

August 28, 2006

To: Sheila Stogsdill
Acting Planning Director

From: Rich Caplan, RICHARD CAPLAN & ASSOCIATES

Re: 6th & Wakarusa Drive Retail Market Study Update

The purpose of this memo is to respond to and further clarify outstanding comments made in the city staff memorandum of August 23, 2006 regarding the revised Retail Market Study for 6th and Wakarusa Drive Commercial Development.

It should be noted that a retail market study for the addition of 154,100 square feet prepared for this proposed commercial development at the northwest intersection of 6th and Wakarusa prepared in 2003 was submitted and accepted by the City of Lawrence in 2003. This updated retail market study analyzes a reduced number of square feet (128,000) or approximately eighty-three percent of the amount of commercial development previously planned and evaluated at this site.

Responses provided to the staff on comments # 4, 5, 6 and 11 have been satisfactorily addressed according to the city staff. The staff acknowledged that their memo of August 23, 2006 overlooked Table H in the retail market study which addressed comment # 11 regarding the proposed impact on the over-all city wide vacancy rate. Therefore, this memo responds to those remaining comments (# 1, 2, 3, 7, 8, 9 and 10) as discussed with the city staff at the meeting at city hall on August 25, 2006.

1. "Discussion and analysis on the mix of proposed uses within the development and that impact on the rest of the Lawrence market and specifically the Downtown district."

As noted in the 2006 retail market study, 82% of the development is proposed to be used for discount retail. The remaining 21,500 square feet of the commercial development is expected to be neighborhood retail uses. However, definitive decisions about the specific tenants have yet to be made.

City staff requested that alternative scenarios be evaluated. Because of the infinite number of possible scenarios, I asked "how many" scenarios the staff wanted. Staff would not narrow the scope of their request beyond "more than one and less than 20." Therefore, I have prepared three alternative scenarios which are being offered in response to this request.

The three alternative scenarios for the 18% percent balance of commercial development (representing 21,500 square feet) consider a combination of five or more of the following seven uses/anticipated tenants at the commercial development:

1. Sit down restaurant
2. Coffee shop
3. Cell phone store
4. Hair salon
5. Florist

- 6. Dry cleaning store
- 7. Nail salon

These uses are intended to serve the neighborhoods in northwest Lawrence. The City's zoning code states that neighborhood retail "predominantly provides for the sale of goods and services at the neighborhood level. These are expected to include food and beverage, personal convenience, personal improvement, financial, insurance and real estate."

It should be noted that each of these possible commercial uses has multiple locations in and around Lawrence, including Downtown Lawrence. A review of the number of like business establishments in Lawrence and Downtown in these categories and the number and percent located in Downtown Lawrence is as follows:

Possible 6 th & Wakarusa Commercial Use	Total Lawrence Like-Establishments	Total Downtown Lawrence Like-Establishments	Downtown Percent of Total Lawrence Establishments
Restaurant	182	30	16% of total
Coffee Shop	19	10	56% of total
Cell phone	12	1	9% of total
Hair Salon	58	17	27% of total
Florist	7	1	14% of total
Dry Cleaners	13	1	8% of total
Nail Salon	15	3	0% of total
Total Establishments	306	63	20% of total

Source: Yellow Pages 2005 - 2006.

As the above table reveals, six of the seven likely uses have more than three-quarters of their Lawrence locations outside of downtown. Only the coffee shop category has a majority of similar Lawrence establishments in Downtown.

In order to analyze the proposed uses within the development and their impact on the rest of the Lawrence market, and specifically on the Downtown district, three scenarios comprising the 21,500 square feet of retail space have been prepared. Three use scenarios are presented in the following table.

