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July 21, 2008

VIA E-MAIL ONLY

Mr. Brad Finkeldei, Chair
Lawrence-Douglas County Metropolitan Planning Commission
6 East 6th Street
P.O. Box 708
Lawrence, Kansas 66044

Re: *Consideration of Amendment to Horizon 2020
Walgreens Rezoning Applications (the "Applications");
July 21, 2008 Agenda Item No. 2*

Dear Mr. Finkeldei and Planning Commissioners:

On July 21, 2008, the Planning Commission will have the opportunity to rezone approximately 3.324 acres located at the southwest corner of Clinton Parkway and Crossgate Drive (the "**Property**"). At the request of Planning Staff, the Applications are preceded by a request to amend Chapter 6 of *Horizon 2020* to identify the Property as a potential Neighborhood Commercial Center. Walgreens does not believe that an amendment to *Horizon 2020* is necessary to allow the rezoning to CN2-PD to be considered by the Planning Commission. If the Planning Commission chooses to consider such an amendment, the following comments are offered in support of it. Walgreens urges the Planning Commission to approve the Applications, and enable the Property to become a neighborhood pharmacy that will provide walkable services to surrounding residents and increase the tax base. To date, the free market has indicated that the Property is not feasible for office use.

Property Zoning History

As noted in the Planning Staff's report for Agenda Item No. 3A, the Applications do bear similarities to the original rezoning applications that were denied by the Planning Commission in July, 1999. The original developers of the Property requested PCD-2 (Planned Commercial Development) zoning for the Property. On a 5-4 vote, the Planning Commission denied PCD-2 zoning, in favor of RO-1B to encourage residential or office-type development. As shown in the July, 1999 Planning Commission minutes attached to the Staff Report for Item No. 3A, the Planning Commission considered similar issues to those before this Planning Commission. In nine years since the original proceedings, the Property has remained undeveloped. Unlike the original zoning

Mr. Brad Finkeldei, Chair
Lawrence-Douglas County Metropolitan Planning Commission
July 21, 2008
Page 2

application, which could have permitted a variety of uses, including a fast-food restaurant (drawing an objection from then-Chairman Male), Walgreens proposes to limit potential uses to that of a neighborhood pharmacy. The actions of the 1999 Planning Commission do not control the actions of this Planning Commission, and Walgreens is optimistic that the Applications will permit the Planning Commission to modify the decision made in 1999.

Planning Staff opposes the rezoning of the Property to CN2, in part because Staff believes the property is not an appropriate Neighborhood Commercial Center. Although Walgreens' application to amend *Horizon 2020* is discussed in greater detail below, please note that the purpose of a CN2 district is primarily (but not exclusively) to implement the Comprehensive Plan's policy on Neighborhood Commercial Centers—namely to provide for the sale of goods and services at the neighborhood level. *Horizon 2020*, page 2-13. Walgreens' purpose for seeking approval of the Applications is to provide such neighborhood services, and strongly believes that both *Horizon 2020* and the Land Development Code (the "**Code**") support Walgreens' proposed use.

Amendments to Chapter 6 of *Horizon 2020*

Agenda Item No. 2 is the result of Planning Staff's instructions to request an amendment to *Horizon 2020* in connection with Walgreens' rezoning requests. Walgreens believes that the proposed amendment is desirable, but not necessary for the Planning Commission to approve Walgreens' rezoning requests. Walgreens' proposed development is a neighborhood commercial use, which (as discussed below) serves the same purposes as a Neighborhood Commercial Center but on a smaller scale. If the Planning Commission chooses not to name the Property as a potential Neighborhood Commercial Center, the Planning Commission may grant the rezoning requests by finding that the proposed neighborhood use is consistent with *Horizon 2020* and CN2 zoning.

Contrary to the Planning Staff's analysis, Walgreens believes that its intended development of the Property satisfies the criteria for a neighborhood commercial use. The basic arguments stated in the Staff Report for Agenda Item No. 2 are stated in italics below, with Walgreens' responses following.

