



**PLANNING COMMISSION MEETING**  
**June 23 & 25, 2008**  
**Meeting Minutes**

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June 23, 2008 – 6:30 p.m.

Commissioners present: Blaser, Chaney, Dominguez, Finkeldei, Harris, Hird, Moore, Rasmussen, and Singleton

Staff present: McCullough, Day, Girdler, M. Miller, and Brown

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**Recognition of Planning Commissioners**

Introduction of new Planning Commission members.

**MINUTES**

Receive and amend or approve the minutes from the Planning Commission meetings of May 19 & 21, 2008.

Commissioner Harris suggested a few changes on pages 22 & 23.

Motioned by Commissioner Moore, seconded by Commissioner Hird to approve the May 2008 Planning Commission minutes with the changes suggested by Commissioner Harris.

Motion carried 7-0-2 with Commissioners Rasmussen and Singleton abstaining.

**COMMITTEE REPORTS**

Commissioner Moore said TAC met and he was elected chair. They discussed bike route changes and also discussed the redesignation of the MPO and new public participation plan.

**COMMUNICATIONS**

Mr. Scott McCullough reviewed new attachments/communications that were posted to the online Planning Commission agenda after the initial posting date.

**EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- No ex parte.
- No abstentions.

**ELECTION OF OFFICERS FOR 2008-2009**

Accept nominations for and elect Chair and Vice-Chair for the coming year.

Motioned by Commissioner Moore, seconded by Commissioner Harris, to nominate Commissioner Finkeldei as Chair.

Unanimously approved 9-0.

Motioned by Commissioner Hird, seconded by Commissioner Chaney, to nominate Commissioner Moore as Vice-Chair.

Unanimously approved 9-0.

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**ITEM NO. 1 FINAL DEVELOPMENT PLAN FOR THE GROVE; 4301 W 24<sup>TH</sup> PLACE (SLD)**

**FDP-04-06-08:** Final Development Plan for The Grove, located at 4301 W 24<sup>th</sup> Place. Submitted by Peridian Group, for Campus Crest, property owner of record.

Commissioner Harris inquired about a letter from a resident who requested fencing to screen out trash and noise.

Ms. Day said it would be above and beyond what was required through the various public hearings. There is fencing and controlled access to the backside of the property. There is vegetation and the park area with future pedestrian paths. If that is a condition that the Commission wants to pursue they can.

Commissioner Moore asked if there was anyone from the public at the meeting to speak about this consent agenda item. There were none.

Commissioner Blaser inquired about a bus shelter on the north side of 24<sup>th</sup> Place.

Ms. Day replied yes, it is located on the north side and a bit to the east. It is a bus stop, not a bus shelter.

Commissioner Blaser did not think there was a bus stop at that location.

Ms. Day said that she received the information from Cliff Galante, Public Transit Administrator.

Commissioner Rasmussen asked about the staff analysis regarding variances.

Ms. Day said that the Planning Commission action to accept the plan would void the variances on the Preliminary Plan.

**ACTION TAKEN**

Motioned by Commissioner Blaser, seconded by Commissioner Hird, to approve the revised Final Development Plan for The Grove, subject to the following conditions:

1. Applicant shall execute a site plan performance agreement.
2. Applicant shall provide a cross access easement with the abutting property to the east to allow for emergency access at the south end of the property to be recorded with the Register of Deeds office.
3. Applicant shall provide a revised Final Development Plan with the following changes:
  - a. Revised endorsement block for the current Planning Chair.
  - b. Provision of a note that includes the deed book and page references for the existing agreements and their purpose on the face of the Final Development Plan.
  - c. Provision of a note on the face of the Final Development Plan to show the deed book and page reference for the cross access easement between the subject property and the abutting property to the east.
4. Submission and approval of public improvement plans prior to issuance of a building permit.
5. Submission and approval of photometric plan prior to release of the Final Development Plan for issuance of a building permit.
6. Provision of a mylar and all required recording fees for the final development plan and to include all elevations of the proposed project.

Motion carried 8-0-1, as part of the Consent Agenda, with Commissioner Singleton abstaining.

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**ITEM NO. 2A MINIMUM MAINTENANCE; N 1 ROAD (RTG)**

**MM-12-03A-07:** Request to designate minimum maintenance road status for a portion of N 1 Road within Marion Township.

**ITEM NO. 2B MINIMUM MAINTENANCE; E 200 ROAD (RTG)**

**MM-12-03B-07:** Request to designate minimum maintenance road status for a portion of E 200 Road within Marion Township.

**ITEM NO. 2C MINIMUM MAINTENANCE; E 600 ROAD (RTG)**

**MM-12-03C-07:** Request to designate minimum maintenance road status for a portion of E 600 Road within Marion Township.

**ITEM NO. 2D MINIMUM MAINTENANCE; E 650 ROAD (RTG)**

**MM-12-03D-07:** Request to designate minimum maintenance road status for a portion of E 650 Road within Marion Township.

**STAFF PRESENTATION**

Mr. Todd Girdler presented items 2A-2D together. He explained a change to Item 2A to extend the road a little further. (he showed on an overhead map) The change was agreed on by Michael Kelly, County Surveyor, due to the concern of a neighbor that wanted the minimum maintenance to include the road leading to his field gate, which is a few feet from where the paintball entrance is.

Commissioner Harris asked if the current staff report for Item 2A included the change that he just explained.

Mr. Girdler said no, but the change would be included in the motion to approve.

Commissioner Hird asked if access to the paintball facility was from the west.

Mr. Girdler said that was correct, off of County Road 1029.

Commissioner Dominguez asked what happens if the road needs to be taken off minimum maintenance.

Mr. Girdler said it would come off the same way it went on. It would be initiated by the Township and then proceed through the process.

Commissioner Dominguez asked if ditches were included in the minimum maintenance.

Mr. Girdler said the minimum maintenance would include ditches.

**PUBLIC HEARING**

No public comment.

**ACTION TAKEN ON ITEM 2A**

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve Minimum Maintenance Road status for N 1 Road in Marion Township including the change discussed and forwarding this recommendation to the Douglas County Commission.

Motion carried 8-0-1, with Commissioner Singleton abstaining.

**ACTION TAKEN ON ITEM 2B**

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve Minimum Maintenance Road status for E 200 Road in Marion Township and forwarding this recommendation to the Douglas County Commission.

Motion carried 8-0-1, with Commissioner Singleton abstaining.

**ACTION TAKEN ON ITEM 2C**

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve Minimum Maintenance Road status for E 600 Road in Marion Township and forwarding this recommendation to the Douglas County Commission.

