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May 8, 2006

Jane M. Eldredge  
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Mayor Mike Amyx and  
Lawrence City Commissioners  
6 East 6<sup>th</sup> Street  
Lawrence, Kansas 66044

Re: The Mercato, City Commission May 9, 2006 Agenda Items, D. 3.a. - 3.f.  
(annexation and re-zonings)

Dear Mayor Amyx:

On behalf of the applicants for the annexation and re-zonings for the Mercato, we request that you approve the recommendations of the Lawrence - Douglas County Metropolitan Planning Commission for annexation of the 17-acre tract and re-zoning of the five tracts which together comprise the approximately 123-acre development at the northeast corner of West Sixth Street and K-10 ("Mercato"). The purpose of this letter is to request the adoption of the Planning Commission recommendations for annexation and re-zoning of Mercato. We have summarized the history of the Planning Commission recommendations for annexation and re-zonings and summarized the findings of fact contained in the Planning Staff Report and the Planning Commission minutes that support the re-zoning recommendations. Our additional comments are in parentheses in this section of our letter.

## **I. HISTORY OF MERCATO**

In the fall of 2004, the principals of Mercato, including Thomas Fritzel, Tim Fritzel, Duane Schwada, Steve Schwada and Russ Tuckel started working with City staff to develop their property. They met with the Planning Staff and Planning Commission. They revised their plans several times with the encouragement of the Planning Staff and the support of the Planning Commission. As a result of the collaboration with the staff and the Planning Commission, the Planning Commission has recommended that the City Commission:

- A. Annex the 17-acre parcel (that was inadvertently excluded from the unilateral annexation along Sixth Street that permitted debt financing of the City portion of the widening of Sixth Street); and
- B. Zone the entire 123 acres to designations that are consistent with adopted City land use plans and the City Code to allow a significant mixed use development at a gateway to the City of Lawrence.

## II. ANNEXATION

The recommended annexation is consistent with:

- A. The adopted City Policy on Annexation (AP-74);
- B. The state law on annexations (K.S.A. 12-520 *et seq.*); and
- C. Horizon 2020
  - 1. Annexation Policies, p.4-3,
  - 2. Growth Management Policy 1.3b., p.4-5, and
  - 3. Growth Management Policy 1.5, p.4-6.

We request that you approve **Item 3.a.**, the annexation of the 17 acre parcel as recommended by the Planning Commission based on the following:

“1. Inclusion of this property into the City limits will allow for orderly planning to occur for the surrounding property;

2. The Comprehensive Plan encourages annexation of all adjacent parcels held by the same owner; and

3. Annexation of this property is needed to insure its proper development in relation to the overall area.”

(Planning Commission Minutes, September 8, 2005, p. 10)

### III. RE-ZONINGS

On April 17, 2006 the Planning Commission recommended the re-zonings for Mercato that are shown on **Exhibit A**. We request that you approve those recommendations which are:

1. **Item 3.b.** 45.31 acres from A (Agriculture) to **PCD-2** (Planned Commercial Development) subject to
  - A. Approval and filing of a Final Plat at the Register of Deeds Office,
  - B. Submittal of a Preliminary Development Plan within 60 months,
  - C. Approval of a Preliminary Development Plan by the City Commission, and
  - D. CC400 restrictions per Horizon 2020
    1. Maximum total of 184,640 gross square feet of retail commercial
    2. No one store shall occupy more than 175,000 gross square feet
    3. The Preliminary Development Plan shall include a single store building that has at least 40,000 gross square feet
    4. The sum of the gross square footage for all stores that occupy space between 100,000 gross square feet and 175,000 gross square feet shall not exceed 70 percent of the gross commercial square footage for the corner of the intersection;
2. **Item 3.c.** 31.12 acres from A (Agriculture) to **RO-1A** (Residence-Office) subject to approval and filing of a Final Plat at the Register of Deeds Office;
3. **Item 3.d.** 25.82 acres from A (Agriculture) to **RS-2** (Single-family) subject to approval and filing of a Final Plat at the Register of Deeds Office;
4. **Item 3.e.** 7.63 acres from A (Agriculture) to **RM-D** (Duplex) subject to approval and filing of a Final Plat at the Register of Deeds Office and
5. **Item 3.f.** 12.77 acres from A (Agriculture) to **RM-2** (Multiple-family) subject to approval and filing of a Final Plat at the Register of Deeds Office.

These recommended re-zonings conform to and are consistent with:

1. The Northwest Plan that was approved by the Planning Commission and adopted by the City Commission on January 7, 1997 - **Exhibit B**;
2. The Annexation Service Plan (and the land use areas assumed in that plan) that were required to be approved by the Planning Commission, adopted by the City Commission and adopted by the County Commission for the City to unilaterally annex the territory along Sixth Street in 2001 - **Exhibit C**;
3. The Proposed Land Use Plan in T2025 that was approved by the Planning Commission and adopted by the City Commission in 2003 - **Exhibit D**; and
4. A Nodal Plan for the Intersection of West Sixth Street and Kansas Highway 10 (K-10) that was approved by the Planning Commission and adopted by the City Commission in 2003 - **Exhibit E**.

