was somewhat contradictory in that the language was placed in the actual lease. He said that was a subject that needed to be discussed as to whether that language should be removed.

Commissioner Cromwell said the cost benefit included the property tax and that language stated "it was essential to airport operations" and should be taken out of the lease. Otherwise, they would be opening a can of worms.

Corliss said that was a fair comment and the Commission might want to defer that final decision. He said the Economic Coordinator's analysis included the property taxes as a benefit to the community. When looking at this project earlier, it was not going to qualify for a tax abatement. The size of the structure, the number of employees, how it would fit under Industrial Revenue Bond financing was probably too small and not acceptable for a Constitutional Abatement Exemption as well. There was an attraction for the City to make public improvements in recognition of the property taxes and might be something to discuss further with the applicant.

Commissioner Johnson asked if a clause could be added in the lease that if LWC was to receive a tax abatement, the incentives the City was providing would be void.

Corliss said that was a possibility, but the City was going to be making those improvements this year and might want to talk about, did the City Commission want to make sure the property paid property taxes as long as it was used for those items.

Commissioner Johnson said there was going to be some money spent that would benefit the public as well as that job creation incentive.

Corliss said staff wanted to explain the public improvements because while they would benefit from this project, the east side of that airport would be opened up which was important for not only Hawkeye and First Management, but appropriate and valuable to other property as that area might be able to be developed further to the south, where Hawkeye was located. Staff wanted to start on those improvements this year.

Vice Mayor Amyx said regarding the lease agreement with Stuber that dealt with the taxation portion, he asked if it was consistent with the lease agreement with Hawkeye.

Corliss said Stuber paid property taxes.

Vice Mayor Amyx said the City had not stopped them from seeking a tax exemption.

Corliss said he did not believe the City had.

Vice Mayor Amyx asked if it was consistent with the lease agreement with Hawkeye.

Corliss said he needed to look at the Stuber Agreement to see if it had similar provisions. The City had also reduced the lease amounts on the Stuber lease which was a result from City Commission discussions a long time ago. He said it was history that when economic development was done at the airport, the City reduced the lease payments.

Vice Mayor Amyx said as long as the City was being consistent in the language in those leases agreements.

Corliss said they might want to discuss their goal and make sure the document the City was negotiating with the applicant, reflected that goal.

Commissioner Cromwell asked what types of jobs would be created.

Corliss said the cost benefit analysis estimated they would pay $36,000 a year which would be a mix of pilots and mechanics overtime.

Commissioner Cromwell said he wanted to be sure the City was giving incentives toward living wage jobs. The cost benefit analysis worked out a lot better when having a little higher wage and that was something he was interested in adding.

Corliss said those were fair comments. He said this project fit in an unusual situation. For example, when the Tax Increment Financing and the Transportation Development District work at the Oread, a wage floor was not done for those positions. In this case, there was no formal granting of a tax abatement, but staff wanted the City Commission to understand this argument for the statutory tax exemption that would not be provided locally, but might be provided at a State level.

He said as water and sewer improvements were being done at the airport, there would be a mix of a public benefit and private benefit. He said direction from the City Commission would be helpful.

Commissioner Dever said in the event the City was given some sort of credit from the State, he was not sure there was a variation in the amount given as far as incentive went.

Corliss said it was an exemption and no time limit as long as they had the essential airport use.

Commissioner Dever said if they were granted the exemption then this job creation credit became of less value. It seemed as if they received all of that credit, it would be basically almost free land, hoping they would bring jobs to the Lawrence area, and full tax exemption and the public benefit would be minimized. He said it was something to consider in the event that exemption was granted and could scale back the job creation credit. He said it seemed as though there would be a snowball effect on what public benefit would be received and wanted to consider that clause as well.

Corliss said State Statute provided that for, "All taxable years commencing after December 31, 1992, all property owned and primarily operated as an airport by a political subdivision, including property leased by the political subdivision for purposes essential to the operation of an airport was tax exempt. " The sentence after that read: "Payments in-lieu of property taxes may be required." He said the statute anticipated this type of situation where the City was going to require the property owner to pay something, but it did not need to be 100% of those property taxes.

Charles Soules, Public Works Director, said as part of the long range plan, a taxiway would be constructed as part of the public improvements and would be setup for the next facility at the airport. Also, a water and sewer line would be installed at the airport.

Corliss said by constructing this taxiway at that location, it opened up the property down the east side which was valuable for people who were interested in relocating at the airport.