1. *Planning Staff argues that the Comprehensive Plan prohibits the addition of new Commercial Centers.*

Planning Staff cites the stand-alone sentence on page 6-20 of *Horizon 2020* for the proposition that "[t]he Comprehensive Plan does not support increasing the size or number of new Commercial Centers." As a preliminary matter, if the Planning Commission grants Walgreens' requested text amendment, there would be no conflict with that sentence because the Property could

Mr. Brad Finkeldei, Chair
Lawrence-Douglas County Metropolitan Planning Commission
July 21, 2008
Page 3

be identified as a potential Neighborhood Commercial Center. If the Comprehensive Plan were unequivocally opposed to new Commercial Center, there would be no need for Policy 3.4, describing the criteria for Neighborhood Commercial Centers. The Comprehensive Plan should certainly not be interpreted as a moratorium on new Commercial Centers. Additional commercial centers are contemplated by *Horizon 2020*. In fact, Planning Staff has recommended in the current draft of the *K-10 and Farmer's Turnpike Plan* the creation of two new Neighborhood Commercial Centers, and cites the criteria in Chapter 6 of *Horizon 2020* in support of the additional neighborhood centers. See *K-10 and Farmer's Turnpike Plan*, Sections 3.1.2.4 and 3.2.1.6. In addition, the revised draft of amendments to Chapter 7 of *Horizon 2020*, which has been approved by the Planning Commission, indicates that with regard to the industrially zoned sites in North Lawrence along North 2nd Street, "[w]hen the industrial usage of a particular property ceases and is no longer practical, it is recommended those properties be converted to residential and/or neighborhood commercial uses." Revised Draft, Chapter 7 *Horizon 2020*, p. 7-4 (emphasis added). Without question, *Horizon 2020* contemplates the addition of new Neighborhood Commercial Centers and new neighborhood commercial uses that are not part of any Neighborhood Commercial Center.

2. *Planning Staff argues that the language in Chapter 6 should be read to prohibit a single-use Neighborhood Commercial Center.*

Planning Staff incorrectly argues that *Horizon 2020* prohibits a single-use Neighborhood Commercial Center, citing language on page 6-5 which states that "[t]o 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 maximum gross square feet." This language is similar to Policy 3.4.E., which restates the 40,000 gross square foot requirement. The Comprehensive Plan established the maximum square footage requirement as the means keep uses at a neighborhood scale. The proposed Walgreens will be less than 40,000 square feet, and therefore satisfies the criteria in Policy 3.4.E. If *Horizon 2020* intended to prohibit single-use Neighborhood Development Centers, the language in the Comprehensive Plan would have explicitly prohibited single uses. Rather, a size limitation exists, which Walgreens satisfies. Moreover, there are already single use CN2 uses in the City, such as the property located at 3838 West 6th Street, which is a single-use CN2 zoning district. Planning Staff can put no prohibition on single-use Neighborhood Commercial Centers in *Horizon 2020* because there is no such prohibition.

3. *Planning Staff argues that the Property does not satisfy the criteria for a Neighborhood Commercial Center.*

Although, the Property is less than one-mile from a Neighborhood Commercial Center at Clinton Parkway and Kasold Drive, Staff acknowledges that the need for a nodal study is lessened

because three quadrants of the intersection are already developed. The preliminary development plan shows that the development will utilize materials that are consistent with the designs of neighboring structures to maximize its integration with existing development. *See* Policy 3.4.H., K., and O. The development relies heavily on pedestrian traffic from nearby neighborhoods, and has been designed with pedestrian mobility as a top priority. *See* Policy 3.4.I. There are dedicated open space areas useable by both employees and shoppers. *See* Policy 3.4.L. The Property is geographically segregated by 24th Place to the south and a drainage creek to the west, and will not expand into surrounding neighborhoods, most of which are already developed. *See* Policy 3.4.M.