Scenario A		Scenario B		Scenario C	
Possible Use	Est. Square Feet	Possible Use	Est. Square Feet	Possible Use	Est. Square Feet
Restaurant	7,300	Restaurant	7,300	Restaurant	7,300
Restaurant #2	5,000	Restaurant #2	5,000	Restaurant #2	5,000
Coffee Shop	9,200	Hair Salon	9,200	Cell phone	9,200
Hair Salon		Florist		Florist	
Cell phone		Dry Cleaners		Coffee Shop	
Dry Cleaners		Nail Salon		Nail Salon	
Total Sq. Ft.	21,500	Total Sq. Ft.	21,500	Total Sq. Ft.	21,500

Overall, these possible neighborhood retail uses are not expected to impact the rest of the Lawrence market and/or Downtown Lawrence and do not compete with Downtown for the following reasons:

- a. Neighborhood Uses - The uses are planned to be targeted to serve the northwest Lawrence neighborhood.
- b. Growing Sub-Market Area - The uses are located more than three miles from Downtown in the area of the city experiencing a high level of new residential development activity warranting an expansion of neighborhood retail uses.
- c. Absence of or Limited Downtown Competition – Some of the possible uses offer retail choices that currently have a limited presence in Downtown: the dry cleaners. These neighborhood uses will locate in parts of the community other than Downtown precisely because they prefer locations more easily served by automobiles in predominantly more residential settings.
- d. Coffee Shop - The possible coffee shop at 6th & Wakarusa would serve two market segments which would not impact Downtown. One market segment is persons commuting west to Topeka for employment purposes who will not drive through Downtown Lawrence on their way to work. The other market segment are persons shopping at the discount retail store who would not be attracted to 6th & Wakarusa specifically for the coffee shop, but have chosen to shop at discount retail at that particular location not offered in Downtown.

Finally, there are an estimated 306 Lawrence retail establishments offering similar services to the possible retail uses at 6th & Wakarusa. The supply of these types of businesses will grow by a maximum of two percent in Lawrence. Furthermore, these 21,500 square feet represents less than one-half of one percent of the city's total retail square footage.

2. “The applicant should adjust monetary figures for inflation, such as those listed in Table A.”

It should be noted that neither corporate earnings reports, nor the International Council of Shopping Centers or local, state or federal tax collections report, express nor compare earnings, sales activity or tax receipts adjusted for inflation. Consequently, such comparisons are extraneous. It is not a common retail industry or government accounting practice to adjust retail sales for inflation.

On occasion, public companies may compare their annual change in sales to inflation over the prior year to better inform the public on performance. When stated, such comparisons are rarely, if ever, performed or reported over multiple years.

Nevertheless, after adjusting for inflation, the net increases in Lawrence retail sales have exceeded inflation (U.S. Bureau of Labor Statistics CPI) when viewed over the past 5, 10 or 15 year periods. (See Table A-1.)

Table A- 1: Lawrence Retail Sales Vs. and Adjusted for Inflation

	Retail Sales Tax Collections	U.S. CPI All Items (1982-84=100)	Retail Sales (Adjusted)	Lawrence Sales vs. Inflation Compared to U.S. and Midwest CPI
1990	\$6,087,000	129.0	N / A	N / A
1995	\$8,086,998	149.8	\$10,721,632	
2000	\$10,348,072	168.9	\$11,732,508	
2005	\$11,841,826	191.0	\$11,841,826	
1990 – 2005	94.5%	48.1%	---	Est. +46%
1990 – 2000	70.0%	30.9%	---	Est. +39%
1995 – 2005	40.5%	27.5%	---	+10.4%
2000 – 2005	14.4%	13.1%	---	+0.9%

Source: U.S. Department of Labor Bureau of Labor Statistics; City of Lawrence.

3. All time series intervals should be kept the same (i.e., 1996, 1998, 2000, 2002, 2004, etc). This would provide for the calculation of annual change percentages.

Table A in the August 3, 2006 Market Study reflected changes over both five and ten year period periods. Table A-1 (in this memorandum) adds a calculation for the change over a 15 year period. Actual population figures (from the U.S. Census Bureau) and actual retail square footage figures (from the City) for each year are not available, can only be estimated and not meaningful in comparing annual changes. Furthermore, since they cannot be validated, they are only estimates and subject to debate. Multiple year trends are far more valid to assess a community or market condition.

7. “Provide a citation for per capita income figures and adjust them for inflation before calculating the percentages.”

