

**PLANNING COMMISSION REPORT**  
**Regular Agenda - Public Hearing Item**

PC Staff Report  
07/21/08

**ITEM NO. 3A RSO to CN2; 3.3 ACRES; (SLD)**

**Z-05-12A-08:** Consider a request to rezone a tract of land approximately 3.324 acres from RSO (Single-Dwelling Residential-Office) to CN-2 (Neighborhood Shopping Center), located on the SW corner of Clinton Pkwy and Crossgate Drive. Submitted by Mission River LLC, for Inverness Park Limited Partnership, property owner of record.

**STAFF RECOMMENDATION:** Staff recommends denial of the request to rezone approximately 3.324 acres, from RSO (Single-Dwelling Residential-Office) to CN-2 (Neighborhood Shopping Center) based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for denial.

**Reason for Request:** *The current RSO zoning does not permit a neighborhood pharmacy*

**KEY POINTS**

- Proposed project is inconsistent with *Horizon 2020*
- Proposed project alters the existing land use pattern of the surrounding neighborhood.

**ASSOCIATED CASES/OTHER ACTION REQUIRED**

- Z-05-12b-08 PD overlay
- PD – Preliminary Development Plan with variances
- Site Plan is required for development if approved for conventional commercial zoning
- Z-4-13-99 A to PCD-2; 5.194 acres in NW¼ Sec. 10-13-19 (Getto property); PC denied PCD-2 and approved via Lesser Change table RO-1B in July 1999. [Original Zoning Request of subject property]
- Z-4-6-99 A to RS-2; 67.184 acres in NW¼ & SW¼ Sec. 10-13-19 (Getto property)
- Z-4-7-99 A to RM-D; 11.616 acres in NW¼ & SW¼ Sec. 10-13-19 (Getto property)
- Z-4-8-99 A to RM-1; 10.346 acres in NW¼ Sec. 10-13-19 (Getto property)
- Z-4-9-99 A to PRD-2; 17.812 acres in NW¼ Sec. 10-13-19 (Getto property)
- Z-4-10-99 A to RO-1B; 17.738 acres in NW¼ Sec. 10-13-19 (Getto property)
- Z-4-11-99 A to O-1; 21.634 acres in NW¼ Sec. 10-13-19 (Getto property) *withdrawn*
- Z-4-12-99 A to PCD-1; 6.643 acres in NW¼ Sec. 10-13-19 (Getto property)
- Z-4-13-99 A to PCD-2; 5.194 acres in the NW¼ Sec. 10-13-19 (Getto)
- Property Preliminary Plat; Inverness Park Addition (Getto Property)

**PUBLIC COMMENT RECEIVED PRIOR TO PRINTING**

Barbara Anne Smathers, 2009 Crossgate Drive, email communication in favor of project  
Nancy Chase – telephone call requesting additional information on project.

**ATTACHMENTS**

- Page Map
- 1999 Planning Commission minutes and maps related to subject property.
- Final Plat

**Project Summary:**

The subject property is proposed to be rezoned to CN2 to accommodate a “Personal Convenience” use. The property is adjacent to Clinton Parkway on the north, Crossgate Drive along the east property line and 24<sup>th</sup> Place along the south property line. A new access point to Crossgate Drive is proposed as part of the development of the project.

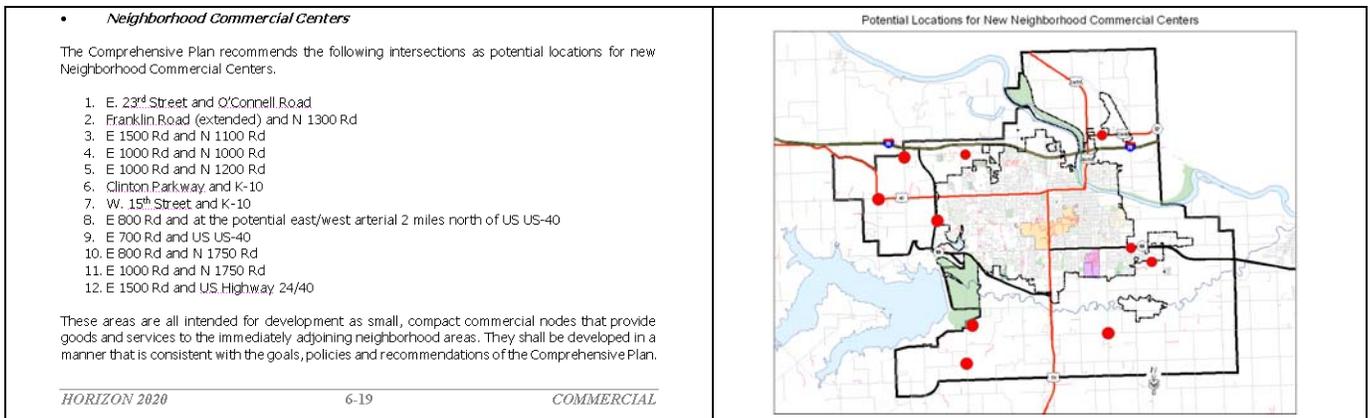
The development request also includes the submission of a PD overlay and a preliminary development plan. However, a minimum of 5 acres is required for a PD overlay per 20-701 (e). The applicant was notified in writing that the PD and PDP applications could not be considered by the Planning Commission. The Planning Commission is not granted the authority to waive or vary this standard. The Board of Zoning Appeals is also prohibited from granting a variance or reductions from any part of article 7 as set out in 20-1309 (b).