The Parking lot at the airport was valuable and important. The staffing at the hanger would not take up a lot of the 24 spaces of parking.

Richard Haig, Chair of the Aviation Advisory Board, said once businesses were located at the airport, it would open the airport up for more federal funding. He said with the area being platted and site planned, that would be helpful.

Commissioner Dever asked if there was any economic benefit from FAA for additional funding if there was an increase in the number of take-offs and landings.

Soules said more activity at the airport, allowed for more eligibility of federal funds.

Commissioner Dever asked if that increase in funding for fixed wing aircraft or did helicopters count.

Soules said all operations.

Mayor Chestnut called for public comment.

After receiving no public comment, Mayor Chestnut said the City Commission needed to talk about direction to staff relative to any modifications or adjustments to the agreement.

Corliss said staff wanted direction from the City Commission. He said staff had been operating on the assumption that it was going to be paying property taxes unless there was a significant change in use such that it was part of the airport operations.

Mayor Chestnut said he supported moving forward with the land lease agreement, but there were two issues which was language in the land lease agreement that addressed the statute, but did not think it was necessary. Also, if a tax exemption was petitioned and granted, that it would have an impact on the incentives and to revoke the incentives because it would not make sense. He said he did not know if the lease agreement had any type of transfer to someone else.

Commissioner Johnson said he did not know if a cost benefit analysis was done with that language.

Vice Mayor Amyx said this body would not have the ultimately authority to make that exemption. If the property tax was not going to be paid, a clause was needed.

Commissioner Cromwell agreed and was in favor of a living wage floor added.

Commissioner Johnson said he did not know why it was necessary because the average of $36,000 a year, equated to $17.31 an hour, based on a 40 hour work week, especially in these hard economic times.

Commissioner Cromwell said it was not about whether they were offering a job at a particular wage, but the City would be providing an incentive, a financial benefit for a particular job. He said that factored into the cost benefit analysis, the wage someone was receiving.

Commissioner Dever said he was interested in seeing the wages of those jobs at the airport and how that $36,000 averaged out. Generally speaking, he was in favor of more growth and more employment at that site. He said he did not know how the $1350 investment related to the 8 full-time equivalents they were talking about adding. He said if the wages were clear and straight forward, he was less likely to favor a living wage in this agreement.

Vice Mayor Amyx said he supported living wage. The information provided far exceeded that base wage right now. The only way they were going to make it different was to send this project through the Public Incentive Review Committee. He said this project would meet every goal of the City Commission.

Corliss said the 2009 wage floor was $11.44 and staff would be updating that information for 2010.

Jim Scott, Hawkeye Helicopter, said the average wage of $36,000 was not accurate. He said with 5 employees the average wage was $60,000 to $70,000 per year. He said they would start at 5 employees and add 6 to 8 employees in the next 3 or 4 years.

Commissioner Dever asked if those jobs would be transferred from their current location to Lawrence and the 5 jobs that were already on payroll, the average wage was more than $50,000.

Scott said correct.

Commissioner Dever asked about the additional people that would be added.

Scott said those employees would be pilots, mechanics, and administration. He said there would be a use for lower end incomes for other miscellaneous jobs around the facility such as washing planes or maintenance on the facility itself. He said he did not feel like they should be obligated to pay that amount, more than the going rate.

Commissioner Dever asked for the 8 time equivalent full time positions for this $1350 incentive, what was envisioned. He said they would relocate the first 5 jobs and then plan to hire on more mechanics and pilots from the west coast for helicopter work. He said their plan was to have a full-time helicopter pilot core that lived in Lawrence or the surrounding area.

Mayor Chestnut said to move forward with additional criteria was bad public policy. The City Commission should be considering a possible living wage standard on to other economic incentives other than tax abatement. He said right now they were through the process, close to the end, and adding something on to this particular project which was a bad precedent. He said he was not saying this was not a discussion that should not take place, but with a lot of information relative to how to enforce an ordinance on other incentives.

Commissioner Cromwell said it was the first time the City Commission had the opportunity to weigh in on this issue. He said the City Commission should not, in general, decide not to change anything because it was always on the tail end. The City Commission often received things on the tail end of the process.

Mayor Chestnut said he was willing to place the issue on the agenda, but one of the worst things was adding something at the tail end of a process.

Commissioner Cromwell said they could have a larger discussion later, but he understood it was a unique situation.