Whether adjusted for inflation or not, it is particularly relevant to note that Douglas County’s growth in per capita income exceeded the income growth rate of the State of Kansas or the U.S. Per capita income has been adjusted based on the U.S. Consumer Price Index. Inflation (the CPI Index) increased 8.1 percent from 2000 through 2004, or from CPI Index of 250.8 in 2000 to 275.1 in 2004 as reported by the U.S. Department of Labor Bureau of Labor Statistics.

After adjusting for inflation, per capita income in Douglas County increased at more than twice the rate of growth of the State of Kansas and more than five times the rate of growth of the U.S. per capita income.

Table C (Revised) - Per Capita Income 2000 – 2004 Current and Inflation Adjusted

Year	Douglas County	State of Kansas	U.S.
2000	\$24,200	\$27,694	\$29,845
2004 (in Current \$)	\$28,291	\$31,078	\$33,050
2000 – 2004 Change (in Current \$)	16.9%	12.2%	10.7%
2004 (Adjusted for Inflation)	\$25,886	\$28,436	\$30,246
2000 – 2004 Change (Inflation adjusted)	7.0%	2.7%	1.3%

Source: U.S Department of Commerce; U.S. Department of Labor Bureau of Labor Statistics.

8. “The applicant did not correctly adjust square footage figures to include every district with retail businesses in the 66049 zip code. This creates a comparison of dissimilar items between population and retail square footage in the West Lawrence area.”

ZIP Code population figures were inserted in the market study merely to show growth patterns in the city. ZIP code data is not a valid type of measurement in Lawrence because ZIP code data does not correspond to Lawrence’s sub-market area boundaries. In fact, some sub-market areas are in two ZIP codes (such as Iowa Street between 6th and 15th Streets). Furthermore, there are multiple market areas within each ZIP Code making such comparisons inaccurate and of no value. Therefore, this requested data would misrepresent the sub-market areas and is not relevant to this market study.

9. “The market study does not address the uses of the separate buildings.”

This comment has been addressed in the additional response to Comment #1.

10. “Calculations related to Average Annual Retail Demand, in what is now Table H, are not explained. The applicant did add some commentary regarding the average pull factor on p. 16, but did not explain why additional square footage is necessary to reach an average pull factor and how that is independent of future population growth with respect to Table H.”

Population growth does not influence a pull factor. Increased selection of goods increases a pull factor.

There are cities with higher population growth rates than Lawrence that have a lower pull factor (De Soto, Eudora) and cities with a lower population growth rate than Lawrence that have a higher pull factor (Manhattan, Topeka). It is fair to assume that new Lawrence residents' shopping patterns will be the same as existing residents' shopping patterns. A pull factor is influenced/increased by an increase in goods selection. If there is an adequate selection of goods, a pull factor will be positive, regardless of population trends.

As noted on page 13 in the City commissioned Development Strategies, Inc. Retail Report in 2006

“The chief reason (why Lawrence is losing buying power) to other locations is probably that people in Lawrence are opting to make a great many of their purchases in other cities and counties. This influence is real and important to bear in mind as future retail development takes place in Lawrence.” The independent study goes on to report that “the city’s share of retail sales generated in the entire county dropped from 96.0% in 1994 to 87.0% in 2004.”

The proposed commercial development at 6th and Wakarusa is a step in reversing this downward trend.

Kirk McClure
707 Tennessee Street
Lawrence, Kansas 66044
mcclure@ku.edu

August 21, 2006

Lawrence – Douglas County Commission
The Lawrence / Douglas County Planning Office
First Floor City Hall
6 East 6th Street
Lawrence, Kansas 66044.

**Re: Proposed Development of Wal-Mart at 6th Street and Wakarusa Drive
Market Impact Study by Richard Caplan**

Planning Commissioners:

I have had the opportunity to review the various market impact studies on the Wal-Mart development prepared by Richard Caplan. The studies are flawed, leading to an incorrect conclusion.

Using the data from the Caplan studies and correcting the flaws, it is clear that the retail market of Lawrence cannot absorb the proposed Wal-Mart store and that the development of this store will cause other retail space already located in the market to fail.

