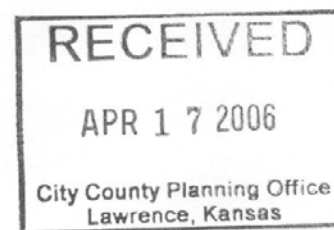


19 Book



April 17, 2006

Terry Riordan, MD, Chair  
Lawrence-Douglas County  
Metropolitan Planning Commission  
City Hall  
P.O. Box 708  
Lawrence, Kansas 66044

Re: *April 19, 2006 Agenda;  
Items No. 19 and 20*

Dear Dr. Riordan:

On behalf of the Lawrence Chamber of Commerce, I am writing to express concerns regarding a couple of the specific revisions that have been proposed to the Development Code, November 11, 2005 Edition (the "**Development Code**") that appear on your April 19, 2006 agenda, under item number 19, and to object to the adoption of the proposed standards for retail impact studies that appears on the same agenda, under item number 20.

**Agenda Item No. 19C;**  
**Objection to Use Table Revision;**  
**Development Code Section 20-403**

This revision to the Development Code proposes to revise the use table in Section 20-403 of the Development Code, as follows: "*Change P\* to S\* for Retail Establishment, Large in the CS District to require a Special Use Permit.*" It is suggested that this proposed revision is necessary to "*not allow big box by-right in CS, but will allow for the review of a specific proposal.*" The Lawrence Chamber of Commerce recommends no change to this Section of the Development Code.

First, every new commercial development is already required to undergo “the review of a specific proposal.” To suggest otherwise is to render the remaining sixteen Sections of the Development Code, consisting of more than 300 pages of text, to be superfluous. The stated purpose of the proposed revision is adequately addressed by the remaining Sections of the Development Code, as adopted. Absent a legitimate issue, there is no reason for the Planning Commission to even attempt to fashion a remedy for something that is not broken.

Second, without further study or analysis, there is at least one existing retail establishment, if not more, currently located in a CS zoning district that meets the criteria of a large retail establishment. If the proposed revision is adopted, all such existing retail uses will be rendered nonconforming under the Development Code. The negative implications of this nonconforming status are substantial. It may become virtually impossible for such an existing property to be refinanced, redeveloped or expanded. This nonconforming status will also have a negative affect on the market value, as well as the overall marketability, of such an existing property. Finally, the owner of such a property may be required by an existing lender to purchase additional insurance coverage to insure against the possibility of a loss due to governmental regulation, and the cost of this additional insurance coverage must be either absorbed and/or passed through to the consumers in our community.

Third, the proposed change in the use table for CS zoned property to require a special use permit for large retail establishment will frustrate several provisions of Horizon 2020. For example:

1. Chapter 6 of Horizon 2020 describes the commercial corridor along South Iowa Street as a regional commercial center, serving shopping and entertainment needs within our community. A substantial portion of this South Iowa regional commercial center is zoned CS. Requiring a special use permit, which may be limited to a specific period of time (see Section 20-1306(i) of the Development Code), virtually assures that no future large retail establishment can occur within the South Iowa regional commercial center, or any other CS zoned areas
2. Policy 1.4 of the Horizon 2020 commercial land use goals and policies states that existing commercial areas should be redeveloped, and that we should even consider financial and development incentives to encourage re-use (renovation or redevelopment) of commercial properties. Requiring a special use permit for large retail establishment uses will actually discourage, rather than encourage, such re-use and redevelopment of existing commercial areas.
3. Policy 3.3 of the Horizon 2020 transportation goals and policies states that our community should encourage, not discourage, consolidation of driveways along principal arterial streets and commercial corridors. Requiring a special use permit for large retail establishment uses will actually discourage, rather than encourage, such consolidation of existing commercial areas.

It is difficult, if not impossible, to imagine any scenario where a retail establishment would make a multi-million dollar investment in our community, or could even obtain financing approval for such an investment, if that investment was jeopardized by a special use permit requirement. There has been no finding or other determination that large retail development within CS zoned districts warrants the artificial constraint of a special use permit. In fact, all evidence and Horizon 2020 are to the contrary. Horizon 2020 encourages redevelopment, infill opportunities, and consolidation along commercial corridors. Requiring a special use permit frustrates these objectives, and we ask that the Planning Commission not adopt this revision.

**Agenda Item No. 19G;**  
**Objection to Market Impact Analysis Revision;**  
**Development Code Section 20-1107**

This revision to the Development Code proposes several substantive text amendments to Section 20-1107 of the Development Code, regarding the criteria for a retail market impact analysis. Unlike the revision to Section 20-403 discussed above, no reasoning or explanation of the need for these changes is provided, except to suggest that the changes were drafted by an Ad Hoc sub-committee. In the alternative, a staff text amendment has been proposed to delete subsections (c) and (d) of Section 20-1107 in their entirety, with the added staff comment that this change provides authority to require a market impact analysis, but leaves the discussion of criteria to a future date and time. This alternative staff text amendment leaves a gaping hole in the Development Code, and suffice it to say that no revision would be preferable to this arrangement. The remainder of my remarks are directed towards the Ad Hoc sub-committee revisions.