Motion carried 8-0-1, with Commissioner Singleton abstaining.

**ACTION TAKEN ON ITEM 2D**

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve Minimum Maintenance Road status for E 650 Road in Marion Township and forwarding this recommendation to the Douglas County Commission.

Motion carried 8-0-1, with Commissioner Singleton abstaining.

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**ITEM NO. 3      AMENDMENTS TO SECTIONS 20-1101 & 20-1701, DEVELOPMENT CODE  
(MKM)**

**TA-12-27-07:** Amend Section 20-1101 and 20-1701 of the Development Code relating to environmentally sensitive lands.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

Commissioner Moore inquired about the woodland area regarding 36" above ground.

Ms. Miller said that was changed to diameter breast height. She spoke with Jennifer Smith at the Douglas County Extension office and that the common diameter breast height is 54" above ground.

Commissioner Rasmussen inquired about the potential for a loophole.

Ms. Miller said that it was an attempt to avoid a loophole. She said there were a lot of issues where large parcels had different owners.

Commissioner Rasmussen asked if it would be considered the same owner and control.

Ms. Miller replied, yes.

Commissioner Rasmussen inquired how the trees on the Kansas native species list were picked.

Ms. Miller said they were picked by the City Horticulture Manager, Crystal Miles. Ms. Miller stated that a provision could be made that an applicant could use native species with the approval of Crystal Miles, or the native species list could be expanded.

Commissioner Rasmussen inquired about section (h) which refers to development activity that occurs without approval of sensitive areas site plans. He asked about the timeframe.

Ms. Miller replied, three years. Every three years new aerals are flown. Clear cutting for the woodlands is the accumulated number of trees in three years.

Commissioner Rasmussen inquired about section (h), where it talks about damage to the stream corridor. He asked if removal of poison ivy would be considered removal of vegetation from the stream corridor.

Ms. Miller said it could be clarified more to include maintenance of the vegetation.

Commissioner Rasmussen inquired about a difference between minimum and mixture of tree species. He felt that the language should be consistent.

Ms. Miller said she could take out the wording 'mixture of' and put minimum of 6 species.

Commissioner Rasmussen discussed section (i)(1)(iii)b, that says '*The site plan shall show the delineation of a jurisdictional wetland area that is accepted by the US Army Corps of Engineers prior to submittal of the Sensitive Areas Site Plan; and the site plan shall show any area that is included on the U.S. Fish and Wildlife Service Wetland Mapper, as a suspected or potential wetland area, along with a*

*100' buffer area unless a certified wetland specialist, the Kansas Biological Survey, or the Army Corps of Engineers, determine that the area is not a wetland.'* Commissioner Rasmussen asked if that meant there should be some sort of affirmative documentation from the corps of engineers that they agree.

Ms. Miller replied, yes.

Commissioner Rasmussen asked if the certified wetlands specialist should that be called a certified wetland delineator. A delineator would identify the boundary of the wetland area.

Ms. Miller said that perhaps it could be limited to the state of Kansas. The wetland map includes freshwater ponds as wetlands. She said that the Kansas Biological Survey might be able to help with wetland boundaries.

Commissioner Rasmussen inquired about 'connected greenways' to protect wildlife.

Ms. Miller said that was covered under stream corridors.

Commissioner Rasmussen inquired about the definition of clearcutting.

Ms. Miller said that it could be changed to say that the removal of more than 50%.

Commissioner Rasmussen inquired about the definition of streams.

Ms. Miller said on the USGS quad maps, the solid lines are streams and the dotted lines are intermittent streams.

Mr. McCullough said the goal is to use the quad maps for determining if a stream exists or not. The intent with the code is to use an objective reference.

Commissioner Finkeldei suggested taking out the definition of stream or state that when the word stream is used that it is defined as the definition on the USGS quad map.

Commissioner Harris inquired about ranking. She asked if property had a significant tree next to a sloped area and also had a prairie remnant, according to the ranking that combination would still be more important than the prairie remnant.

Ms. Miller said the native prairie remnants would be connected to another item and in the definition of ranking it was specifically to woodland areas, but prairie remnants could be added to that.

*7:30pm - Commissioner Hird left the meeting.*

Commissioner Harris asked about submitting the plans for sensitive lands together or separately from development plans. She asked if there would be a way for a decision making body to review a plan and then see the plan again with the sensitive lands.

Ms. Miller said the sensitive land site plan would have to be submitted before or with the development plan so that staff could review it for compliance. If it does not comply it would be returned to the developer for revisions.



Commissioner Rasmussen asked about section m on the modifications, page 102, if there are jurisdiction elements on a property is it saying that anything cannot be done with the land. He asked if a critical feature cannot be altered.

Ms. Miller said that was correct.

Commissioner Dominguez asked if there was an exemption.

Ms. Miller said there was an exemption for utilities. There are other exemptions if you have property that is already platted. But as far as an exemption from the wetlands, no.

### **PUBLIC HEARING**

Ms. Carrie Lindsey, President League of Women Voters, said the Commissioners had great comments. The League supports the sensitive land site plan being submitted first to save developers from having unrealistic expectations about the process. Was also concerned about historical sites having protection. She wanted sites that were not yet historical sites, but were in the process of being registered for as historic, to be protected as well.

Commissioner Dominguez asked what would happens if someone wants to develop some property and there is an argument about it being historical and someone starts the process to register it as historic just to delay the development process.

Ms. Lindsey said that there should be someway to have a timestamp of when the site plan was submitted to the City and when the historic process is started.

Commissioner Finkeldei asked if someone could apply for an historic site on someone else's property.

Mr. McCullough said that a better example might be the recent deliberations on the rock quarry that probably met the age of being historic but there was not historic registration for it but there was a lot of debate about whether it was a structure worthy of preservation and protection but it did not show up in the sensitive area site plan.

### **COMMISSION DISCUSSION**

Commissioner Rasmussen asked if someone has critically sensitive area, as defined, would protection of 100% of those sensitive features be required. He also asked if someone had jurisdictional wetland on their property could they not do anything with it.

Ms. Miller replied that was correct.

Commissioner Rasmussen asked if there was a way to modify that.

Ms. Miller said under the modification section M, page 9-9, could modify the areas.

Commissioner Rasmussen asked how someone could get a modification if they are going to be altering the environmentally sensitive feature.

Ms. Miller said it would not be possible, she was mistaken. If the Commission wants people to be able to modify jurisdictional wetlands and to be able to develop on the floodways then item 5 could be removed and those kind of requests could be brought before the Commission for modifications.

Mr. McCullough said that they could also follow the lead of the Corps and grant permits to modify wetlands.