**1. CONFORMANCE WITH THE COMPREHENSIVE PLAN**

**Applicant's Response:**

*The Horizon 2020 plan provides for neighborhood commercial centers and identifies certain intersections as potential locations for future commercial uses. The use proposed, fits within the description of these centers, but the current configuration of the plan does not identify this particular intersection for future commercial use.*

Neighborhood commercial centers are described in *Horizon 2020* as having the ability to contain more than a single use (Page 6-5). The Plan states *“To insure there are a variety of commercial uses and that no one use dominates a Neighborhood Commercial Center, no one store shall occupy an area larger than 40,000 gross square feet.”* The implied intent is that multiple uses are required to establish a neighborhood commercial center. A single use does not create a neighborhood commercial center. *Horizon 2020* identifies 12 specific new neighborhood commercial centers and does not include the subject property nor the immediate intersection as one of the identified new commercial centers.



**The Plan states:**

*“To facilitate orderly development of future commercial nodes, Lawrence shall attempt to complete “nodal plans” for each commercial center in advance of development proposals.” (Page 6-6).*

A nodal plan for areas designated as commercial centers is required prior to rezoning to comply with the provisions of the Comprehensive plan. However, in this case, three quadrants of the

intersection are all ready developed. The need for a nodal study is lessened by this existing condition.

*“All new commercial and office development shall occur in accordance with the plan recommendations. New commercial, retail and related uses shall be developed as node with shared parking, common access drives and related design appearances.” (Page 6-14)*

Therefore, only those locations specifically noted in the plan are legitimately able to be considered as complying with locational criteria set out in *Horizon 2020*.

*“The Comprehensive Plan includes recommendations for the location of new commercial development. As the community grows, it may be necessary to change the recommended location of a Commercial Center or not use a designated intersection for a commercial use.” (Page 6-14)*

The Plan is intended to be read such that specific locations cited in the plan are the designated locations for future new commercial development. This site is located between two existing nodes that are developed or developing.

*“If there is a need to move the recommended location of a Commercial Center or downgrade the recommended size of a center, the Comprehensive Plan shall be amended.” (Page 6-14)*

It is appropriate to revise *Horizon 2020* prior to approval of new commercial locations not specified in the plan and to appropriately adjust the locations and sizes of remaining new commercial locations in response to changes to the plan. See item 2 for a report on the applicant’s request to amend the Comprehensive Plan.

*“The Comprehensive Plan does not support increasing the size or number of new commercial centers” (Page 6-14).*

Therefore, approval of the request to a commercial node should result in a corresponding loss of another equivalent node elsewhere in the city.

**Staff Finding** – The proposed request does not conform to the land use recommendations outlined in *Horizon 2020*.

**2. ZONING AND USE OF NEARBY PROPERTY, INLCUDING OVERLAY ZONING**

Current Zoning and Land Use:	RSO (Single-Dwelling Residential-Office) District
Surrounding Zoning and Land Use:	<p>Published RM15 (Multi-Dwelling Residential) District) to the west, pending mapping updated for development of an apartment complex known as Remington Square – currently undeveloped.</p> <p>RM12 (Multi-Dwelling Residential) District to the north; Existing apartment development (SP-06-30-83 Parkway 4000).</p> <p>PUD (Planned Unit Development) to the northeast existing apartment development.</p> <p>RM24 (Multi-Dwelling Residential) District to the east; existing apartment development (SP-04-21-90; Lorimar Apartments).</p> <p>RSO (Single-Dwelling Residential) District to the south; undeveloped tract.</p> <p>PRD–(The Legends at KU) (Planned Unit Development) District to the</p>