1. *Growth in the supply of retail space has far outpaced the growth in demand for retail space.*

Caplan makes use of sales tax receipts from 1990 through 2005 to proxy demand for retail space. This is a good approach. However, the Caplan report uses the current dollar growth to project growth in demand. This is the same, incorrect, procedure he used in 2003 with his first market analysis.

As I pointed out in 2003, these numbers must be adjusted for inflation in order to estimate growth in retail spending. The applicant admitted to this flaw and withdrew the market analysis. The revised market analysis claims to correct sales tax data for inflation, but this correction is not shown in the data.

When corrected for inflation:

- a. From 1990 to 2005, growth in retail spending is only 1.6% per year suggesting that the City should have kept retail space down to that same rate of growth. However, since 1990, the City's retail stock grew by 4.1% per year and by 4.9% per year from 1996 to 2005, far outpacing growth in demand leading to the widespread vacancy that we have today.
- b. From 2000 to 2005, retail spending actually fell, indicating that there is no new demand for additional retail space.

2. The rate of population growth has declined.

The Caplan analysis makes extensive use of the Development Strategies Inc. (DSI) study. The DSI study makes use of population growth rates that are higher than Lawrence experienced even when the City was growing at its peak rate of 2.2% per year in the 1980s. DSI offers no justification for this assumption that population growth will be higher in the next decade than it ever has been in the past.

Caplan makes no mention of the Census Bureau's recent report suggesting that the City is now growing at about 0.6 percent per year. This Census figure is corroborated by the declining school enrollment, the high rental vacancy rates, and the declining inflation adjusted retail sales tax receipts.

3. Income growth has slowed corroborating the slow growth in retail spending.

Caplan uses U.S. Department of Commerce data to claim that income grew 14.4% from 2000 to 2004 suggesting that this indicates growing retail demand. What the report fails to state is that this only a 4.4 percent increase after inflation.

The Kansas Department of Labor Employment Survey provides local, thus better, data on income growth. The employment survey finds that wages grew by only 3.4% from 2000 to 2005 after inflation. This wage growth translates into about 0.7% growth in income per year.

Even over a longer period of 1996 to 2005, wages grew by only 1.1% per year. If multiplied by 0.6% growth in population per year, the growth in retail demand is only 1.7% per year. This closely corresponds to the 1.6% per year in real growth in retail spending found in the sales tax data. With either approach retail demand is growing by much less than the growth in retail space. This translates into a need for only about 110,000 square feet per year, if the City was not already overbuilt. This indicates that the City cannot absorb retail space at the rapid pace at which it is now being planned and built.

4. *The vacancy rate in the retail market is higher than Caplan and DSI assert.*

Caplan makes use of the DSI estimated retail vacancy rate of 3.9%. On a total stock of 6,479,000 square feet, this vacancy rate suggests about 250,000 square feet of vacant space. Simple addition of known, long-term vacant buildings adds to more than 250,000 square feet. For example, the Tanger Mall is 135,000 square feet alone. This indicates that the DSI study did not properly count vacant space and cannot be relied upon for an analysis of the vacancy conditions of the City.

Several conclusions can be made after correcting the flaws found in the Caplan study.

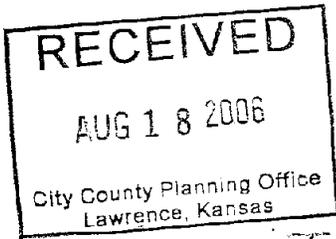
1. The City has permitted developers to build more retail space than the City can absorb. This is hurting existing retail centers. If a second Wal-Mart is built at 6th Street and Wakarusa Drive, this additional retail space will cause a comparable amount of space to go vacant elsewhere in the community, blighting these existing shopping districts.
2. Population growth and income growth has slowed in the community. This necessitates that the community slow the pace of retail expansion in the future so as to not further blight existing shopping districts.
3. The City has already allowed too much space to be built leading to widespread and long-term vacancies. This should cause the City to exercise restraint before permitting any expansion of the already bloated supply of retail space.