In theory, Section 20-1107 of the Development Code was adopted to codify the provisions of the Comprehensive Plan (i.e., Policy 3.11 of the Horizon 2020 commercial land use goals and policies). However, as adopted Section 20-1107 grossly distorts the concept of a market impact analysis embodied within the Comprehensive Plan, and this distortion is further exaggerated by the proposed revisions. Policy 3.11 of the Horizon 2020 commercial land use goals and policies provides, as follows: *"Proposals to create any shopping district that, when considering the entire node, will result in greater than 150,000 gross square feet of commercial building space shall include an independent market analysis. Initial development proposals of 50,000 gross square feet or less on any single corner are exempt from this market analysis requirement, but will be limited to one exemption per corner of the intersection."* (Emphasis added).

Contrary to Horizon 2020, Section 20-1107 of the Development Code, as drafted, requires a market impact analysis for any application for site plan or zoning that could result in 50,000 square feet or more of added retail space in the City. Horizon 2020 clearly states that a market impact analysis is required for shopping districts that create greater than 150,000 gross square feet of retail space, and that the first 50,000 square feet are exempt from this requirement.

The proposed revisions before the Planning Commission (i) extends the requirement for a market impact analysis to development plan applications, (ii) grants broad authority to the Planning Commission, the City Commission, and the planning staff to require additional information, and (iii) grants exclusive authority to the Planning Director to select the consultant. These revisions are contrary to the language of Policy 3.11 of the Horizon 2020 commercial land use goals and policies.

If the City maintains a list of approved independent consultants, what possible difference could it make to the City if the applicant, who is paying for the study, gets to pick the consultant? If the independent consultants are approved by the City in the first place, logic suggests that the City should prefer to distance itself from the actual selection process for liability reasons, not to mention the fact that Policy 3.11 of the Horizon 2020 commercial land use goals and policies states that “[t]he independent consultant that performs the market study shall be chosen by the city and agreed upon by the entity submitting the proposal for the shopping center.” (Emphasis added). The applicant must bear the cost of the market study and, therefore, should be allowed to select the certified consultant on a cost-competitive basis.

Last July, in a letter to then Mayor Dennis “Boog” Highberger, the Lawrence Chamber of Commerce urged that this Section of the Development Code be deleted in its entirety for several reasons. By including this provision in the Development Code, the City is making a determination of what it thinks the market will bear, contrary to a free-market society. In addition, preventing development if there is a vacancy rate greater than 8% prevents Owners from developing property in anticipation of falling vacancy rates. Finally, Horizon 2020 is a planning guide, and not every section of Horizon 2020 lends itself to being codified within the Development Code.

One of the oft stated principles in support of the adoption of the new Development Code, succinctly stated, was to simplify and instill a sense of certainty in the development process. With all due respect to the Planning Commission and the planning staff, establishing additional layers of governmental regulation and bureaucracy hardly seems an appropriate response to this stated principal. The requirement for a market impact analysis is contrary to this very principle, and the proposed revisions to Section 20-1107 further destroy any ideals of simplification and/or



certainty into the development process. We ask that the Planning Commission not adopt these proposed revisions and, further, that the Planning Commission delete Section 20-1107 of the Development Code in its entirety.

**Agenda Item No. 20;**  
**Objection to Standards for Retail Impact Studies**

Consistent with our request that the Planning Commission delete Section 20-1107 of the Development Code in its entirety, the Lawrence Chamber of Commerce opposes the adoption of the proposed standards for retail impact studies as identified in the Ad Hoc committee memo dated February 15, 2006.

Policy 3.11 of the Horizon 2020 commercial land use goals and policies expressly provides in subsection B, as follows: *"The project shall not be approved if the market study indicates the commercial project or any proposed phase cannot be absorbed into the community within three years from the date of its estimated completion, or that it would result in a community-wide retail vacancy rate of greater than eight percent."* (Emphasis added). The proposed revisions to Section 20-1107 of the Development Code, together with the proposed standards for retail impact studies, ignore the plain language of Horizon 2020 which refers to a community-wide vacancy rate, and extends the concept of a market impact analysis to a "disaggregated set of retail sectors" and a "geographical disaggregation for each sector." Horizon 2020 does not state, or even suggest, that individual retail sectors or geographic areas of the community are to be included in a market impact analysis. If a market impact analysis is required at all, it should be limited to the "community-wide vacancy rate" expressly referred to in Horizon 2020.