Commissioner Rasmussen asked what the mechanism was if there is a critically sensitive area for saying we are not going to hold someone to the 100% protection requirement.

Mr. McCullough said it would be an appeal to the City Commission. If the proposed language is maintained where they cannot come to the Planning Commission to be modified and the site plan with their proposed changes to the critical features is denied then they can appeal that to the City Commission.

Commissioner Harris said that they might be opening up a can of worms by creating appeals to the City Commission.

Commissioner Finkeldei said that staff could try to define that and draw the line of how much of the land could be effected.

Mr. McCullough said that the definition of wetlands needs to be better defined and how that will be used in the Code.

Commissioner Moore said that maybe they should have language that if any requests are made to have a mitigation plan come forward at the same time to mitigate whatever the sensitive land is.

Commissioner Dominguez asked Ms. Miller to look into the historical registration process.

Commissioner Harris was in favor of making a change that speaks to having an active application prior to the submission of the development plan. She also liked the comment about having an environmental specialist. She said that one of the letters received from the public suggested having an environmental specialist looking at it.

Mr. McCullough asked if Commissioner Harris was suggesting that someone outside be consulted.

Commissioner Harris said that was correct.

Mr. McCullough said that the City is not in the position to hire out consulting at this point.

#### **ACTION TAKEN**

Motioned by Commissioner Moore, seconded by Commissioner Chaney, to defer until July Planning Commission.

Unanimously carried 8-0, with Commissioner Hird leaving prior to the vote.

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**ITEM NO. 4      AMENDMENT TO GPI DISTRICT, DEVELOPMENT CODE (MKM)**

**TA-03-01-08:** Amend Article 4 of the Development Code relating to uses permitted in the GPI District. Initiated by Planning Commission on 3/24/08.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

Commissioner Harris asked about lighting standards.

Ms. Miller explained the lighting standards.

**PUBLIC HEARING**

No public comment.

**ACTION TAKEN**

Motioned by Commissioner Harris, seconded by Commissioner Chaney, to approve the proposed amendment [TA-03-01-08] and additional revisions as stated in the staff report and forward to the City Commission.

Unanimously approved 8-0.

Motioned by Commissioner Moore, seconded by Commissioner Harris, to recommend staff initiate two text amendments as set forth in staff report.

Unanimously approved 8-0.

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**ITEM NO. 5      AMENDMENT TO SUBDIVISION REGULATIONS (MKM)**

**TA-05-04-08:** Amendment to Section 20, Subdivision Regulations pertaining to nonconforming uses created through the dedication or acquisition of public easement(s). Initiated by County Commission in April, 2008.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

Commissioner Moore asked if the item was initiated by County Commission.

Ms. Miller replied, yes.

Commissioner Harris asked if this might create a situation where there would not be enough right-of-way for roads in the future or utilities.

Ms. Miller replied, no, because there will be dedication of right-of-way for what is needed.

**PUBLIC HEARING**

No public comment.

**ACTION TAKEN**

Motioned by Commissioner Rasmussen, seconded by Commissioner Moore, to approve the proposed amendment [TA-05-04-08] to revise the language in Section 20-2 and 20-4 regarding the impact of dedication of additional permanent easement for road right-of-way and forward to the Board of County Commissioners.

Unanimously approved 8-0.

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**ITEM NO. 6      AMENDMENT TO COUNTY ZONING REGULATIONS (MKM)**

**TA-05-05-08:** Amendment to Article 18 to add a footnote to lot/parcel width at road frontage to waiver requirement when county engineer has approved an exception based on execution of an access restriction agreement. Initiated by County Commission on 4/16/08.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

Commissioner Harris asked if the placement of the access points remain the same.

Ms. Miller said the spacing would still be the same. The only thing changed was the amount of frontage.

**PUBLIC HEARING**

No public comment.

**ACTION TAKEN**

Motioned by Commissioner Moore, seconded by Commissioner Chaney, to approve the proposed amendment [TA-05-05-08] to revise the table in Section 18 to indicate that the County Engineer may waive the minimum frontage requirements and enter into access restriction agreements.

Unanimously approved 8-0.

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**ITEM NO. 7      AMENDMENT TO COUNTY ZONING REGULATIONS (Linda Finger)**

**TA-05-06-08:** Amendment to Article 19 to add a new use for 'value-added agricultural business.'  
Initiated by County Commission on 4/14/08.

*Item 7 deferred prior to the meeting.*

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**ITEM NO. 8      AMENDMENT TO COUNTY ZONING REGULATIONS (Linda Finger)**

**TA-05-07-08:** Amendment to Article 19 to correct formatting error by creating sections 19-2 and 19-3 (which currently don't exist) and by revising 19-1.06 to add compliance with all applicable state and federal laws to the application process. This also includes an addition of the compliance issue to what the County Commission can consider in a review or revocation of a CUP under 19-3. Initiated by County Commission on 4/16/08.

*Item 8 deferred prior to the meeting.*

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**ITEM NO. 9      AMENDMENTS TO SUBDIVISION REGULATIONS (JCR)**

**TA-05-08-08:** Amendment to Section 20-804 and to the definition of "Easement, Cross Access" in 20-815 to clarify the process/procedure for creating a cross access easement and to provide minimum construction standards for the service drive within the easement. Initiated by County Commission on 4/14/08.

*Item 9 deferred prior to the meeting.*



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**ITEM NO. 10     AMENDMENTS TO SUBDIVISION REGULATIONS (JCR)**

**TA-05-09-08:** Amendment to Section 20-806(c) and 20-807(d) to clarify the process/procedure for providing proof that no unpaid taxes exist for property included in Certificates of Survey or Minor Subdivisions. Initiated by County Commission on 4/14/08.

*Item 10 deferred prior to the meeting.*

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**ITEM NO. 11      AMENDMENTS TO SUBDIVISION REGULATIONS (MKM)**

**TA-12-26-07:** Amend Section 20-806(b)(3) and 20-806(d) to clarify that a parent parcel may be divided to create 1 residential development parcel, and is not required to create 2 or 3. Initiated by the Planning Commission on 11/26/07.

*Item 11 deferred prior to the meeting.*

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**MISCELLANEOUS NEW OR OLD BUSINESS**

Commissioner Finkeldei stated that all of the Planning Commissioners should have received a list of committees. He asked they each look it over and decide which committee they would like to serve on.

Consideration of any other business to come before the Commission.

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**Recess at 8:53 P.M. until 6:30pm June 25, 2008.**

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Reconvene June 25, 2008 – 6:30 p.m.