#### **IV. FINDINGS OF FACT**

Based on the findings of fact proposed in the Planning Staff Reports, the discussions of the Planning Commission and the requirements of City Code Section 20-1809, we request that the City Commission adopt the following findings of fact and authorize the appropriate ordinances to be drafted and placed on a future City Commission agenda:

##### **A. ZONING AND USE OF PROPERTY NEARBY**

The properties to the north are zoned A (Agriculture) and used as agricultural and rural residential. The properties to the west are zoned A (Agriculture) and used as agricultural and rural residential. They are west of the SLT. The properties to the east are zoned for multiple and single family uses and are in the process of developing. The properties to the south are zoned for commercial, office, multi-family, town homes and single-family. (All of these re-zonings were approved unanimously for Diamond Head/Northgate by the City Commission on May 4, 2004. Please see **Exhibit F**.)

##### **B. CHARACTER OF THE NEIGHBORHOOD**

Mercato is a significant part of the development of Northwest Lawrence that has been anticipated and planned for urbanization since the 1997 adoption of the Northwest Plan.

This area is just now developing following the widening of West Sixth Street, the extension of City water lines, and the planned expansion of the City wastewater system. The plans for Mercato mirror those for the development to the south and complement those to the east. The character of the neighborhood is a mixed use commercial center node surrounded by a variety of supporting residential uses.

**C. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED**

The property is no longer suited for the agricultural uses to which it has been restricted. All of it has been planned for urbanization since 1997. It is bounded by three arterial streets; the South Lawrence Trafficway (K-10) to the west, the recently widened Sixth Street (US-40) to the south and the proposed George Williams Way to the east.

**D. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED**

Mercato was rural and agricultural since before it was zoned A. It is not vacant. It is simply not yet urbanized.

**E. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES**

The change from permitted rural uses will not have any detrimental affect on nearby properties. The urbanization of Mercato will support the nearby developing properties to the south and east, while providing a single family residential buffer for the more rural properties to the north. It will have no detrimental affect on the SLT to the west or on the properties to the west of it. It will improve and enhance the tax base of the City.

**F. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE AS COMPARED TO ANY HARDSHIP OF ANY INDIVIDUAL LANDOWNER**

There is a significant gain to the public health, safety and welfare to have this project approved. It comprehensively plans for the northeast corner of this commercial node. Not a single adjacent landowner has complained or will be detrimentally affected by this project. (Mercato is proposed by an experienced and capable group of investors; all of whom currently have extensive other commercial, office, residential and industrial properties and proposals for development in the City of Lawrence. They plan, build, own, maintain and manage their

properties in the same community in which they live. They are well known and they are well respected.)

#### **G. CONFORMANCE WITH THE COMPREHENSIVE PLAN**

These re-zonings generally conform to the goals and policies of Horizon 2020. They specifically conform to the commercial policies and the transition of land uses policies. The land use portion of Horizon 2020 did not include this area, so it was necessary to develop and adopt the Northwest Plan which guides the particular land uses for the area contained in Section 28 and 29, north of Sixth Street from Folks Road to the SLT. It was adopted by the City to supplement the Western Development Plan and Horizon 2020, neither of which proposed any commercial on the north or south sides of this intersection. The recommended re-zonings conform to the Nodal Plan and the interpretation of that plan as evidenced by the unanimous City Commission adoption of the re-zonings for Diamond Head and Northgate on May 4, 2004.

#### **H. PROFESSIONAL STAFF RECOMMENDATION**

The professional planning staff recommended approval of each of the above requests, except that they recommended use of the lesser change table to reduce the densities in Item 3.c. (RO-1A) and Item 3.f. (RM-2). Both of these zoning designations permit the same residential density. The Planning Commission disagreed with the staff recommendation. (See discussion of Item 12B on p. 18 of the Planning Commission Minutes) Several commissioners expressed support for the higher density. Both the RO-1A and the RM-2 were recommended by the Planning Commission for approval by the City Commission.

### **V. SUMMARY**

- A. We request that you approve the recommended annexation (**Item 3.a**) as recommended by the Planning Commission and authorize the drafting of an ordinance for placement on a future agenda.
- B. We requested that you adopt the proposed findings of fact for **each** of the individual re-zoning requests.
- C. We request that you approve each of the recommended re-zonings ( **Items 3.b. - 3.f.** based on the adopted findings of fact for each re-zoning designation and subject to the conditions recommended by the Planning Commission.

*Mayor Mike Amyx*

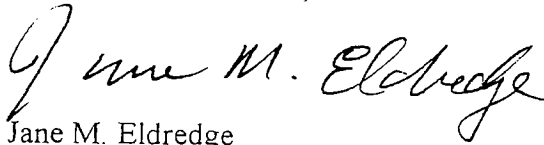
May 8, 2006

Page 7

Thank you for your consideration.

Sincerely,

BARBER EMERSON, L.C.

A handwritten signature in cursive script, reading "Jane M. Eldredge". The signature is written in dark ink and is positioned above the printed name.

Jane M. Eldredge