Retail activities in Lawrence generate a significant dollar amount of sales tax revenue and ad valorem property tax revenue for the City of Lawrence, Douglas County, and USD 497. A recent memo, dated April 4, 2006, from Casey Libst, City Budget Manager, addressed to David Corliss, Interim City Manager, discusses a comparison of ad valorem property tax rates among the top ten largest cities in Kansas. The memo goes on to compare data provided by the League of Kansas Municipalities (the "League"). A review of this data reveals that Lawrence is below the mean in all categories reported by the League. This data also shows that Lawrence has the highest percentage of property assessed at the residential property tax assessment rate, and the lowest percentage of property assessed at a higher, non-residential rate.

In January, 2006, Development Strategies, Inc. ("DSI"), reported its findings of the recently completed inventory of retail establishments in the City of Lawrence. The findings

**LAWRENCE•KS**  
CHAMBER of COMMERCE

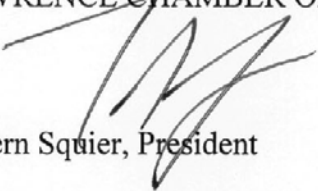
reported by DSI show that Lawrence ranks last among peer review communities in the ratio of retail sales to effective buying income. Furthermore, Lawrence ranked second to last among peer review communities in retail sales pull factors.

The property tax data provided by the League, and the retail findings reported by DSI, suggest that Lawrence is under-retailed as a community, and has considerable potential to support additional retail expansion. The adoption of the proposed standards for retail impact studies as identified in the Ad Hoc committee memo dated February 15, 2006, is contrary to the data and findings provided by the League and DSI. As a community, our development policies, including the Development Code, should be directed towards attempting to encourage additional retail development, rather than creating barriers to such expansion.

We look forward to discussing these issues with you and answering any questions that you might have. If I may be of any assistance, or if you require any additional information, please call me.

Very truly yours,

LAWRENCE CHAMBER OF COMMERCE



Lavern Squier, President

cc: Tom Jennings  
Grant Eichhorn  
Dennis Lawson  
Holly Krebs  
John Haase  
Marguerite Ermeling  
Susan Erickson  
David Burress  
Lisa Harris

Memorandum  
City of Lawrence  
Planning Department

**TO:** Lawrence-Douglas County Planning Commission  
**FROM:** Planning Staff  
**CC:** Sheila Stogsdill  
**Date:** April 17, 2006  
**RE:** April 19, 2006 Agenda Item #19G: TA-03-02G-06; regarding recommended changes to proposed Retail Market Impact Analysis Section.

**Overview:**

This text amendment (TA-03-02G-06) is for the consideration of alternative language that was developed by an ad hoc committee to the Planning Commission. Staff recommends adding text under 20-1107 (e) that clarifies the intent of the Market Impact Analysis on project approval regarding the regulation of specific types of businesses. Specifically, staff recommends changing the language of the last paragraph to read:

"Additionally, the market impact analysis is not intended to regulate the specific types of businesses proposed, but coupled with information maintained by the Lawrence Douglas County Planning office, should be used to identify underserved retail sectors and provide compelling rationale for attracting retail businesses to satisfy this market demand."

While it is not specifically stated in the code section, it is implied in the language that this gives the authority to the Planning Commission to regulate the types of business that are allowed in a development. The alternate language being proposed is designed to alleviate this confusion.

**Recommendation:**

If the Commission is comfortable in moving forward with adoption of the Ad Hoc Committee's language, staff recommends consideration of the alternate language above. A recommendation of approval could be considered for the proposed text amendments and forwarding them to the City Commission with a recommendation for approval.

If the Commission does not feel comfortable with the details of the proposed text amendment and is not in favor of the current text developed by the City's consultant, the Commission could recommend the alternate text as prepared by Staff be approved and forwarded to the City Commission with a recommendation for approval as an interim measure. In this case, staff would still recommend that the above language be added to the code.

## League of Women Voters of Lawrence-Douglas County

P.O. Box 1072, Lawrence, Kansas 66044  
April 16, 2006

Dr. Terry Riordan, Chairman  
Members  
Lawrence-Douglas County Planning Commission  
City Hall  
Lawrence, Kansas 66044

RE: ITEM NO. 19: ADOPTION OF REVISIONS TO DEVELOPMENT CODE, NOVEMBER 11, 2005 EDITION.

Dear Chairman Riordan and Planning Commissioners:

Attached please see our requested revisions to the modifications recommended in the Staff Report. The item numbers, pages, and sections of the requested changes are listed below and explained in more detail in the attachment.

**ITEM NO. 19A, Text amendments to various sections of Chapter 20; TA-03-02A-06:**

Page 2-2, Section 20-202(a)(1): Strikeout the word *predominantly*.

