

# East Lawrence Neighborhood Association

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October 20, 2012

City Commission  
City Hall  
6 E. 6<sup>th</sup> Street  
Lawrence, KS 66044

Dear Commissioners,

We would like to object to public financing for the proposed plans for 9th & New Hampshire.

Public financing for a chain hotel that will create temporary construction jobs and low-wage, part-time service jobs is not something that we feel the city should use public financing subsidies for.

There are already millions of public financing dollars that went into the Oread Hotel, so creating competition for that hotel, one that the public was also forced to supplement with tax dollars, we feel is a bizarre form of economic development that our city should NOT put out the welcome mat for.

Giving a business what essentially amounts to a 20 year pass on property taxes also fundamentally shifts the tax burden onto the average home owner during that 20 year span. And what will happen to that building 20 years from now? Will it be owned by the same people? Will the hotel have moved out? After 20 years will it need significant updates that the owners will also expect public financing for? When will it end?

Also picking & choosing hotels for public financing is the exact opposite of a "free market". If you truly believe in a "free market", then that means a level playing field for all businesses. Picking favorites by using public subsidies for one or two businesses is not fair to other businesses expected to pay their own way.

If a business plan cannot succeed without public financing, then perhaps another business plan needs to be developed. Using public monies as a way to guarantee profit for the developer is simply bad public policy!

Thank you for your time and consideration.

Sincerely,

Leslie Soden, President  
East Lawrence Neighborhood Association

**Date:** October 22, 2012

**To:** Lawrence City Commission

**From:** Laura Routh

**RE:** Comments regarding the Redevelopment Plan and Incentives being offered to the 900 NH South Project

In July of 2012, I submitted to City Hall an open records request<sup>1</sup> under the Kansas Open Records Act (KORA). I requested correspondence related to the 900 New Hampshire development proposal because I was disturbed by the City Commission's actions overruling the decisions of the HRC, and because I was curious about the process that resulted in the City moving forward to grant a multi-million dollar incentive to the developer.

I've spent the last 3 months going over the documents received, and I have noted a number of troubling patterns. I am not sure if City Commissioners are aware of the level of accommodation and assistance provided by City staff to the developer. However, I believe that this information deserves public release and discussion so that both the taxpayers and the City Commission are made aware of the City's role in the 9<sup>th</sup> and NH project.

As a test case, this record review can help us, collectively, better understand the dangers inherent in the City advocating for a project to the benefit of the developer over neighborhood concerns.

What follows are excerpts from select emails; my questions and comments follow each email, and are summarized at the end of this memo:

**April 6, 2012 email from Lauren Davis (Treanor Architects) to Lynn Zollner (HRC administrator for the City):** *Hi Lynne, not sure if you have wrapped up your staff report or not, yet but I thought of an argument that may help you out to incorporate and will use in our presentation on Monday. Thanks so much for working with us on this couldn't do it without you! If we get HRC approval we should all go out an celebrate!"*

Why is the developer providing the City with suggested language to strengthen the appeal? Did the City ultimately incorporate this argument? Were opponents of the project given similar assistance?

**April 3, 2012 email from Tony Schertler (Springstead Inc.) to Bill Fleming (attorney for the developer):** *"We are still waiting for the Hotel developer to provide us with the Hotel pro forma. Also, we are not certain of the mix of uses in the development when it is reduced in height since we are still waiting for a complete pro form for that alternative. However, the more critical issue is that*

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<sup>1</sup> The KORA request cost me, personally, \$500 in administrative and copying fees, plus I spent upwards of \$150 in legal fees, which were paid to my attorney to negotiate the request. The City has heretofore refused to release a number of critical documents, claiming exemptions available under KORA.

*based on the information you have provided us so far, the project doesn't appear to create a compelling case for avoiding reducing the height of the development, much less for need of any possible financial assistance. We don't think this is what you intended."*

*"Based on the way the information has been provided to us so far, the project appears to be healthier if reduced in size even without assistance."*

If the developer's submittal did not adequately justify the height proposed, or support the request for incentive, why did the City's consultant not simply reject the proposal? Why were the citizens not given access<sup>2</sup> to this preliminary report?

Is it appropriate for our consultant to have prompted changes to the project that benefited only the developer?

**That the developer was alerted to possible conflicts in their project finance calculations, and was told by the City's consultant, Springstead, that the developer's calculations did not support the request for an incentive is frankly damning. Essentially, Springstead sent the developer's numbers back to them, seemingly for padding and revision. It is further troubling that these draft spreadsheets were requested under KORA, but the City has thus far refused to release them.**

**April 23, 2012, email from Jonathan Douglass (City Clerk) to a select list of CADRE, Leadership Lawrence and Chamber of Commerce members:** *"It's your friendly local government bureaucrat checking in. Just wanted to make you aware that the request regarding 900 NH has changed significantly. Please see the agenda which was updated just minutes ago with the new request. It is agenda items D2 and D3. I won't be offering any testimony regarding this item, but I will be recording yours in the minutes!"*

**April 24, 2012 email from Paul Werner (architect to the developer) to Zack Bollick and Jonathan Douglass (CADRE, Leadership Lawrence and Chamber of Commerce members) et. al. al.:** *"Excellent work, LL crew. Don't worry- plenty of opportunity to chime in. IN fact, my project behind Johnny's goes to the CC next Tuesday...only zoning...but it may be worthwhile to drum up a little support since the same 4 people will be there against it (smiley face). I'll keep you posted"*

Why is the City Clerk directing this information to a select group of project boosters? Does the City Clerk, through his association with these groups, have a conflict of interest?