Commissioners present: Blaser, Carter, Chaney, Dominguez, Finkeldei, Harris, Hird, Moore, and Rasmussen

Staff present: McCullough, Day, Leininger, J. Miller, M. Miller, and Brown

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**BEGIN PUBLIC HEARING (JUNE 25, 2008):**

**COMMUNICATIONS**

- No Communications

**EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- Ex parte:

Commissioner Moore received a phone call from Mr. Greg DiVilbiss regarding Misc 1 (FDP-04-04-06) on tonight's agenda.

Commissioner Carter had the same conversation with Mr. DiVilbiss.

Commissioner Hird received several emails from the public and one phone call that he did not have time to return.

- No abstentions

Planning Commission recognized previous Chair Grant Eichhorn for his time served on the Planning Commission.

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## **MISCELLANEOUS NEW OR OLD BUSINESS**

### **MISC 1      EXTENSION FOR FINAL DEVELOPMENT PLAN FOR LAKE POINTE PCD; NW CORNER OF CLINTON PKWY & LAKE POINTE DR (MKM)**

**FDP-04-04-06:** Extension for the Final Development Plan for Lake Pointe PCD, located on the NW corner of Clinton Parkway & Lake Pointe Drive.

#### **STAFF PRESENTATION**

Ms. Miller presented the item.

Commissioner Moore inquired about how plats expired under the old code.

Ms. Miller this is under the 1966 Zoning Ordinance which had the 18 month rule and then an extension could be asked for.

#### **APPLICANT PRESENTATION**

Mr. Greg DiVilbiss, owner of the center parcel that includes the shopping center, discussed the time limit on the development. He explained that he could not build until the housing market picks up. He wanted his extension to be extended again in the future.

Commissioner Rasmussen asked if he was wanting another means for extending it further.

Mr. DiVilbiss said that was correct.

Commissioner Rasmussen asked if he had talked to Planning staff or legal council about it.

Mr. DiVilbiss replied, no.

Mr. McCullough said staff recommendation was that a 6 month extension be granted. This specific circumstance where the Plat has been filed and the Development Plan is being extended, the Code is silent on how many extensions can be granted by the Planning Commission. It would be determined by the Planning Commission. There are some outstanding conditions that have not been met yet.

Commissioner Finkeldei asked if it would be possible to grant another extension.

Mr. McCullough replied, yes, the applicant would have the opportunity to request another extension.

#### **PUBLIC HEARING**

No public comment.

#### **COMMISSION DISCUSSION**

Commissioner Carter said that if for some reason they would rush the developer into this project it might limit the quality of tenant that they might be able to get.

Commissioner Dominguez asked how big of a hassle it was for the developer to keep requesting extensions.

Mr. McCullough said the extension request is usually done through a letter.

Commissioner Dominguez asked what the downside was for the developer to not finish the project.

Mr. McCullough said internally part of staff analysis of extending the development plan is determining what is delaying the project. Typically staff appreciates when the applicant has performed all the conditions to get it to the point of being recorded and finalized with no outstanding issues.

**ACTION TAKEN**

Motioned by Commissioner Hird, seconded by Commissioner Carter, to approve the 6 month extension request with the condition that the conditions of approval be met and the Final Development Plan filed with the Register of Deeds. If the conditions of approval are not met and the Final Development Plan filed within the extension period, the plan would expire on Nov. 22, 2008 and no further extensions would be possible.

Unanimously approved 9-0.

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**ITEM NO. 12 CPA-2008-9 (MJL)**

**CPA-2008-9:** Amend Horizon 2020, Chapter 14 Specific Plans, to add a reference to and incorporate the K-10 & Farmer's Turnpike Plan.

**STAFF PRESENTATION**

Ms. Michelle Leininger presented the item. No action will be taken on this item as it will be heard again by Planning Commission in July.

**PUBLIC HEARING**

Ms. Kim Richter, wanted to know if the plan talks about what type of industrial use is best for the area. She requested more time to think about this. Inquired about the purple box.

Ms. Leininger said that page 3-10 of the plan outlines zoning districts and primary uses.

Ms. Marguerite Ermeling felt that the map was extremely simplified. At the moment it is still the existing chapter but the second level of planning has not been done for this area. It might be necessary to slow the process down and give attention to a watershed plan. She did not feel like public input has been added to the plan. She felt like she has not been listened to and her ideas have not been integrated into the plan.

Commissioner Finkeldei asked Ms. Leininger how many watersheds are in the area.

Ms. Leininger said roughly 14-15 watersheds. Page 2-15 has a map.

Commissioner Finkeldei asked if there were additional planned public meetings before the public July Planning Commission meeting.

Ms. Leininger replied no.

Commissioner Harris asked Ms. Ermeling what she felt was not incorporated in the plan.

Ms. Ermeling said she was not prepared to answer that question but that there were many letters from the public with suggestions and ideas.

Commissioner Dominguez asked Ms. Ermeling if she knew how many watersheds were in the county.

Ms. Ermeling said there are tons of ravines around the area.

Mr. Mike Dunnaway, Lakeview Fishing & Shooting Association, was concerned about the lake and environmental conditions. He had concerns that if the plan as drafted is adopted, significant negative impacts to the area will result. His primary concerns are summarized as follows:

- The lake itself at Lakeview is an oxbow lake formed by a flood in 1853 that changed the course of the Kansas River channel. Only two such lakes exist in Kansas. The lake has been preserved by construction of a drainage channel linking the lake to Baldwin Creek. The drainage system diverting water to Lakeview is extremely sensitive to local runoff. If development is allowed to occur, without constructing proper safeguards, the danger of flooding will significantly increase. Not only will the structures at Lakeview be placed at risk, but other homes in the area could be in jeopardy as well.
- A portion of the lake is designated as a wetland and is an important part of the area's ecosystem.

The volume of runoff and the potential contaminants contained in the runoff as a result of commercial, industrial, and residential development in the area may be detrimental to the future of this wetland area.

- Similarly, we have a concern that the water quality in the lake itself will be adversely impacted as a result of the runoff from nearby developments. This may in fact pose health problems for our members and their guests who enjoy water sports in our lake.

- The plan as drafted does not address the benefits of the current land uses existing in the area, nor is there any mention of trying to preserve the character of the region.

We raised these same issues upon completion of the first draft of the plan. It seems prudent and responsible to address these issues in order to fully consider the impact on area residents. We ask that the planning process be revisited and that the concerns stated above be fully addressed.

Ms. Leininger said that the City has stormwater regulations and when and if this area is developed it will be under the stormwater regulations. Those issues would be addressed in other regulatory documents. The City stormwater engineer is currently working on a stream buffer ordinance and he did give comments to this plan. All of these things will help to protect the water quality. Staff is working to identify the buffers around the stream.