	southwest; Existing apartment development.
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Much of the zoning pattern for the subject property and the immediately surrounding area was set as part of a master plan for the original 160-tract that incorporated the existing drainage courses and boundary street network into the intended development pattern. The alignment of 24<sup>th</sup> Place was established to provide access to abutting lots with maximum separation from intersections with cross streets and Clinton Parkway. The zoning districts were established to provide a land use transition south of Clinton Parkway (arterial street) and the southern portion of the development. Transition through zoning district application was also provided east to west with the more intensive uses on the east adjacent to the higher density residential use and lower density uses on the west abutting the school.

**Staff Finding** – The surrounding uses are dominated by residential development in the form of apartment buildings and townhouses. The site was designated for residential office and the street network may not function as well with a heavy auto-oriented use.

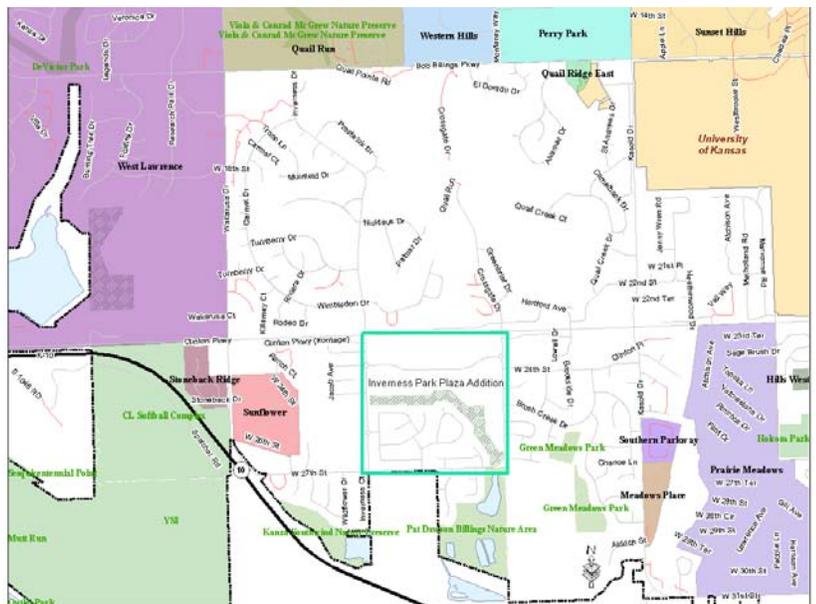
### 3. CHARACTER OF THE NEIGHBORHOOD

Applicant's Response:

*The surrounding uses around the subject property are high density multi-family developments and zoning to the east, west and south with lower density residential and a school to the north. The design theme throughout is residential style construction and materials (I.E. brick, stone, horizontal siding, pitched roof lines, shingles etc.). The proposed development will use the same residential style materials.*

The subject property is not part of a designated neighborhood association. It was, however, a part of 160 acre development that used a neighborhood approach to development and the framework of establishing the base zoning district. The low density single/duplex family residential area located in the southern half of the original acreage was the first section to develop. The multi-family development has filled in and the remaining vacant areas are still being considered for various development opportunities. The area surrounding the original acreage developed with multi-dwelling uses that are oriented in an internal arrangement that “backs up” development to the abutting public streets to the east and north.

The surrounding area includes a variety of housing choices and a range of development densities. Higher intensity uses are generally located along Clinton Parkway with decreasing intensity north and south of Clinton Parkway. The street profile of Clinton Parkway is such that many of the properties are lower than the street and the intensity is further screened by the de facto berming. Berming is located abutting the street along with a continuous green center island dividing the east and west bound traffic. This results in creating a boulevard affect along the street and creates a boundary or edge between



the north and south “neighborhood areas”.

The traffic circle located at 24<sup>th</sup> and Crossgate Drive provides traffic calming and intersection control. It also signals a transition to lower intensity development south of Clinton Parkway. Existing development is oriented with rear yard areas to both Clinton Parkway and Crossgate creating individual neighborhoods radiating in wedges away from the intersection.

**Staff Finding** – The neighborhood orientations of the surrounding areas are away from the Clinton Parkway/Crossgate intersection. The current zoning is reflective of the existing development pattern of the surrounding neighborhood character.

#### **4. PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY**

*Horizon 2020* is the existing plan for the area. There is not a separate neighborhood or area plan for the subject property and its environs. This area is designated for low density residential development in Map 3-1 of *Horizon 2020*.