Mayor Chestnut said Commissioner Cromwell's point was appropriate and that what the City had been doing in incentives, in the last two years, were totally outside of tax abatement. If that was the shift, they needed to have that discussion about living wage whether it was TDD or TIF Districts.

Corliss said there was a wage floor discussion with the TIF and TDD Policy Development, but this was even different than that discussion. He said the City was acting as landlord and a landlord making improvements that benefit the airport and an applicant. It was a challenge when they were going to bring other parts of the economic development policy, such as a wage floor, into that discussion. He said it was appropriate to have that direction because staff was forecasting more interest at the airport and have something similar where the City was acting as landlord and have that issue of property taxes, but would also have the issue of public improvements, and the issue of rent and it might be a much larger facility which might be more consequential.

Commissioner Dever said the "devil was in the detail" and at this very last point, there were several issues that needed clarification.

Commissioner Johnson asked if this project would go to the Public Incentive Review Committee.

Mayor Chestnut said it was not scheduled.

Vice Mayor Amyx said as they considered all of those long term answers to the global issues that faced Lawrence Kansas on whether or not someone was eligible or not to receive any type of incentives from the City. He said this was an opportunity for a new business to start up.

Commissioner Cromwell said he would like to see the lease or this was going to be the same situation with the next facility at the airport.

Corliss said he needed direction regarding the property tax requirement on the lease.

Mayor Chestnut said they would strike the language that referenced the exemption section because it was moot and adding language on some type of provision to end incentives if exemption was granted through an appeal through the Douglas County Appraiser's Office and through State Statute.

Corliss said staff would present the Mayor's comments to the applicant and staff would advise the City Commission on their response.

Moved by Cromwell, seconded by Amyx, to authorize the City Manager to negotiate a modified Land Lease Agreement and Job Creation Credit Agreement with LWC Partners, LLC, addressing the issues of the language for the tax exemption and a provision to eliminate those incentives if a tax exemption was granted. Motion carried unanimously. **(8)**

Moved by Dever, seconded by Johnson to approve airport improvement projects (taxiway, site preparation, and parking lot) estimated at $135,000, contingent on execution of Land Lease Agreement with LWC Partners, LLC. Motion carried unanimously. **(9)**

Conduct bond sale and adopt Resolution No. 6873, authorizing the sale of taxable general obligation improvement bonds for $2.975 million, and declare an emergency and adopt on first and second reading, Ordinance No. 8485, providing the necessary funds for the acquisition and improvement of the west Lawrence Labs building, located at 4950 Research Parkway.

Ed Mullins, Finance Department Director, presented the staff report. A bond sale was conducted earlier today and five bids were received. The rates looked a bit high because the bonds were taxable whereas typically, the bonds were exempt from taxation. The bonds mature in 25 years, whereas general obligation bonds typically mature at 12 years.

Staff recommended the City Commission approve the Hutchinson, Shockey bid at 5.48% and adopt Resolution 6873, authorizing the sale; and, declare an emergency and adopt first and second reading Ordinance No. 8485, which enabled the winning bidder to market the bonds.

Mayor Chestnut said the biggest question was making sure this fit into the Pro-forma that was put together.

Diane Stoddard, Assistant City Manager, said the projections that were provided in December regarding this transaction, assumed an overall total interest cost of 5.5% that was slightly higher than the best bid, in terms of total interest cost, however, overall the projections on the yield curve, which was the annual interest rate per year over that 25 year issue was slightly different. The City's Economic Development Coordinator's projections and the interest rate on the early years was lower than what was actually proposed on the sale and rates on later years was less than the actual. Overall there were slightly more interest cost associated with this than staff had originally projected. The interest the City and County Commissions had was related particularly to the subsidized interest portion. The City Commission might recall the average subsidized annual interest was discussed by the City and County for this transaction being approximately $18,000 in December. The figures today showed that it would be approximately $23,000 annually, over a 25 year period.

Commissioner Dever said the amount the Economic Development Coordinator projected was $18,000 for that same period of time.

Stoddard said yes.

Mayor Chestnut said that amount was $5,000 a year, split between the City and County.

Stoddard said once staff had the final amortization schedule, she would share that information with everyone and make sure the Lawrence Douglas-County Bioscience Authority (LDCBA) the current schedule. The information needed to be changed annually with those bonds because the rate they were charging to LDCBA was dependant on the City's idle fund rate during the year.