Commissioner Dominguez asked staff if they had already taken Mr. Dunnaway's concerns into consideration.

Ms. Leininger replied, yes. In the initial stages when the plan was started the City stormwater engineer was involved and there are regulations in place for stormwater. All of the comments have been looked at.

Commissioner Moore said that section 2-14 talks about Baldwin Creek so perhaps further mention of the Oxbow lake might be appropriate there.

Mr. Dave Ross, President of Scenic Riverway Community Association, agreed with Ms. Ermeling and felt like his concerns have been ignored. He discussed the Free State High School meeting of about 75 people that he was present at where neighbors expressed their concerns.

Mr. McCullough said that all public comments were provided to the Planning Commission. He also said that staff left the Free State High School meeting with very few comments that were specific to the plan and that the meeting was charged with emotions. The land use concept of this plan is based on policy in Horizon 2020 that call out the need for increased employment for the region. This is the third interchange to an interstate highway and has support in Chapter 7 for an industrial employment center so it was the natural extension to do the sector planning of the area. He understood the common theme that the neighbors feel that staff was not listening to them but staff was hoping for some good productive comments for the plan itself. Staff did hear good comments on adopting more of the SmartCode into the plan. This plan by itself does not urbanize the area. This plan is to be used as a guide if and when a property owner makes a request to develop and receive urban services when they are available, so staff took into account all the existing layers of development. Staff did build into the policy statement on page 3-4 and 3-5 a little bit more language about traditional neighborhood design and its benefits because that is an alternative development pattern that could be beneficial for the area, given the topography and the sensitive areas. He said that part of the plan involves education and that there is nothing in this plan that could take away somebody's farm or livelihood. The plan is a guide for when an owner wants to request annexation into the city.



Mr. Ron Schneider, attorney representing Scenic Riverway Community Association, suggested to Mr. Ross to have a meeting to put together a comprehensive presentation outlining in detail the concerns and issues. He said he would send it to staff.

Mr. Stan Unruh, said he had no intentions to request annexation or rezoning of his land, nor did any of his neighbors.

Ms. Jane Eldredge, Barber Emerson, went over the written comments that she sent in a letter, which can be found in the June Planning Commission agenda items. She asked for particular changes to the sector plan.

Commissioner Finkeldei asked staff about double bufferyards.

Mr. McCullough said that page 3-4, in the middle of the page transition area, has the language about double bufferyards.

Commissioner Carter asked staff about the bufferyards being different than the Development Code.

Mr. McCullough said that Horizon 2020 policy is about transitioning land uses. Staff gave full consideration to different alternatives to transition, knowing that they wanted to capture the goal of providing an employment center at the intersection of state and local highways and principal arterial roadway. There are a few options to do that such as transitional uses, by shrinking the employment/industrial center to something smaller than it is and then step down with uses transitioning up into the residential areas. You could keep the industrial area the same size and maybe provide higher density across the road. Or be creative and try to find other ways to transition between the very abrupt land use categories of the highest industrial category we have and the lowest residential category we have. Staff landed on the concept that looks like what is seen in the plan. It was easier to transition uses going east to west along the principal arterial road and more challenging transitioning to the north where a more local feel will be off of the highway going north.

Commissioner Harris asked about the option of toning down the intensity of the use as an alternative buffer.

Mr. McCullough said it was considered and one of the reasons is the natural boundaries of the road system that exist today. When you look at the parcel pattern of the corner section it does make some sense to keep it as a heavy industrial pattern. From the initiation of the sector plan, staff has approached this as a real opportunity as a completely greenfield area in terms of urbanization. It is an opportunity to get some esthetically pleasing developments on the interchange of I-70.

Commissioner Harris asked how the amount of industrial area was decided.

Mr. McCullough said staff took into account the fact that industrial areas are needed. Staff then looked at the road access. Staff tried to address the need for a nice inventory of large acre parcels for employment center use. Staff also took into account some of the road boundaries, the topography of the area, and the interchange location to prevent truck traffic unnecessarily moving out of the interchange.

Commissioner Hird asked if the bufferyard requirements are doubled in this sector plan would there then be an exception made in the development code.

Mr. McCullough said he did not think it would be an exception because not very many people go above and beyond the minimum.

Commissioner Carter asked about the intersection that is now identified as a minor gateway that was not identified in Transportation 2030.

Mr. McCullough said the intersection was there. Transportation 2030 was a good process but it was a hurried process. The interchange was, at that time, was still a distance from where the boundaries of the city were. The language proposed states that this will be a future gateway as it urbanizes.

Commissioner Rasmussen said he had a few transitional questions. On page 3-4, section on transition area, statement 'all land uses within the identified transition area shall bear the burden of providing the extra buffer.' He said that the transition area seemed to be partially on the industrial area and partially on the low density residential area. He asked if that meant the industrial area would have the responsibility of providing the minimum of doubling transition area.

Mr. McCullough said that was correct.

Commissioner Rasmussen asked if there would be an extra wide buffer in the residential area and an extra wide buffer in the industrial area.

Mr. McCullough said that was also correct.

Commissioner Rasmussen said the transition area starts in the west, moves across the north side of the industrial areas and stops at the east point. He inquired about the residential office.

Ms. Leininger said that staff looked at that. The thought behind that was because the residential office acts as the transition between the lower density residential and the office research where you're going to get higher densities than you will with the low and medium density.

Ms. Ermeling (proxied minutes from audience member Grant Eichhorn) commented on the bufferyard issue. She said that you cannot expect to buffer that well from anything since it is an overlooking point. She said it is a unique setting in the topology.

## **COMMISSION DISCUSSION**

Commissioner Harris inquired about the definition of gateway in the context of this plan and what rules they should be following. She said that Horizon 2020 shows the intersection as being a major gateway but Ms. Eldredge said that Transportation 2030 calls it a minor gateway.

Mr. McCullough said that staff would like to explore the different sections of the Code and Plans. The Gateway & Boulevard Committee might come up with recommendations on what elements to include for this issue.

Commissioner Dominguez said that everyone is concerned about the growth area. He asked how long it would take to build infrastructure out to these industrial sites and what is the City liability to build that infrastructure out. He also asked about the responsibility to run sewage and such infrastructure out there.

Mr. McCullough said this does not commit the governing body to make any commitments for infrastructure to the planning area. Timing is unknown at this point because the City Commission is considering releasing Utilities Dept to update their master plan to include the area.