The Planning Staff acknowledges compliance with Policies 3.4.A., B., D., E., and G. In other words, except with respect to the two requirements that have the least to do with the public policies behind the Neighborhood Commercial Center, the proposed development satisfies all criteria in Policy 3.4. This proposed development is designed with the neighborhood in mind. As the last undeveloped corner at the intersection, there will be no excessive concentration of commercial traffic or duplication with other commercial services. Policy 3.4.G.

4. *Planning Staff argues that the Comprehensive Plan's amendment review criteria do not support the amendment.*

Walgreen's affirms its responses quoted by the Planning Staff in the Staff Report for Agenda Item No. 2. The Planning Commission must consider the three factors described on page 13-9 of *Horizon 2020*, but they are not the exclusive considerations for the Planning Commission to consider in granting an amendment. The proposed amendment is appropriate in light of the recent shift in political and economic thought regarding the need for mixed land uses that lower automobile reliance. Although the proposed development is not part of a Traditional Neighborhood Design (TND) development, it is an infill development that embraces the underlying policies behind the need for TND, such as meeting the neighborhood needs at the neighborhood level, facilitating infill development, creating jobs, and increasing the tax base. The development features design and landscaping characteristics to facilitate the integration with the neighboring residential uses.

Between 1999 and the present, Chapter 6 of *Horizon 2020* has been revised and there has been greater emphasis on infill development out of a strong adversity to sprawl and strip development. This single-use neighborhood pharmacy, located at the intersection and serving the needs of adjacent properties within walking distance, is not strip development. The development is more akin to nodal development, in the sense that it is self-contained, pedestrian friendly, and geographically limited by street design and topography to one corner of the intersection of an arterial and a collector street.

Mr. Brad Finkeldei, Chair
Lawrence-Douglas County Metropolitan Planning Commission
July 21, 2008
Page 5

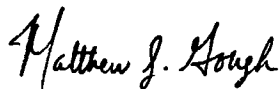
5. *Planning Staff argues that the Comprehensive Plan must be strictly applied.*

The Supreme Court of Kansas has discussed the weight to be given to a comprehensive plan in evaluating rezoning requests. While a city is not bound by the terms of a comprehensive plan, the terms of the plan should not be overlooked when changes in zoning are under consideration. *Taco Bell v. City of Mission*, 234 Kan. 879, 894, 678 P.2d 133 (1984) (citing *Golden v. City of Overland Park*, 224 Kan. 591, 598, 584 P.2d 130 (1978)). In the *Taco Bell* case, as with Walgreens' Applications, the evidence supporting the granting of the zoning change was overwhelming, and the evidence in opposition was minimal. *Taco Bell*, 234 Kan. at 894. Walgreens' development fulfills the neighborhood-oriented purposes of a Neighborhood Commercial Center and CN2 zoning, but because the Property is less than one mile from an existing center and no nodal plan exists, Planning Staff recommends denial. The Planning Commission has the authority to consider the totality of the facts and approve the Applications.

The proposed development and rezoning satisfies the neighborhood-oriented purpose of a Neighborhood Commercial Center but is simply a neighborhood commercial use that is integrated into the mixed residential neighborhood that it will serve. A Walgreens Pharmacy at that location has been supported by neighboring residential property owners in both the correspondence included in the agenda packet and during a neighborhood meeting on June 12, 2008. The Planning Commission should approve the requested text amendment to establish the Property as a Neighborhood Commercial Center, or in the alternative find that no comprehensive plan amendment is necessary and Walgreens' request for CN2 zoning is consistent with *Horizon 2020*.

If the Planning Commission approves Walgreens' request for CN2 zoning, enclosed with this letter are proposed findings of fact.

Very truly yours,



Matthew S. Gough
of Barber Emerson, L.C.