Mayor Chestnut said from talking to several Commissioners there were other questions regarding the LDCBA lease and the buy back provision.

Stoddard said she apologized for not having the current lease available when the City Commission last discussed this issue. She said in the City Commission's packet of information was the final version of the lease or what was considered by the County last week and what had been discussed with LDCBA. She said regarding that option to purchase provision, there were a number of items that were additive and one item that was subtracting. In the future, if the LDCBA wished to exercise its option to purchase, they would pay the purchase price and legal fees of the $2.375 million plus add to that amount, the $600,000 of improvement costs that were also included in this bond issue. LDCBA would also pay any outstanding expenses that would be accrued by the City or County, which information would be kept on the City's ledger sheet. LDCBA would pay any interest on outstanding bonds, from the date they decided to execute the option to purchase, to the earliest redemption point on the bonds. They would pay any other expenses related to retiring that bond early, minus the principal portion of the lease payments that had been accrued to date by the LDCBA.

The two items that were not included in this calculation would be the interest that would be paid by the LDCBA over the course of time, which reflected the idea that interest cost was something that was a cost to the transaction, but also it was important to note the City and County subsidized interest portion, would also not be included in any payment. The intention was to make the City and County whole in the transaction with the exception of the subsidized interest and staff realized it could yield a scenario in the future where the payment coming from the LCDBA was something that was less than the fair market value of the building at that time, however, the City and County would be essentially fully reimbursed for the costs incurred related to the bond transaction and those key elements. She said it was important to consider that one of the main objectives was an economic development objective rather than a simple real estate transaction. It was important to consider the LDCBA was also an entity that was created for that economic development mission with the City, County and University.

Commissioner Cromwell said his main problem was that he asked about the buy back provision, but was told that provision was not in the lease which changed the math. He said he liked the project, but disliked that he voted on a lease that was not current and he had not seen. He said he accepted Stoddard's apology, but it presented a problem because the City Commission had already accepted this lease.

Mayor Chestnut said Commissioner Cromwell was focusing on the option to purchase.

Commissioner Cromwell said his problem was that the information was different from what had already been voted on and now the City was at a point of issuing bonds for a project he wanted to go forward, but did not want that provision in the lease. He said it was made very clear that provision was not in the lease.

Mayor Chestnut said if Commission Cromwell's desire was to strike the option to purchase.

Commissioner Cromwell said he had a problem with the option to purchase. Under provision number "F" in that subsection, in which the rent and principal was paid was the kicker because 25 years down the road, not only were they not adding any value to the building, but were also creating, in essence, a rent to own aspect.

Commissioner Johnson agreed with Commissioner Cromwell. He said he did not see that they were going to subtract additional monies. He asked if the lease to purchase could be amended.

David Corliss, City Manager, said the commissioner was on the prevailing side and there could be a motion to reconsider the vote and a direction to work with the County and LDCBA to either remove the option entirely or change the option so the rent was not included. He said the agreement was not a rent to purchase, but essentially that all of their costs were placed into the facility. He said staff was working on a number of items to make sure that when closing on the property, there was insurance, maintenance and other things so there would not be any issues. The option to purchase was something that was added toward the end of their negotiations. He said staff had not had a chance to fully explain and tried to keep the City Commission informed about the different aspects, but failed in this regard.

He said obviously, LDCBA had an option to purchase the building at any time it just had to be acceptable to the City and County Commissioners on whatever terms. He said the City Commission could strike the entire section or modify the agreement to remove subsection "F" so there was no credit for the lease payments. He said the City was acting more as a traditional landlord in that instance as opposed to a financier of the building which was how others viewed it, but was not saying it was correct. The reason why this project came to the City this way was because the LDCBA benefitted from the municipal financing of the facility and the subsidy, otherwise, they would have tried to do it themselves, but they were not able to do that. He said the City was acting as a financier, in this case.

Commissioner Johnson said he supported the project and wanted the project to move forward. The icing on the cake all along was at the end of the day, the City was going to have a piece of real estate. He said he wanted to keep the option to purchase, but asked if a clause could be added such as "or fair market value or appraised value, whichever was greater", or strike that last clause.

Mayor Chestnut asked if the clause was needed.

Corliss said no, it was something the LDCBA asked for.