Commissioner Blaser said that most industrial plans are not very pleasing to the eye. He said that it is possible to have steel buildings that look like brick. He felt they should be careful with building materials.

Commissioner Moore looked at the Southeast Area Plan and said it does not mention building materials for industrial at all and does not mention design features. He did not think they could say that in the northeast area there has to be brick but the southeast plan it does not say that.

Mr. McCullough said it has only been recently that staff has been actively pursuing industrial design guidelines.

Commissioner Carter was concerned about a warehouse for industrial uses being built of stone or brick might limit the feasibility for the developer.

Ms. Leininger said the statement that talks about that is a 'should statement.' It is meant to be an encouragement for quality building materials and other quality architectural features. She said it leads into the want for the city to have some industrial design guidelines. It is a flexible statement for what the city would like to do in the future.

Commissioner Hird said he is Chairman of the Gateways & Boulevards Committee and he would like to address these issues. He would like to be consistent with other sector plans. He felt it was an emotional issue and wanted to comment to Mr. Ross and Mr. Dunnaway saying they are not listened to. He assured the public that Planning Commission does look at the communications and they do listen, they may not agree, but they do listen.

Commissioner Harris talked again about the buffer area at the top. She wondered why it was best to divide the buffer between industrial and residential. She asked if the industrial is developed before the residential then the people living in that residential area will have half or less of the buffer unless they put it in themselves.

Mr. McCullough said the policy is for development as it comes into the city and urbanizes. He believed both land uses should share the burden of the transition. He felt that each side of an abrupt change should carry some of the burden for transitioning.

Commissioner Harris asked if the buffering on the industrial side would be adequate for transition.

Mr. McCullough said the plan is for future buildout.

Commissioner Blaser asked if there was any place in Lawrence that goes from heavy industrial directly to low density residential.

Commissioner Finkeldei said Hallmark.

Mr. McCullough said there are plenty examples of industrial within residential areas. He stated as the city has grown staff have used the codes at their disposal and developed in that fashion.

Ms. Leininger said there are industrial examples in East Lawrence along the BNSF Railroad and Hyper is an example as well.

Commissioner Harris was in favor of having a sector plan for the area and working toward the goals for the area. She felt there needed to be a purpose and that the vision leaned more toward the city rather than the neighbors. She wanted to get to a closer shared vision between the city and the neighbors.

Commissioner Rasmussen asked if staff would consider a section to the policy concerning environmentally sensitive lands.

Mr. McCullough said page 3-3 mentions that environmentally sensitive land should be protected but staff could try to boost that a little.

**NO ACTION TAKEN**

*8:40pm - Commissioner Chaney left the meeting.*

PC Minutes 6/25/08

**ITEM NO. 13     A TO IG; 155 ACRES; I70/K10 BUSINESS PARK (SLD)**

**Z-04-09-08:** A request to rezone approximately 155 acres from A to IG. The property is located on the NW Corner of N 1800 Rd & E 900 Rd; I70/K10 Business Park. Submitted by Steven Schwada, agent for Stonewall Farms LLC; JDS Kansas LC; Pert LC; Penny J Tuckel; Axrom LLC; Venture Realty Corporation; Arco Sales Corporation; Venture Properties Inc; Industrial Square Corp; JDSS Limited Company; Radol LC; Tuckel Russell L JR; Northland Ventures LC; and Oread LC, property owners of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

**APPLICANT HEARING**

Ms. Jane Eldredge, Barber Emerson, commented on the 3 conditions on the staff report. She went over the letter that she wrote that was included in the Planning Commission online packet. The property owner has agreed to exclude the uses of a truck stop, slaughterhouse, explosive storage, and salvage yard.

Commissioner Rasmussen stated that in the staff report (page 13-9) it refers to findings made by Planning Commission in December 17<sup>th</sup> regarding traffic leaving the property will head south to K-10 & I-70. He questioned how the property owners would ensure that happens.

Ms. Eldredge said that the property owners cannot ensure which way traffic will go. The owners however do know that the land has access to I-70. The most likely use of the property would be warehouse distribution. She stated that there will be no access to the county roads and that the primary arterial road would be the Farmer's Turnpike.

Commissioner Rasmussen asked how long the process would take to retire the lagoon.

Ms. Eldredge stated that the City development policy provides that utilities may be extended when a property owner requests and pays for those utilities. She said that typically those utilities are extended as the City grows and there are a number of property owners who are interested in paying for those utilities. As part of the annexation ordinance the site would use rural water and onsite sewer management services, and that those are permitted as long as they are sufficient to serve the uses that are there. Ms. Eldredge said she did not know how long the process would take to retire the lagoon and that it would depend on when City services would be available.

Commissioner Rasmussen inquired about limiting the uses to non-polluting and non-objectionable uses, as mentioned in the staff report. He wondered what the property owner considered to be non-polluting and non-objectionable uses and asked if the four uses Ms. Eldredge stated earlier would be excluded.

Ms. Eldredge replied yes, the four uses would be excluded.

Commissioner Dominguez inquired about buffering. He asked if she felt that the existing residences were large enough pieces of land that there was enough buffering.

Ms. Eldredge replied, no. Instead of applying County regulations she asked that City regulations be applied because they are greater in terms of setbacks and buffering requirements. County setbacks are 25' versus City 50' setbacks and the City has bufferyard requirements as well.

Commissioner Carter asked if the developers responsibility was a 25' setback.

Mr. McCullough said that the Code offers developers choices for bufferyards. Sometimes infill developments do not have a lot of room. The higher density landscaping and/or screen walls or berms are required if there is not room for a wider bufferyard. A berm or fence would not be required for the wider buffer but landscaping would need to be provided. The less landscaping there is the wider the bufferyard.

Commissioner Dominguez asked if a wider buffer was wanted.

Mr. McCullough said not necessarily, it was whatever the developer chose.

Ms. Eldredge showed on the overhead three choices for bufferyards. She said the bufferyard would provide screening that was intended to protect one abrupt use from another. She felt that zoning should apply uniformly to every part of the city that the zoning designation occurs.

Commissioner Hird asked if the property owner was voluntarily subjecting the property to City buffering requirements as opposed to County buffering requirements.

Ms. Eldredge replied yes.

Commissioner Finkeldei suggested using the word 'simultaneously' instead of 'prior to' in condition 1 of the staff report.

Mr. McCullough said that staff did not oppose Ms. Eldredge's changes to conditions 1 and 2 in the staff report but staff did not agree with the change to condition 3.