The area was part of an overall 160-acre development request considered in 1999 for annexation, rezoning, and subdivision plat approval. The area was reviewed for development issues in a holistic manner that analyzed the proposed development request as they related in context to the larger development and to the context of the surrounding community. The original request for the subject property made in 1999 was for PCD-2 zoning and PCD-1 zoning to the immediate west. The Planning Commission denied the proposed commercial zoning and approved the RO-1B district that would have encouraged a mixed use residential/office type development. Denial of the request was based on insufficient justification to deviate from *Horizon 2020*, availability of retail shopping opportunities within a reasonable distance, strip mall development and traffic impacts were undesirable (refer to attached minutes).

**Staff Finding** – The existing comprehensive plan, *Horizon 2020*, and previous land use decisions for this area established the framework for the development patterns of the area.

Approval of commercial zoning must be based and reflected in the comprehensive plan and an adopted nodal plan for the area prior to consideration of commercial development.

#### **5. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS**

Applicant's Response:

*The site constraints make this 3.3 acre tract difficult to develop given the flood plain along the west side of the property. This floodplain bisects the west portion of the site severely limiting the development of the property.*

The current RSO zoning allows a range of uses including:

- Residential uses both attached and detached;
- Community Facilities such as a schools and daycare center;
- Medical Facilities including offices and clinics, office uses;
- Personal Improvements such as yoga centers, fine arts studios, martial arts center or diet center.

These permitted uses are consistent with the surrounding land use pattern of the area. Denial of the request will not prohibit development of the property.

The presence of the floodplain will not prohibit development for the allowed uses anymore than the proposed use. The property is not bisected by the regulatory floodplain. The floodplain includes a 60' wide D/E that runs the entire western edge of the property. The recent LOMR set the D/E width. The subject property includes 2.11 acres of area outside of the regulatory floodplain.

The two existing Walgreens stores are developed on properties less than 3 acres that do not have floodplain encumbrances. The property at 23<sup>rd</sup> and Louisiana Street is a 1.6 acre parcel and the property located at 6<sup>th</sup> & Kasold is located on 1.4 acres. The subject property is three times as large as developed properties of a similar nature and double that of the area is unencumbered by floodplain.

The development of the original plat for the original 160-acre site included specific access restrictions to Clinton Parkway and to Crossgate Drive on the east side. Access to lots along Clinton Parkway was designed to be accommodated from a parallel local street (24<sup>th</sup> Street Place) along the south side of the lots. This would allow for traffic movement north of the traffic circle to function without other intersections being placed at very short intervals and to retain the turn lanes at Crossgate Drive and Clinton Parkway.

**Staff Finding** – The current zoning is suitable for allowed uses within the district and reflects the development pattern of the surrounding area.

## 6. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

Applicant's Response:

*This property has remained undeveloped largely because of the terrain. The property owners previously rezoned the site to RO1b, a residential and office mix following its annexation into the city. Upon completion of the new Development Code on July 1, 2006, the RO-1B became RSO.*

The subject property is currently zoned RSO, a conversion from the adoption of the Development Code in 2006 from the then published RO-1B a multi-family-Office district. The subject property was part of a development request that included 160 acres known as the "Getto property." The developer originally requested PCD-2 zoning for the property (Z-4-13-99). Staff recommended denial of the PCD-2 district and recommended RO-1B as part of the Lesser Change Table. The Planning Commission concurred with staff's recommendation and forwarded a recommendation to the City Commission for RO-1B in July 1999 for the subject property.

There are no identifiable or extraordinary terrain challenges associated with this property that inhibit development.

**Staff Finding** – The RSO zoning designation has been in place since the adoption of the Development Code in 2006. The property has remained vacant since annexation and land use approval was initiated in 1999. Development of the original tract has occurred from the south to the north and is actively developing.

## 7. EXTENT TO WHICH APPROVING THE REZONING WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES

Applicant's Response:

*Approving this rezoning application will not adversely affect the neighboring properties. Actually it will increase the values by providing a needed use within the immediate and surrounding areas. By attaching the Preliminary Development Plan to the rezoning application, the applicant is "tied" to the use and development character for this parcel of ground thereby keeping with surrounding context.*

Development of the property as a commercial use may result in additional traffic to the immediate area. The applicant is seeking additional access to Crossgate Drive as part of the proposed development and must be addressed as part of the overall physical development. Development of the tract as proposed by the application will require intersection improvements to Crossgate Drive and the construction of a full median from Clinton Parkway to the traffic circle. This will result in right-in/right-out only access to Crossgate Drive. Traffic along with stormwater management and land use intensity were reasons cited by property owners in 1999 as reasons for opposition to the proposed commercial zoning at the time.