Mayor Chestnut said it seemed a lot simpler to strike that clause all together because there was an inherent assumption that any property the City owned could be sold at some point in the future and market conditions were going to dictate. There was a lot of confusion and trying to define all of those things that were going to happen. Certainly, the City would have an interest in selling the property if it benefitted the City and LDCBA in the future, but could be negotiated later based on the occupancy and a lot of other things. If they placed all those structured terms into the agreement, there was potential for some type of windfall to be generated on either side and why not leave it silent and realize that could happen in the future.

Commissioner Dever said he raised the question last time the City Commission discussed this clause and its purpose. He said he spent a lot of time with LDCBA because of what Mayor Chestnut indicated. He said he was not clear on the reasoning, but this further removed any “windfall” the City might gain by making this difficult investment at this time. He said it was a good investment and wise investment, but to shackle the City into some contractual obligation to sell. He said if the City needed to give that option and if the answer was no, then he suggested taking that clause out because it did not do the City any good at all.

Mayor Chestnut said if this provision came into play, knowing the cost benefit analysis, the real estate taxes that would be collected on that building would have wiped out any of that. If that building was that successful, the City was going to be down to the County, talking about reassessing this property because the income value would be substantial and that was not incorporated into the cost benefit analysis.

Corliss said the Commission should make a motion to reconsider the approval of the lease with Lawrence-Douglas County Bioscience Authority, and direct staff to present a revised lease that removed section 3.6 and other related provisions and ask the County to reconsider its action.

He said staff was working on a number of operational items. Lawrence Regional Technology Corporation was going to be the managing entity for the Bioscience Authority.

Vice Mayor Amyx said he wanted to thank staff for the language that in the event the LBDCA was to purchase the building, it was the intent of staff to make sure the City and County was made whole of the debt was incurred in this project.

Corliss said that was the general goal, but there were other goals as well and the City would still have that real estate and no other factors that might make it look differently.

Mayor Chestnut called for public comment.

After receiving no public comment, Mayor Chestnut wanted to make sure everyone understood it was $23,000 of interest expense and the Pro-forma was around $18,700.

Stoddard said the Pro-forma was around $18,750 average cost per year and the average cost was going up. Some years were going up and some years were going down. In the earlier years, the interest rate subsidy was going to be higher because the actual interest rate on those earlier years was higher than the projected.

Corliss said it was $23,000 per entity.

Stoddard said staff would make sure everyone had an updated amortization schedule, that not only showed the payments of the bonds, but what the projected LDCBA lease cost and the subsidy for City and County.

Commissioner Dever asked how the Commission felt about the additional cost associated with this economic development investment.

Mayor Chestnut said in some years those costs were higher and some years lower. It was higher in earlier years which meant present value wise it was a net cost and probably in nominal dollars it evened itself out. He asked if staff ran that information against an economic model.

Stoddard said it had not been done because the bids were just received today. She said she plugged in the figures the City received from the lowest bidder.

Mayor Chestnut said when the benefit cost analysis was performed he asked what impact it had on the ratio.

Stoddard said she had not done that and if there was a desire to update the model, staff could update the model accordingly. It did impact the overall subsidy.

Mayor Chestnut said it was higher by $4,000 a year in earlier years, but at some point it reversed and was lower than the assumption.

Stoddard said yes, in the earlier years, those were the years when the City and County interest subsidy was the highest because in those first 5 years, the lease from the LDCBA was capped at the $25,000 a year. The City and County was sharing the difference between the total interest payment and there was no principal due those first 5 years, but that total interest payment and the $25,000. That amount was going to be higher than projected in the lower years, and higher than what was project in the later years. Overall, the total of the interest subsidy was higher than projected. She said before all that information was given to the City Commission, she would like the City's Economic Development Coordinator make sure she was looking at it appropriately.

Mayor Chestnut said he wanted to get a consensus on what people wanted because there was a Pro-forma that had certain assumption and there would be lots of variables that were going to change over time. This intuitively sounded inconsequential, but he was wanted to think about it before moving forward. Once the City Commission declared an emergency and adopt on first and second reading, the Commission was locking into those General Obligation Bonds.

Commissioner Dever said he was listening to what Stoddard said and clearly, they assumed a certain rate initially for those bonds and the subsequent rate, whether higher or lower, were different over time.

Mullins said there was a combination of factors. Those first five years were interest only, no principal payment and were paying that interest on the entire amount of the issue.