## **PUBLIC HEARING**

Ms. Kim Richter, felt that the property should not be zoned IG because the property is next to residential properties. She felt that the area was a minor gateway to Lawrence but a major gateway to Lecompton. She felt that IBP or IL would be a more appropriate zoning district. She was concerned that property value would go down on residences located next to heavy industrial. She did not feel that buffering would mask any kind of development on the land. She felt that the only way to control aesthetics was to zone it properly.

Ms. Gwen Klingenberg, Lawrence Association of Neighborhoods, felt that the IG zoning was inappropriate. She stated that the zoning could be IL and still allow warehouses and that zoning districts IL or PD would be better suited to what exists. She said that conventional zoning could not be conditioned, referring to the four excluded uses that Ms. Eldredge discussed earlier. She said that if a court case comes up in which a conditioned conventional zoning was challenged and found to be invalid, every single approved conditioned conventional zoning would lose its conditioning. She went on to say that a new owner or present owner could restart the process and not have to go through the rezoning process if the approval expires. The conditioned uses would be gone but the zoning would still be there without the conditions. She felt that IL or IBP zoning districts would be more appropriate. She stated that the City spent a lot of money to improve the East Lawrence gateway. She felt that the applicant should comply with City Codes now that the property is annexed into the city.

Ms. Sarina Farb, daughter of nearby property owners, expressed concerns about buffering that would protect properties farther away from pollution. She was concerned that the owners might not honor their word of not allowing the four uses discussed by Ms. Eldredge.

Ms. Day said that buffering is not intended to 100% screen from view a particular use. It is intended to provide a barrier to capture some of the sound and screening of vehicle lights. Staff cannot ask that there be a 10' wall built around the development. Some existing vegetation would most likely be retained, a series of street trees as well as other landscaping could be placed on the property. The setback of the building continues to be measured from the property line and would most likely be located to the centers of the property with the parking lots oriented in a way to have the easiest access out of the property and to the transportation network. She stated that when staff looks at buffering they try to make sure it is applicable to the district. There are a number of locations in the community where there are additional standards or overlays such as floodplain regulations, extraordinary setbacks along portions of 6<sup>th</sup> Street and portions of South Lawrence Trafficway, so it is not an unusual requirement. She said that staff does work hard to work with the Codes addressing extraordinary setbacks and extraordinary buffers. The typical practice has been to deal with the immediate properties and layer the uses as you move outward to help retain the integrity of the neighborhood and to continue to buffer those less intensive activities. She said that the Development Code does have the ability to restrict land use in conventional zoning districts, not just for Planned Developments and the land use restrictions would typically become part of the zoning ordinance. The Planning Department would have to work with internal mapping systems to recognize the land use restrictions but in pre-submittal meetings with developers Planners could identify the restricted uses at that location.

Commissioner Finkeldei asked if the use restrictions would be included with the land.

Ms. Day replied yes, unless it was rezoned.

Mr. Ron Schneider, attorney representing Scenic Riverway Community Association, asked for a continuance of the item in order to receive additional information. He said that the neighbors have been inundated for months with meetings on the subject. He said that at the County Commission meeting a month ago there were over 30 people in opposition. He stated that his clients are opposed to the annexation and rezoning of the property to industrial development. He stated that IG zoning was too heavy of industrial zoning for the area. He understood that some form of warehouse activity was expected at the site so he suggested a less intensive zoning of IBP could be used instead. He felt that IBP zoning was a better compromise and felt that IG zoning was incompatible with the surrounding residential area. He said that if the applicant expects some form of warehouse to be built at that location then the zoning of IBP should be the compromise. He also stated that the IG zoning states 'the district is generally incompatible with residential areas in low intensity commercial areas.' He expressed concerns about noise, pollution, toxic fumes, and vibrations associated with industrial sites. He felt that the neighborhood wishes and concerns should be given serious consideration.

Ms. Marguerite Ermeling discussed buffering and felt that it would be impossible to obstruct the view from neighbors. She felt that there were better places to put IG zoning. She said that the Santa Fe area was a well identified industrial space and felt that industrial projects should be continued west from that existing industrial area. She felt that IBP zoning would be a better alternative and might be an appropriate compromise. She felt that the applicant had not worked with the neighbors and others in opposition to the project as much as they could have.

Mr. Joe Farb, lives about 1 mile north of proposed project, was opposed to the IG rezoning and felt that the property owners have not been listened to. He felt that a compromise of lesser intense industrial zoning could be reached.

Ms. Beth Johnson, Chamber of Commerce, read a statement she found through the International Economic Development Group that said 'the main goal of economic development is improving the economic wellbeing of a community through efforts that entail job creation, job retention, tax base

enhancements, and quality of life.' She said that the Chamber has heard repeatedly from elected officials that Lawrence has to grow the tax base and be able to change the tax base so that it takes a little of the reliance off of the residential tax payers and puts a little more reliance on industrial taxes. She said that Steve Brown from Berry Plastics spoke at City Commission about how there are companies in Lawrence that have growth potential but no room to expand. She stated that there are industrial areas in the city, such as East Hills Business Park and Franklin Business Park but that both of those are on K-10. There is only one property on I-70, nothing at the Airport of substance, nothing in Santa Fe Business Park, and only a 28 acre site in Riverside Business Park. She stated that more industrial sites are needed for Lawrence and that business is lost to other cities who do have industrial sites. She felt that the I-70/K-10 intersection was a perfect location for industrial. She understood the neighborhood concerns about what the industrial site would look like. She said there was an open lot across the street from where she lives and that she was concerned about what the house would look like. She said there were no guarantees of what proposed structures will look like. She said that one guarantee would be that since the land would be annexed into the City it would fall under City Codes. She said that one of the things that the Industrial Committee has been working on is to put restrictions and covenants on what that development would look like without being prohibitive. She said that there are a lot of building materials out there that are not ugly. She said that she researched jobs and according to the 2000 Census that 47.7% of residents 25 years of age and older have a bachelor degree which means that there are 53.2% of residents that do not have one. She said that meant that jobs were needed across the scale. She said that the only way to get those jobs was to bring industrial land into the inventory of marketing for companies that are interested in Lawrence.

Commissioner Harris asked how the square footage of the distribution center compare to the IBP square footage.

Ms. Johnson stated that the distribution center was 400,000 square feet and the manufacturing office was 20,000 square feet at most.

Ms. Jo Ann Farb, lives about 1 mile north of proposed site, was opposed to the IG zoning. She did not think that any of what Ms. Johnson said necessitated that the property be zoned IG. She was a little offended by the comparison of concerns that Ms. Johnson mentioned of having to deal with a house being built across the street from her. She said that 53.2% of people not having bachelor degree might include children and elderly people. She felt that taxes would not go down by this industrial development and also felt that the development would have hidden costs. She also expressed concern that the whole project might not go forward due to the downfall in the market and the tax payers might get stuck with the costs incurred by it. She felt that the area should be zoned IBP, not IG.