MSG:jsm

WALGREEN'S
PROPOSED FINDINGS TO SUPPORT
RE-ZONING TO CN-2 - PD
July 21, 2008

1. CONFORMANCE WITH THE COMPREHENSIVE PLAN

The re-zoning conforms to the policies stated in Chapter 6- Commercial Uses that:

- encourages infill development, at one or more corners of arterial and collector streets
- integrates the use (pharmacy) into the surrounding land uses of the neighborhoods
- creates a focal point for the surrounding neighborhood
- enhances the mix of uses in the existing development.

The re-zoning does not conform to the land use map contained in Chapter 6, but none of the single use neighborhood commercial uses are included on this future land use map.

2. ZONING AND USE OF NEARBY PROPERTY

The surrounding zoning is various densities of residential. The surrounding and nearby uses include single family, multi-family and apartment house residences, a park and three schools.

3. CHARACTER OF THE NEIGHBORHOOD

The neighborhood consists of college-age young people and older people in the multifamily residences, young families in the single family residences and schools and residents of all ages in the duplexes. It is dense residential area without a single neighborhood scale store to walk to or that could serve as a focal point for the neighborhood.

4. PLANS FOR THE AREA OR NEIGHBORHOOD

There are no area or neighborhood plans for this area.

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

The property has been restricted as zoned effectively for nine (9) years. The office market has been very soft in Lawrence for a long time. Residential development at this location is highly restricted and extremely unlikely because of the drainage easement on the west and the roadways on the north, south and east of this 3.3 acre piece of property. It is not suitable for RSO as shown by the long period of lack of interest in this site.

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

The property has been vacant as zoned for nine (9) years. It had been vacant as zoned A before that, since 1966 when the County adopted zoning regulations.

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

The rezoning is not anticipated to have any detrimental effect on nearby properties as evidenced by support of the rezoning by nearby property owners. It will provide a pedestrian friendly neighborhood pharmacy that will allow nearby residents to walk to provide some of their daily needs. It will also provide a focal point where neighbors will meet each other in attending to their daily needs.

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

Denial of the application does not improve the health, safety and welfare of the public. The application includes the preliminary development plan which is based on a traffic impact study, downstream sewer analysis, and storm water study that all determine that this small site is served by sufficient infrastructure to support the proposed use and to allow for the safe handling of all traffic generated by the site.

Approval of the application will provide pedestrian friendly opportunities to provide daily necessities to a large number of nearby residents who do not have that available to them now.

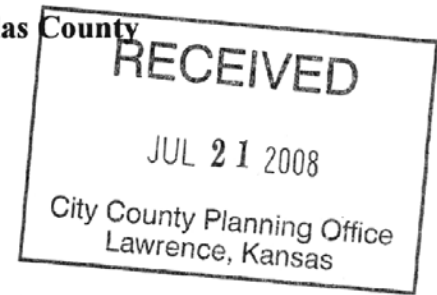
Denial of the application will continue the hardship to the owner of the land to develop the property with the existing use restrictions and physical restrictions inherent in the site.

9. PROFESSIONAL STAFF RECOMMENDATION

Staff recommended denial.

League of Women Voters of Lawrence-Douglas County
P.O. Box 1072, Lawrence, Kansas 66044

July 20, 2008



Brad Finkeldei, Chairman
Members
Lawrence-Douglas County Planning Commission
City Hall
Lawrence, Kansas 66044

RE: ITEM NO. 2: CPA-2008-10(DDW); ITEM NO 3A: RSO TO CN-2; 3.324 ACRES; SW CORNER CLINTON PKWY & CROSSGATE DR (SLD); ITEM NO 3B: RSO TO INCLUDE PD OVERLAY OFR CN-2; 3.324 ACRES; SW CORNER CLINTON PKWY & CROSSGATE DR (SLD); ITEM NO. 3C: PRELIMINARY DEVELOPMENT PLAN FOR WALGREENS; SW CORNER CLINTON PKWY & CROSSGATE DR (SLD)

Dear Chairman Finkeldei and Planning Commissioners:

We commend the staff for their recommendation to deny the request for a Comprehensive Plan change, a rezoning to CN-2, a request to overlay it with a PD, and a Preliminary Development Plan for Walgreen's. Like the planning staff, we believe these requests are not in alignment with the comprehensive plan, and they lack conformance to the requirements of the Land Development Code.