Secondly, the way the low bid was structured, there were higher interest rates the first few years and then lower interest rates and then rates went back up. He said it made it marketable for the bidder and overall, it provided the City with the lowest true interest cost, but it did have higher interest rates in the earlier years.

Commissioner Dever said the City's Economic Development Coordinator analysis did not have a fluctuating rate.

Mullins said it was a yield curve. He assumed a certain shape of the yield curve and typically, the longer the maturity, the higher the rates.

Commissioner Dever said in deference to that change, the actual cost for the first 5 years, the additional dollar amount, was not $4,000 or was the total the $4,000.

Stoddard said it was a larger amount than $4,000. The average annual cost was $4,000 more, but it was a larger increase in those early years than $4,000. Overall, again, when looking at the 25 year period, the overall amount of projected interest subsidy, the City and County was providing, was more than originally projected.

Commissioner Dever asked if Stoddard could tell him how much more.

Stoddard what staff had projected in looking at the information that was shared as far as the amortization schedule in December, it showed a City and County share for each entity at $464,000 over the entire 25 year period at an average of $18,570. The total each entity shared in interest over that 25 year period was $591,750 and that increased the average from the $18,570 annually to an average of $23,630.

Commissioner Dever said it was $130,000 more in interest approximately.

Stoddard said yes, over the 25 year period. Again, given the caveat based on staff's projections because the schedule changed every year when looking at the idle funds rate.

Mayor Chestnut said the way the Pro-forma worked was that it was interest only for the first 5 years and when this building was leased, they start absorbing that.

Stoddard said yes in year 2015, was when LDCBA was picking up the good share of the principal and interest payment and the City's subsidy in that year in interest payment, which was also equivalent to the County interest payment would be projected approximately at $20,000.

Commissioner Dever said in the first 5 years, he asked how much money they were talking about.

Stoddard said in the December projection, the earlier years was anywhere from $17,000 to $47,000 a piece for the City and County in interest cost for those first 5 years which was when LDCBA was not contributing to the principal. Based on the rates the City received today, which included a higher interest rate in those 5 years, the City and County shared was projected at $37,000 to $66,000 a year in those early years. Again, there were some reductions in the later years because the interest rate declined, but that was a major point of greater costs on the City and County in the earlier years then in the initial projection, but it was important to look at the entire 25 year period.

Vice Mayor Amyx asked if the interest rate dropped when the principal was paid down.

Stoddard said it was higher in the earlier years and then it dipped down and went back up.

Mullins said it was a unique structure. The second high bid had more of a normal shaped yield curve, but the City would be paying a higher interest rate.

Vice Mayor Amyx said Corliss' original recommendation was to use General Obligation Bond financing.

Corliss said yes. The total cost to the City in addition to what was earlier presented was going to be $130,000 over 25 years. If the City was successful in buying into that new economy for biosciences, this was a key part and would pay significant dividends to the community regarding jobs and tax base. If this turns out not to be successful, then the City needed to exercise the option of getting out of the bioscience arena, but the City and County staff did not think that would be the case. He said it was important to have good reports back to the Commissions to see where those dollar amounts were over time. He said he was comfortable in proceeding.

Commissioner Cromwell said they were talking about few hundred dollars a month and a little more in the earlier years to the City's bottom line. The big risk was getting tenants in the building. In reality the big unknown was how many people they could get into the building. He said he was good with the additional amount and did not change the fact the main problem was marketing this building.

Commissioner Dever asked what recourse the City had to rebid the bonds.

Corliss said the issuance cost would eat substantially into that $130,000 over that time. The market would question why it was being done and they did not know when the timing would be good. He said given the market uncertainty's they were awfully close to what was projected 2 months back. A 5.5% rate was projected and the rate now was close, but it was a little different on how it was spent over that time period.

Commissioner Dever said they were absorbing more of the initial costs. He said in determining the viability of something it was all about the numbers shown, what they believed was the correct scenario, and was off somewhat. He said they should acknowledge they were off in those numbers making sure everyone was comfortable with the numbers and move forward. He said it was important to recognize there was a higher risk in the front end and that was what they were paying.

Corliss said the Commission's charge was to go about marketing that facility with pronounced effort to make sure that happened.

Commissioner Cromwell said if they analyzed the fee curves, there was a higher total interest rate, but since they were more on the hook for those early years, he asked if they should chose a different shaped curve with a higher overall rate.

Mullins said this used a true interest cost and took into account the time value of money and present value. All those other bids had a higher true interest cost which meant overall they would be paying more on the bonds.