**Staff Finding** – Approval of the request will result in a change to the established land use pattern of the surrounding neighborhood. Approval of the request may affect the traffic circulation. The existing street network was designed and platted for specific uses and land use patterns with access restrictions placed on Clinton Parkway and Crossgate Drive.

**8. THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION**

Evaluation of this criterion includes weighing the benefits to the public versus the benefit of the owners of the subject property. Benefits are measured based on anticipated impacts of the rezoning request on the public health, safety, and welfare.

Applicant's Response:

*Approval of this application will fill a need of the surrounding property owners by providing health care needs within walking distance. This rezoning case, limited to a neighborhood pharmacy, will allow a parcel of land that is difficult to develop to provide a useful service to the surrounding property owners while providing the City with the tax revenue of a developed site rather than continued vacant ground.*

Denial of the request does not create a hardship to the landowner since the existing RSO district permits uses compatible with the area and contemplated in Horizon 2020 and the property is suitable to developing under the RSO district. Denial of the proposed rezoning will result in the maintenance of the existing traffic and planned for land use patterns for the area, which is a gain to the public.

Approval of the request may also reduce the potential for infill development at existing commercial centers within the vicinity.

**Staff Finding** – Denial of the request will not create a hardship to the landowner since the ability to develop to the RSO district standards remains valid. Denial of the request will result in the maintenance of the existing and planned for street and land use patterns established for the area, which is a gain to the public.

## 10. PROFESSIONAL STAFF RECOMMENDATION

Staff recommends denial based upon the findings of fact outlined above.

### STAFF REVIEW

The following table is provided to identify the general purpose statements of the existing and proposed zoning districts related to this proposed change.

District	Purpose
<b>1966 Zoning Code</b> RO Residence Office District (20-606)  RO-1 = 1 RO-1A = 2 <b>RO-1B = 3 (Subject property)</b> RO-2 = 4	For uses on properties zoned RO on and after February 13, 1996, the RO District is designed to primarily provide mixed use areas for professional offices, medical and dental clinics and similar types of uses that are compatible with and can be located adjacent to or in combination with single, duplex, or multiple-family residential uses without undue harmful effects to the residential uses.  Three residential densities are permitted in four zoning districts to provide flexibility and allow the location of: 1) high density apartment/office combinations in and near the downtown area, and high density areas lying adjacent thereto; 2) medium density residential and/or office developments in areas that are in conformance with the Comprehensive Plan and compatible with surrounding land uses; <b>3) a lower density district to be located adjacent to or near single-family and restrictive commercial areas and</b> (4) a lower density district, where residential units are restricted to single-family or duplex structures, to be located adjacent to or near single-family and restrictive commercial areas.
<b>2006 Development Code</b> RSO, Single-Dwelling Residential Office District (20-230)	The primary purpose of the RSO District is to accommodate low to medium-intensity administrative and professional offices that are compatible with the character of low and medium-Density residential neighborhoods. The District is also intended to be used as a transitional Zoning District between higher intensity commercial areas and residential neighborhoods. The District allows Detached Dwellings, duplexes, Attached Dwellings and administrative and professional office uses, which may be combined in the same Structure (e.g., office on the Ground Floor or at the front of the Building with Dwelling Units on upper floors or toward the rear of the Building).
CN2, Neighborhood Commercial Center District (20-208)	The CN2, Neighborhood Shopping Center District, is primarily intended to implement the Comprehensive Plan's "Neighborhood Commercial Centers" policy of providing for the sale of goods and services at the neighborhood level. Neighborhood Commercial Centers are generally located at least one mile from another Commercial Center. Developments in CN2 Districts are intended for Collector/Arterial Street intersections or at Arterial/Arterial Street intersections. Development is intended on only one corner of the intersection.

The RO-1B district (RSO District in 2006 Code) would have allowed Professional office uses but not retail or automotive related uses. This use restriction was carried over to the RSO zoning district. The purpose statement of the CN2 district expresses the connection between the district location and the Comprehensive Plan land use recommendations. This should be read as a standard and not as a guideline. The proposed request fails to meet the basic test of compliance with the Comprehensive Plan with or without a development plan overlay.

### CONCLUSION

For the reasons noted in this report, staff does not support the rezoning request to CN2.