Communities throughout the nation have learned to monitor the health of their real estate markets and to plan accordingly. Cities can better achieve their planning goals if they react appropriately to market signals. The Lawrence retail market is dangerously overbuilt and will only become worse if additional space is added to the supply. This leads to the conclusion that a Wal-Mart store should not be developed now at 6th and Wakarusa Drive.

Sincerely,

A handwritten signature in black ink, appearing to read "Kirk McClure". The signature is stylized and includes a horizontal line extending to the right.

Kirk McClure



To the City Commissioners:

Letting Wal-Mart Build next to Free STATE is wrong.

They sell Guns. Employees do not get paid overtime.

Women are denied Promotions. They are fighting for equal pay.

More Traffic Congestion, Just what we need. We have enough THANK YOU.

Who pays for the Driveway to Wal-Mart, Is it the taxpayers? Even though we do not a NON-UNION Store,

I know Everthing the taxpayers ask for. Falls to deaf years. I did not want, "Welcome To Lawrence" in front of Lawrence, s Wal-Mart. But why listien to me.

I may be one voice. But, I've never been known to Not voice my opinion.

Phone Unlisted

Mrs. Mary Smith
3816 Sierra Ct.
Lawrence, Kansas 66047-2218

2-06-16-06

THOMPSON RAMSDELL & QUALSETH, P.A.

Law Offices

ATTORNEYS

TODD N. THOMPSON*
ROBERT W. RAMSDELL
SHON D. QUALSETH
JESSICA L. LEDBETTER*
MATTHEW P. GAUS

STEPHEN R. McALLISTER*
Of Counsel

333 West 9th Street
P.O. Box 1264
Lawrence, KS 66044-2803

Voice: (785) 841-4554
Fax: (785) 841-4499
Email: tlegal@aol.com

LEGAL ASSISTANTS

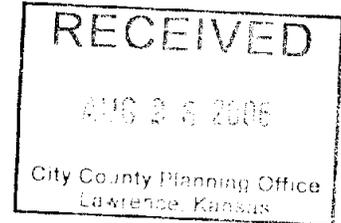
LESLIE J. GERSTENKORN
JAMES E. SLUGA
KATHLEEN LENNEAR BELL

*Also admitted in Missouri
+Also admitted in Nebraska
*Also admitted in Illinois and
in the District of Columbia

August 28, 2006

HAND DELIVERED

Planning Commission
City Hall
6 East 6th Street
Lawrence, KS 66044



Re: *Wal-Mart Project*
6th and Wakarusa

Dear Commissioners:

This letter addresses three related matters that are before you on Wednesday night concerning the property on the northwest corner of the intersection of Sixth Street and Wakarusa Drive. Wal-Mart and the owner of that property will appear at your meeting to discuss proposed amendments to the existing zoning for the property, as well as a Development Plan for the property that includes many enhancements over a previously approved Plan.

These matters are before you in something less than typical circumstances in that the City agreed to file for this review of the modified zoning and the Plan, and Wal-Mart and the owner acceded to requests by the City for reductions in the size of the development and for enhanced design and construction standards. These circumstances arose out of efforts by the City, the owner and Wal-Mart to bring to a close several lawsuits that are pending in the District Court of Douglas County.

The lawsuits involve disputes as to building permits, special assessments for public improvements, and subsequent efforts by the City to rezone the property. The Courts have not ruled on many of the issues involved in the lawsuits, and as a result there are several matters which remain disputed and/or open to interpretation. However, most of the disputed issues are not pertinent to the issues before the Planning Commission, and the legal issues will not be addressed in this letter or at the meeting on Wednesday. Although the disputed legal issues are likely to be rendered moot if the proposed revised zoning and the enhanced Development Plan are approved by the City, you are not being asked to decide those issues.

A brief history of the subject property is in order. First, we note that the land in question is shown in the Northwest Plan (adopted in 1996) as intended for future commercial development (see copy of the Plan's Use Map, attached to hardcopy of letter as Exhibit A). In 2002 the City did rezone the property for commercial development. The 2002 rezoning (from Ag zoning) provided for the largest store at the site to be a building of 132,100 square feet, and for several smaller buildings to be built on outlots. There was a total of 154,100 square feet of commercial space approved for the corner.