Commissioner Cromwell said it would cost somebody more, but not necessarily the City.

Mullins said at the City's reimbursement rate capped at 4%, it probably would fall onto the City. He said they topped out the tenant on what the tenant was paying. He said this bid provided the lowest true interest cost which was the lowest net present value of all those payments over that 25 year period of time.

Commissioner Johnson said the difference between 1st place and 2nd place on that table was 5.5% versus 5.48, the question was the years 1 through 5, what was the potential savings and how different did that yield curve look. He said the first 5 years was the riskiest.

Mullins said the City had $2.975 million and would pay interest on that amount for a 5 year period of time. That interest would be paid on the true interest cost value because it would be a blended amount. Each year it had its own distinct coupon rate and all those coupon rates would be totaled up because they were paying the interest on all those amounts. If choosing the next higher bidder, they would be paying a higher amount during those first 5 years when paying interest only. Since it was interest only during those 5 years they would be paying the accumulative interest rate for that entire 25 year period of time, from the first maturity to the last maturity. He said there might be a little bit of factor in terms of how those interest rates in the original model were calculated and might not have been totally accurate, but a higher rate needed to be paid when going with a higher true interest cost for those first 5 years. He said take 2.975 million and times it by 5.48 or 5.50 and that was the amount that needed to be paid the first five years.

Commissioner Johnson said it would be about $600 a year difference on a straight interest rate. He said that was why he thought if the second yield curve dipped down lower the first 5 years, a bigger savings than $600.

Mullins said since they were not paying any principal for 5 years, it was 5 years down the road, those rates were higher and then the rates dipped in about 2 to 3 years and came back up.

Vice Mayor Amyx said it was clear the need to have the occupancy level raised in that facility would be the primary objective.

Mayor Chestnut said clearly, those numbers needed to be run back through the model and set that base case and as this project progresses, updates were needed. He said success was predicated on having success in early years on occupancy.

Corliss said in the Economic Development Coordinators memo that was provided in November, it stated the 3 biggest factors that affected the benefits to the community were the return of the idle funds, the number of employees, and the wages of those employees as well.

The City Commission reviewed the bids for General Obligation Bonds, Series 2010-A. The bids were:

BIDDER	**True Interest Rate**
Hutchinson, Shockey, Erley & Co.	5.475905
Robert W. Baird & Co., Inc.	5.502992
Country Club Bank	5.584095
Morgan Keegan & Co., Inc.	5.794569
DeWaay Financial Network	6.00257

Moved by Dever, seconded by Johnson, to award the bid to Hutchinson, Shockey, Erley & Co., for a Net Interest Cost of $2,661,799.71 and the True Interest Rate of 5.475905. Aye: Amyx, Chestnut, Cromwell, Dever and Johnson. Nay: None. Motion carried unanimously. **(10)**

Moved by Dever, seconded by Johnson, to declare an emergency and adopt on first and second reading, Ordinance No. 8485 authorizing and providing for the issuance of $2,975,000 principal amount of taxable general obligation improvement bonds, Series 2010-A, of the City of Lawrence, Kansas; providing for the levy and collection of annual tax for the purpose of paying the principal and interest on said bonds as they become due; authorizing certain other documents and actions in connection therewith; and making certain covenants with respect thereto. Aye: Amyx, Chestnut, Cromwell, Dever and Johnson. Nay: None. Motion carried unanimously. **(11)**

Moved by Dever, seconded by Johnson, to adopt Resolution No. 6873, authorizing and directing the sale and delivery of $2,975,000 principal amount of taxable general obligation improvement bonds Series 2010-A, of the City of Lawrence, Kansas, previously authorized by

Ordinance No. 8485 of the issuer; making certain covenants and agreements to provide for the payment and security thereof; and authorizing certain other documents and actions connected therewith. Aye: Amyx, Chestnut, Cromwell, Dever and Johnson. Nay: None. Motion carried unanimously. **(12)**

Moved by Cromwell, seconded by Johnson, to reconsider approval of the LDCBA lease agreement, ask the county to reconsider its action on the same; strike section 3.6 of the lease agreement and direct staff bring an amended lease back to the City Commission for consideration. Aye: Amyx, Chestnut, Cromwell, Dever and Johnson. Nay: None. Motion carried unanimously. **(13)**

PUBLIC COMMENT:

Hubbard Collinsworth spoke regarding charges on commercial property when their sidewalks were not cleared especially for handicapped access, on intersection, that was not controlled by the City.