While some property owners adjacent or nearby the site in question have written letters in support of this rezoning, we believe that the neighborhood has (or will soon have) access to similar services, and the site is too small to meet the 5-acre minimum requirement of the PD Overlay District.

We appreciate your work to make Lawrence a great place to live.

Sincerely yours,

Carrie Lindsey
President

Alan Black, Chairman
Land Use Committee

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May 19, 2008

Jane M. Eldredge
E-Mail: jeldredgc@barberemerson.com

Mr. Scott McCullough, Director
Lawrence/Douglas County
Metropolitan Planning Commission
City Hall, P.O. Box 708
Sixth and Massachusetts
Lawrence, Kansas 66044

Via Hand Delivery

Re: Requested Text Amendment to Horizon 2020

Dear Mr. McCullough:

Enclosed please find the Rezoning and Preliminary Development Plan Applications and required studies in support of the request that the southwest corner of Clinton Parkway and Crossgate Drive be rezoned to CN-2-PD based on the preliminary development plan for a single-use structure for a neighborhood pharmacy.

In addition to these applications, you and your staff have indicated that a text amendment may be necessary to Horizon 2020. In that regard, we request that page 6-20 of Horizon 2020, that recommends "...potential locations for new Neighborhood Commercial Centers. . .", be amended to add as number 13 the "southwest corner of Clinton Parkway and Crossgate Drive".

The Horizon 2020 amendment may be necessary, because although the Horizon 2020 focuses our attention on the need for commercial shopping centers to be developed as nodes, rather than strip centers, it is silent on the issue of the single neighborhood use, such as a neighborhood pharmacy. The CN-2 zoning designation in the Lawrence Development Code allows for sites as small as two acres and single-use structures that are less than 40,000 square feet. These small compact neighborhood commercial uses that serve immediately adjoining neighborhood areas are consistent with the goals, policies and recommendations of Horizon 2020; but are so small that they are not part of a neighborhood commercial node, such as the potential locations identified by Horizon 2020.

In the case of the southwest corner of Clinton Parkway and Crossgate Drive, the other three corners have already been zoned for multi-family residential uses, as have all of the adjoining parcels to the proposed site.

McCullough, Scott

May 19, 2008

Page 2

The proposed amendment is a result of the changed circumstances that as a community we are addressing the need to encourage more pedestrian and transit-oriented commercial areas by encouraging neighborhood services that are integrated with residential neighborhoods, such as the traditional neighborhood designs that we are providing. This amendment addresses the expressed needs to provide walkable neighborhood needs, such as a pharmacy, in a location that is safe and convenient for residents and especially for senior residents.

The proposed amendment advances the clear public purpose of providing neighborhood needs at the neighborhood level.

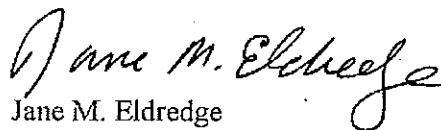
It is a result of a clear change in public policy from grouping all commercial businesses in one node to integrating neighborhood uses, such as a pharmacy, into our neighborhoods to provide amenities and a neighborhood identity or place where neighbors meet, as evidenced by our desire for traditional neighborhoods, more walkability, and more pedestrian-friendly environments.

If you do not determine that such an amendment is necessary, then the Rezoning Application and Preliminary Development Plan Application will answer all questions regarding use, density and form of the building, because the entire project will be reviewed at one time.

Thank you for the opportunity to submit these documents supporting our request for a Walgreen's neighborhood pharmacy. If you have any questions about anything in this application, please contact me at your earliest convenience at: 843-6600, or contact Gary Conwell at: (785) 232-0747.

Sincerely,

BARBER EMERSON, L.C.


Jane M. Eldredge

JME:klb

Enclosures