Wal-Mart entered the picture in 2003. It wanted a store larger than the approved 132,100 square feet, and applied to rezone the property to increase the size of the main building. Ultimately it scaled back its request, and sought to have largest store on the site be 151,588 square feet, plus 6,378 square feet under canopy in the garden center. The Planning Staff recommended approval of Wal-Mart's zoning request, and of the proposed Plan. The Planning Commission also recommended approval of both the zoning and the Preliminary Development Plan.

However, the City Commission denied the rezoning request. As a result, Wal-Mart proceeded under the existing zoning and Plan and applied for a building permit for the 132,100 square foot building in the approved Plan. The owner also applied for a building permit for a restaurant on one of the outlots in the approved Plan. The City did not issue the permits, and a lawsuit followed.

Subsequently, the City Commission (four of the current members, but with Commissioner Dunfield instead of Commissioner Amyx as the fifth member) initiated a rezoning that is also the subject of a lawsuit. That rezoning effort provided for a reduced size for the largest single building on the site, but still permitted up to 154,000 square feet of commercial development on the northwest corner. Also as part of that rezoning effort, the City Commission **added** "department store" as a permitted use on the property.

The preceding background information is provided in an effort to place in context the Applications that are before the Planning Commission for its consideration on Wednesday. We believe that if you understand the current situation with regard to the development of the property, it will be readily apparent that the proposed revisions to the zoning and the proposed Plan represent significant improvements that benefit the community. The actual issues that are before you for your consideration include the following requests:

1. To **revise downward** the amount of retail development allowed on the site. The reduction is from roughly 154,000 square feet, to 128,000 square feet.

2002 original rezoning by the owner:	154,100	Ordinance 7491
2004 rezoning by City subject to court challenge:	154,000	Ordinance 7755

2. To provide an **enhanced** physical appearance of **the buildings**, and an **enhanced** appearance and layout of **the site**. The proposed Plan includes design and construction standards that are not currently applicable to the site, but are being included in conformance with the Agreement reached in connection with the lawsuits. Some of the enhancements include the following:
 - a. Retaining walls and revised grading to greatly reduce visibility of the parking lot and the buildings;
 - b. Use of a variety of materials on the exterior of the building, including brick, wood beams, synthetic stone columns, ornate molding, etc.;
 - c. Extra berming;
 - d. Use of more mature trees, and more trees than required;
 - e. Larger than usual landscape islands;
 - f. More greenspace than required;
 - g. Extraordinary screening of the loading dock area;
 - h. Moving the entry drive on Congressional so that traffic does not immediately go across the front of the store;
 - i. Increased walkability – more pedestrian friendly;
 - j. Moving buildings on the outlots to street setback lines;

We will have sample materials, color boards and site plans with us on Wednesday. We will also provide you with elevations and with perspectives from several locations surrounding the site. We will compare the internal and external traffic patterns of the revised Plan with those of the previously approved Plan. We trust that you will agree that these numerous enhancements warrant a recommendation for approval.

Staff has recommended approval of the zoning amendments and of the Plan. These recommendations for approval come despite the fact Staff has, in many ways, treated the amendments more as an initial zoning and a new Plan, rather than as proposed revisions to existing commercial zoning of a previously planned commercial area. As a result, we believe that Staff has made requirements that are not actually applicable to the amendments, and has placed a few too many Conditions on the project.

In an effort to reduce the number of Conditions that require your consideration, there has been ongoing discussion with Staff. Some Conditions have been accepted without discussion; some have been accepted after discussion; some Conditions are being clarified or amended; some

Conditions are still under discussion; and several Conditions have been identified as not being acceptable to the owner and/or Wal-Mart. The break down of those categories is as follows:

Accepted Conditions

- b) Notation of an existing 6-foot wide, not 5-foot, sidewalk along the north side of W. 6th Street.
- d) Dimensioned setbacks from the periphery boundary or periphery street rights-of-way per City standards.
- g) Addition of landscaping, i.e. shrubs or greenery that will not interfere with pedestrian flow, within the parking lot islands directly west of the Wal-Mart building.
- j) A note, specifying that all curb inlets will be constructed per City storm sewer standard details.
- k) A note, stating that Per City Code Section 9-903(B), a stormwater pollution prevention plan (SWP3) must be provided for this project. This project will not be released for building permits until an approved SWP3 has been obtained. Construction activity, including soil disturbance or removal of vegetation shall not commence until an approved SWP3 has been obtained.
- m) A note, stating that exterior building materials will be constructed within 9 inches of finished grade.
- p) A note, stating how pedestrian pathways will be differentiated when crossing drive aisles and driveways (pavers, paint, etc...).
- q) Addition of special markings or pavers to differentiate the pedestrian pathway from the 1,800-square foot building to the sidewalk across the driveway to the west.
- w) A note, stating that the pad site buildings shall be constructed with the same level of architectural standards as the Wal-Mart store, as determined by Planning Staff.
- c) Notation of reconstruction of the existing 5-foot wide sidewalk along the west side of Wakarusa Drive to a 10-foot wide recreation path.
- 11. Construction of the pad site buildings with the same level of architectural detail as the Wal-Mart building,

Conditions Needing Clarification or Limitation

- 4. Revision of the plan to include the following:
 - a) Reconfiguration of the northern curb cut radius to the approval of the City Engineer.
 - e) A note, stating that the ADA building entrances will be constructed to zero entry.
 - f) Preservation of right-of-way for the future installation of a transit shelter and wheelchair landing pads on 6th Street.
 - h) Addition of groundcover or shrubs within the landscape island at the south end of the row of parking which includes 19 spaces in the Wal-Mart parking lot.
 - i) A note, stating that occupancy permits for proposed buildings will not be issued until the required public drainage improvements are complete, final inspected and accepted by the Public Works Department.
 - l) A note, stating that the 10' x 10' box culvert underground detention basin will be privately-owned and maintained.

- n) A note, stating that native materials will be utilized for at least 30% of all building exteriors.
 - o) Additional site amenities such as seating areas, public art, or fountains, abutting the Wal-Mart and pad site buildings.
 - s) Inclusion of weather protection within 30 feet of all customer entryways.
 - t) Inclusion of focal points within 200 feet of the intersection of two streets.
 - u) Inclusion of pedestrian-scaled lighting along pedestrian walkways.
 - v) Inclusion of building foundation plantings for the pad site buildings and additional building foundation plantings for the Wal-Mart store.
2. Native materials for at least 30% of all building exteriors.
 3. Additional site amenities, such as seating areas, public art, or fountains, adjacent to the Wal-Mart and pad site buildings,

Unacceptable Conditions

1. Revision of the Retail Market Study per approval of City staff.
2. Revision of the Traffic Impact Study per approval of City staff.
5. Submission of a tree survey to determine if existing trees should be retained and the retention of trees on site if warranted per the design guidelines,
6. Pervious surfacing for 50% of the parking areas exceeding the minimum parking requirements (note pervious parking demonstration to the east of the Wal-Mart building),
7. Weather protection within 30 feet of all customer entryways,
10. Building foundation plantings for pad site buildings and additional building foundations plantings for the Wal-Mart store,
13. Elimination of the 19 parking spaces along the eastern side of the north-south driveway,
14. Relocation of the 7,300-square foot building from the northwest corner of the southeast pad site to the northeast corner, and
15. Addition of pedestrian connectivity (via sidewalks and special markers/pavement) from the relocated 7,300-square foot building to the 7,400-square foot building on the southeast corner of the site.
16. Elimination of the 35 parking spaces running east-west along the southernmost edge of the Wal-Mart parking lot. Greenspace should replace these spaces.
17. Addition of a north-south pedestrian pathway running from the southernmost internal sidewalk to the Wal-Mart building. This pathway should be placed between the north-south rows of 33 parking spaces.

Also, there are a few corrections that need to be noted. On the PDP documents and at the top of page 7 of the PDP Report it is stated that a new traffic signal will be installed by Wal-Mart at the intersection of Congressional Drive and W. 6th Street. That is not accurate. The terms of the Agreement are that the City will install the signal, and that Wal-Mart will pay for two-thirds (2/3) of the reasonable cost of traffic signalization at 6th and Congressional if the zoning and plan approval applications are approved.