FUTURE AGENDA ITEMS:

01/19/10

- Approve Text Amendment TA-11-23-09, to Article 12- Floodplain Regulations to review General and Additional Standards for Residential and Non-Residential Construction. Adopt on first reading, Ordinance No. 8484, for text amendment TA-11-23-09 to Article 12- Floodplain Regulations to review General and Additional Standards for Residential and Non-Residential Construction. (PC Item 6; approved 8-0 on 12/16/09)

01/26/10

- Receive Solid Waste performance audit report.
- Public Hearing – Vacation of easements in Briarwood Addition.
- Receive recommendation on award of bids on the renovation of the Carnegie building (bid date is 1/12/2010).
- Consider approving Text Amendment TA-6-17-09 to various sections of the City of Lawrence Land Development Code to review standards related to “Boarding House.” Adopt on first reading, Ordinance No. 8482, for text amendment TA-6-17-09 various sections of the City of Lawrence Land Development Code to review standards related to “Boarding House.” (PC Item 4; approved 6-2 on 12/16/09)

ACTION: Approve Text Amendment (TA-6-17-09) to various sections of the City of Lawrence Land Development Code to review standards related to "Boarding House" and adopt on first reading, Ordinance No. 8482, if appropriate.

02/09/10 - Anticipated date to receive Planning Commission recommendation on Lawrence Community Shelter SUP to relocate the shelter to 23rd Street.

02/16/10 - Anticipated date to receive Planning Commission recommendation on Lawrence Community Shelter SUP extension at 944 Kentucky.

TBD - Receive 2010 Lawrence Municipal Airport Sanitary Sewer Study Draft Report.

- Receive staff memo regarding possible annexation of Westar Energy Center and adjacent properties.
- Receive city auditor's comparison of accumulated infrastructure depreciation ratio for Lawrence and similar communities.
- ICS Training.
- Downtown Task Force consideration
- Recycling report with comments from SAB

COMMISSION ITEMS:

Vice Mayor Amyx said if the City Commission would discuss snow removal at a later date.

Mayor Chestnut said he suggested a review after a couple of weeks. He said they might want to have a discussion in February about what was learned and the effect of the new ordinance.

Vice Mayor Amyx said he attended a meeting where school closing and the effect on the neighborhoods were discussed. He said those schools were important to the fabric to the older areas of town. He said if the City Commission desired to place this issue on the agenda, he had no objection.

Commissioner Cromwell said he also had concerns about the property values and taxation as well as the integrity of the neighborhoods. He said it was appropriate and fell within their purview to issue a statement.

Mayor Chestnut suggested that citizens provide input and if drafting a letter, it would be placed on the agenda for possible approval. **(14)**

Moved by Amyx, seconded by Johnson, to adjourn at 8:53 p.m. Motion carried unanimously.

APPROVED:

____
Robert Chestnut, Mayor

ATTEST:

____
Jonathan M. Douglass, City Clerk

CITY COMMISSION MEETING OF JANUARY 12, 2010

1. RFP – HVAC Public Library – Due date February 10, 2010

2. Ordinance No. 8481-rezone (Z-10-17-09), 24 acres, UR to CC-400 - Mercato project NE corner of K-10 & W. 6th

3. Ordinance No. 8486, amending chapter 16, Article 12, Section 16-1201, Access Management Requirements for west 6th Street

4. Ordinance No. 8483, Text Amendment, TA-10-21-09 to correct inconsistencies regarding the uses identified as ‘Communications’ and ‘Communications Service Establishments.

5. Memorandum Agreement – KU, sharing of costs - transit services contract - Olsson 7

6. Subordination Agreement for Shala Stevenson, 1238 Prairie.

7. City Managers Report

8 Land Lease Agreement and Job Creation Credit Agreement - LWC Partners

9. Airport Improvement Projects - taxiway, site preparation, and parking lot) estimated at $135,000.

10. GOB Bids – Hutchinson Shockey, Erley & Co, NIC of $2,661,799.71 & TIR of %5.475905.

11. Ordinance 8485 – 1st & 2nd Read – GOB, Series 2010-A for $2,975,000.

12. Resolution 6873 - GOB, Series 2010-A for $2,975,000.

13. Lease Agreement – LDCBA.

14. Draft letter concerning School District.