**June 12, 2012, email from Scott McCullough (City Planner) to Bill Fleming (attorney for the developer):** *"Bill, I would like to discuss with you the issue of demonstrating that all possible planning has been done for the 900 NH project."*

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<sup>2</sup> It should be noted that the public was never given access to all 3 Springstead reports, or to the draft calculations referenced in this email. When I requested these documents under KORA, my request was denied.

**June 12, 2012 email from Dianne Stoddard (Assistant City Manager) to Bill Fleming (attorney for the developer):** This email forwarded Springstead draft report calculations: *“Bill, do you agree with the methodology Britt used for the parking garage figure so that we can get that number to Springstead? Are you ok with the three Springstead reports so that we can direct them to remove the DRAFT stamp and resend?”*

Why are City staff members inviting the developer to review and edit drafts of documents that are to be presented to the public and the City Commission?

**June 15 email from Diane Stoddard (Assistant City Manager) to Bill Fleming (attorney for the developer):** *“Hi Bill. Note the agenda item on the TIF items. Also perhaps a way to balance out the TIF/TDD equation could be to reduce the expected interest return on the items but indicate in the development agreement that the higher interest rate would be reimbursed in the event that the revenues are available? Throwing that out as a possibility.”*

**June 20, 2012 email from Dianne Stoddard (Assistant City Manager) cc:d to Bill Fleming (attorney for the developer) and Dan Watkins:** *“Attached is my draft memo for the City Commission items for next week. I am also including the memo attachments here for review. Let me know if you see any concerns! This needs to be finalized for the agenda, tomorrow. I am going to send separately the draft Springstead report that Britt and I are still reviewing. Also, I am still working with Britt on a memo regarding the justification for the contribution on the parking garage. It is almost completed –we just need some info from Bill.”*

**June 25, 2012, email from Diane Stoddard to Bill Fleming, attorney for the developer:** *“Dave wanted to check with you all. Would you be available at 4 PM on Monday to discuss the presentation order, etc.? related to Tuesday’s agenda item on the HRC issues?”*

Why does City staff provide the developer with ideas to strengthen their financial case? Why are we giving the developer and the opportunity to edit presentations to be made to the City Commission?

### **Conclusion:**

The aforementioned emails clearly demonstrate that the 9<sup>th</sup> and NH developers had ready access to City staff and resources throughout project negotiations, even when the HRC and the neighborhood were asking questions and challenging facets of the project. In some cases, the developer and their attorney appear to have drafted and edited City staff memos and reports regarding the project prior to their public release. That the developer was granted editorial privilege before City documents were released to the general public or were seen by to the City Commission is also troubling.

It is not my intention here to criticize individual staff members. My point is that I believe these records show clearly that the process is broken. The imbalance of applied resources, clearly weighted to favor the developer, is disturbing, and begs a larger question: is the process as revealed standard practice at City Hall?

If the City wishes for the taxpayers to trust in the process by which projects are approved and incentives granted, the process needs to be above reproach. In the case of 900 NH, I do not think that the evidence available supports the notion that the City is operated as a neutral, objective party. In regard to the accommodation, assistance and incentives granted to the 9<sup>th</sup> and NH project, the actions of the City go beyond cooperation or symbiosis; what they represent is a violation of the public trust.

What we have witnessed through the course of this project is known to practitioners of public administration as “regulatory capture<sup>3</sup>”, wherein an agency comes to be dominated by the very entities or industries it is charged with regulating. At the City level, regulatory capture seems to happen when City officials (elected or professional) fail to act in the public's interest, but rather act in ways that benefit the entity or industry the city is supposed to be regulating.

I am concerned that the interests that the City is charged with protecting are being ignored in favor of the regulated industry's interests. Increasingly, capture seems to be playing a significant and persistent role in our City's economic development and growth.

The City went to great lengths to document its finding that “no feasible or prudent alternative” existed to this project. Yet that conclusion must be viewed with some skepticism in light of the findings herein. It is deeply troubling to consider that the processes revealed may represent business as usual at City Hall.

**I believe that in light of the discrepancies and questionable practices observed, the City Commission should reject the incentives requested.** Further, I think that the Commission ought to direct that the 900 NH project record and all related correspondence be reviewed by the City Auditor, to determine adherence to City code, City policy and state law.

In the future, for any new project where incentives are requested or offered, I would like to see the City establish, maintain, and open to the public and media the following:

- A directory of all parties to incentivized projects, and a clear description of the City's role in the project
- Public access to drafts and open release of correspondence between City staff and the developer relating to modifications made to projects, prior to incentives being granted.

City staff is working with public trust behind them. Thus, the City must be careful to maintain neutrality and balance when proctoring divisive development projects. Failure to do any less will inevitably cause public disenchantment with the actions of City hall.

I appreciate your consideration of my concerns. I respectfully request that this memo be included in the public record for the 10/23/12 City Commission meeting and public hearing. Thank you.

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<sup>3</sup> <http://www.investopedia.com/terms/r/regulatory-capture.asp#ixzz29Ue1IOF6>