Planning Commissioners
August 28, 2006
Page 6

We are cognizant that you had a long meeting last week, and we will continue to try to resolve issues in advance of Wednesday's meeting so that these items can be considered as efficiently as possible.

Sincerely,

THOMPSON RAMSBELL & QUALSETH, P.A.

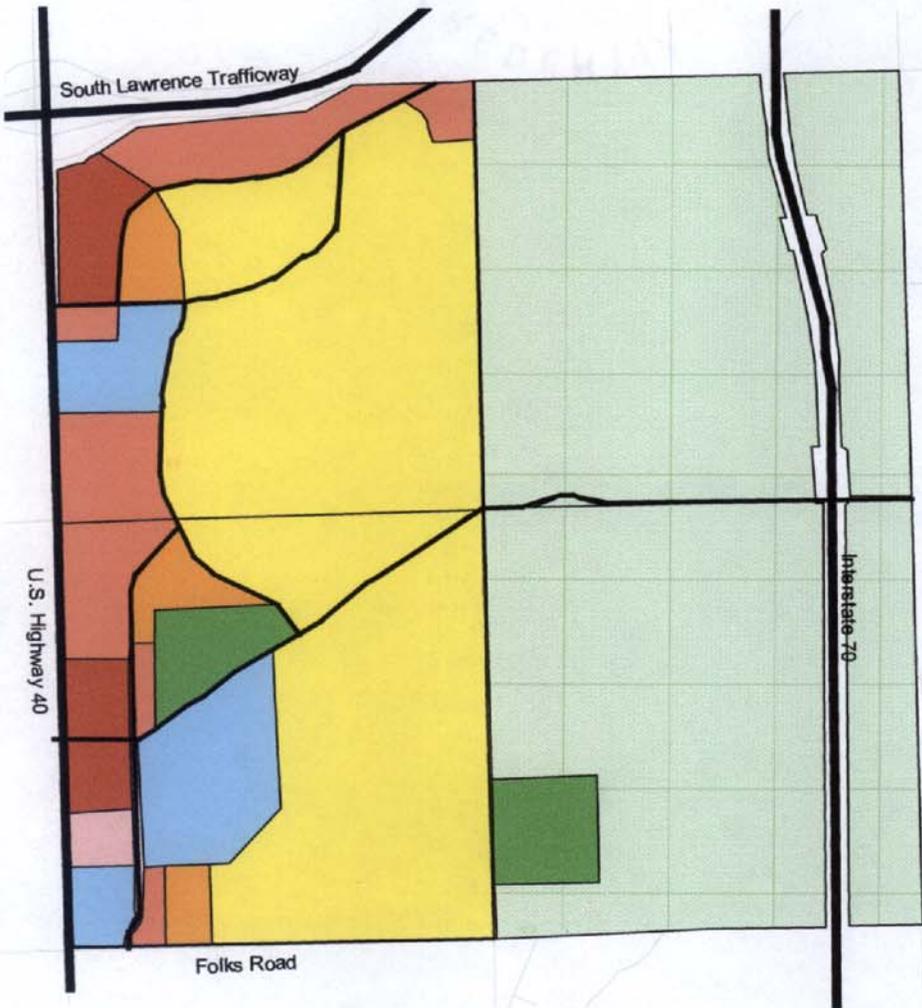
A handwritten signature in black ink, appearing to read 'Todd N. Thompson', with a long horizontal line extending to the right.

Todd N. Thompson

TNT:lg

cc: Kathy Griffith
Michael Phillips
Ray Frankenberg
Owen Buckley
Jim Bowers
R. Scott Beeler

The Northwest Area Proposed Land Uses



- county road
- major street
- city park
- commercial
- institutional
- multi-family
- office
- office/m. f. mix
- rural residential
- single-family



Note: Actual environmental conditions which place constraints on development are not shown on this map. Refer to the comprehensive plan for guidance on environmental condition maps, studies and policies.