**ITEM NO. 19E, Text amendments to Article 7, Planned Developments; TA-03-02E-06:**

Page 7-2, Section 20-701(f)(1)(ii): Add language from Ordinance 3500, Article 10, Planned Unit Development, Section 20-1004.1 RESTRICTION OF USES AND BUILDING TYPES.

Page 7-4, Section 20-701(j)(1): Add language: "building type".

**ITEM NO. 19H: Text amendments to 20-1304 regarding the criteria for Major Changes to Final Development Plans, TA-03-02H-06:**

Page 13-24, Section 20-1304(e)(2)(iv)h.: Change and add language: "*changes a ~~non~~-residential Building type or non-residential structure by more than 10% in size.*"

**TERMINOLOGY, ADDITIONAL DEFINITION: CONNECTOR STREET:** We ask that you also include a definition for "CONNECTOR STREET" in the Terminology section.

We hope that you will look upon these requested changes favorably.

Sincerely yours,

Alan Black, Chairman  
Land Use Committee

Caleb Morse  
LWV L-DC Board

Please see ATTACHMENT below.



April 14, 2006

Ms. Sheila Stogsdill, Acting Planning Director  
City of Lawrence  
6 East 6<sup>th</sup> Street  
Lawrence, Kansas 66044

Dear Sheila:

I am writing today to express my concern about the "new retailer criteria" proposal to be deliberated on April 19, 2006 by the Lawrence Douglas County Metropolitan Planning Commission.

As Broker of an established commercial real estate company (founded and based in Lawrence the past eighteen years), whose brokerage has leased up the majority of inline retail centers in this community, I feel an obligation to weigh in on any consideration that will directly affect the fiscal well being of our retail economy.

Contrary to the perception of many, it is actually a great challenge to convince new retail businesses to come to Lawrence. Most are considering a dozen or so towns to open a new location before finally narrowing down, and deciding on Lawrence. The process takes months, and in some cases, years from the initial contact to opening day.

It wasn't too long ago when a governing body in Carmel, California decided that an ice cream parlor wasn't a desirable business to have in their seaside town. Fortunately, a high profile movie star ran for political office and won, putting an end to the micromanaging effort his predecessors had attempted to impose. Today, Carmel, now boasts many thriving retailers who rely on both local and tourist trade. If one were to examine their town demographics (population, tax base, pull factor, etc.) the conclusion would be that a City of that size could never support as many businesses as it enjoys presently.

Another case could be made in Seattle, Washington, where a retail study clearly would determine the City has too many coffee shops. Yet, somehow through the strong efforts of merchandizing, customer service and determination, coffee shops flourish in high per capita numbers.

On a local level, some have said that we have too many Pizza Restaurants. Upon closer examination, however, most of the restaurants are finding a niche to serve. Some are thin crust, others thick; some deliver, others don't. There is even one that is take and bake at home, and yet others that are dine-in only.

A governing marketplace criterion could never allow for all these variations and fortes of services. Sub categories would be required ad nauseam, going far beyond a generalized tax classification.

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City County Planning Office  
Lawrence, Kansas

When the product, service or merchandizing fails, so does the business, in favor of a superior operation. This is truly the finest, time-honored way a free market system works. It has been successful since Lawrence was first chartered over 150 years ago.

An individual or committee representing the City would be required to play Solomon and decide whether a new business should be permitted to enter or expand in Lawrence. This approach is intrinsically unfair to local merchants who won't be allowed to open a second location because a competitor is already selling the same product.

The bureaucracy required to implement such a system of restraint and confinement would be more easily effective if the City put a "closed for business" sign up at every entry into town.

Retail adaptation concerns are another problem that would surely arise. It is most common to see retailers go through evolutionary changes with their merchandising and marketing. What is being sold today may not be the same as two years from now. As an example, retail Pager sales evolved into Cellular phones, which may eventually evolve into even newer technologies.

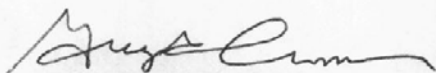
Businesses will have to go through an approval process before they are permitted to adapt and change their variety of merchandize. If another business beat them to the new technology, and the City has determined that it can only support one type of business in that category, then that business will either strive to survive on their old technology, or close their doors for good.

The idea of micro managing retail is a very slippery slope, untested, and threatening to the future economic vitality of our City. The unintended consequences would be disastrous for many years into the future.

I hope all parties participating in this "new retailer criteria" proposal will govern wisely and ultimately abandon the idea. The impact, bureaucracy and heartbreak will be far-reaching and difficult to repair if permitted to move forward. I am of the professional opinion that government should work to support competition and foster a positive attitude towards the American Dream of business ownership.

I appreciate your attention in this matter and request this letter be forwarded to all departments and individuals involved in this undertaking.

Very Truly Yours,



Greg A. Cromer, Broker and President  
American Real Estate & Investments, Inc.