Ms. Johnson said that the 53.2% figure included retirees, but did not include people under 25 years of age.

Mr. Dave Ross, President of Scenic Riverway Community Association, felt that the zoning should be IBP, not IG. He felt there was a need for higher quality jobs and he would like to see something built that was high quality and benefit everyone. He did not like the uncertainty of what would be built there. He also felt that screening with berms was a better option than trees.

Mr. Stan Unruh, was concerned about buffers to the east of the property.

Ms. Day said the conventional buffer would apply.

## **APPLICANT CLOSING COMMENTS**



Ms. Eldredge, said that the applicant has been responsive in meeting with the neighbors and that they held a meeting where only four neighbors attended. She felt that it was a positive meeting and that she did not see any of the neighbors tonight at Planning Commission. Mr. Schneider said he did not want any of his clients meeting with her and she asked who his clients were and he was unsure so during her meeting with neighbors she announced that if any of them were Mr. Schneider's client that they needed to leave. She asked Planning Commission take out the emotional aspect of the project. She agreed it was an incompatible use with residential but one of the ways to deal with that was to use bufferyards that are intended to mitigate incompatible land uses. She said that the bufferyards are meant to buffer adjacent property owners, not property owners that live a mile away. She stated that the IG zoning is in conformance and that the character of the neighborhood is agricultural. She said the property was suitable for industrial zoning and that it provides an opportunity for the community. She said the goal was not to build the ugliest thing possible at this location. The goal of the community is to increase jobs, which cannot be done without industrial sites.

Commissioner Rasmussen inquired why there were only four uses that would not be allowed at the site.

Ms. Eldredge said that the four uses were of concern to neighbors. She said that because of the location it would need to be available for multiple uses. The more restrictive the property is the less likely businesses will locate to the site. She felt that the four uses were reasonable to exclude.

### **COMMISSION DISCUSSION**

Commissioner Harris asked if it was proper procedure to consider draft documents like the draft sector plan and the draft industrial chapter in their decision or should they stick with the approved plans.

Mr. McCullough said that it was appropriate given the context. He gave the example of the request of the revised Southern Development Plan for The Exchange to have the draft plan support that use. The Commission used that draft plan for supporting that project. He said that was a fact that they had to weigh individually in terms of whether or not the recent planning efforts were far enough along to make that a factor.

Commissioner Moore asked if there were more uses on the list and wondered what businesses such as Amarr Garage or Berry Plastics would be considered.

Ms. Day said that Berry Plastics would likely fall into the manufacturing use and the warehouse distribution piece could fall into the IBP, IL, or IG zoning districts. Martin Logan, Impact Worldwide, Microtech were uses that fell into the manufacturing production technical category and would be allowed in the IBP, IL, or IG zoning districts.

Commissioner Carter was concerned about IBP versus IG zoning. He felt that prospective employers may not want to come to Lawrence not knowing what use could be at that location.

Commissioner Blaser felt they should look at IG zoning for the site. He said that the concerns brought up by neighbors regarding toxic fumes, noise, dust, vibrations, are mostly controlled by federal laws.

Commissioner Harris did not agree that the Planning Commission role did not include considering the effect on the neighbors in the area. She felt that their job was to decide if the uses were appropriate for the site and if it fits within the context of plans for the entire community. The neighbors have asked for IBP instead of IG and she liked that idea if it supports the City's bigger goals. It might do that by bringing the employment that the City wants and might bring a better tax base. She was in favor of delaying the item since there was no sector plan in place yet. She felt that if the item was not delayed then they should go for IBP zoning that would serve the community the best and allow the developer to

accomplish what they want. She also liked the idea of the developer meeting with the community to reach a compromise.

Commissioner Rasmussen said that he personally would not want an industrial site next to his home but if he were the property owner of the site it would make sense to put an industrial use at this site. He said the staff report says the developer would put a covenant on the plan to restrict four types of uses. He said he could think of many more uses than four but he also understood the developer wants the most flexibility. He felt it was a good and appropriate location for industrial use.

Commissioner Hird said he lives in the country so he can sympathize with the neighbors because he would not want an industrial site next to his home either but the problem for the Planning Commission was that they have to consider the community as a whole. There was not a decision that will please everyone entirely. Based upon the access to I-70 there is no better place to put an industrial site. As difficult as it is in the face of sincere land owners, he felt they should stick by their previous decision in December. He hoped that the neighbors would participate in the specific development. He felt that doubling the buffering would not hide anything. He felt it was bad policy to start singling out sectors and applying unequal treatment. He appreciated the applicant voluntarily doing City buffering instead of County buffering. He was encouraged that the four uses specified would be prohibited. The accessibility of the site lends itself to industrial development.

Commissioner Dominguez said he wanted to do what was best for Douglas County and the Planning Commission's job was land use. He said the site area was a gateway to Lecompton and he understood the concerns of Lecompton. He said the property owner had the right to develop the land. He felt that IBP zoning might be a compromise.

Commissioner Blaser said he would vote for the IG zoning.

Commissioner Carter agreed with Commissioner Hird.

Commissioner Finkeldei said the tough part of serving on Planning Commission were the extremes of items. He said that if the question was if they want jobs in the community the answer was yes, if the question was if a property owner wanted industrial next to their \$350,000 house the answer was no. He said that if they could get a nice employer to bring 300 jobs to the community the neighbors would not be happy and the Chamber of Commerce would not be happy with only 300 jobs. He said that he always listens to every speaker's concerns even if he does not agree with the concerns. He thought there should be some sort of balance of the extremes. He felt that the location was perfect for industrial use and best for the community as a whole.

Commissioner Moore said he watched City Commission last Tuesday where Steve Brown from Berry Plastics spoke about the need for more industrial space.

#### **ACTION TAKEN**

Motioned by Commissioner Hird, seconded by Commissioner Carter, to approve the request to rezone approximately 154.9 acres, from A (Agricultural) to IG (General Industrial) based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval, subject to the following conditions:

1. Approval and publication of an annexation ordinance ~~prior to~~ *simultaneously with the* publication of an ordinance for the rezoning.
2. ~~Prior to publishing the rezoning ordinance an annexation agreement shall be executed with the City to address the availability of public services (sanitary sewer, water and roads).~~

3. ~~Development shall include transitional recommendations (increased buffer yards) as outlined in the K10 and Farmer's Turnpike Plan if and as this plan is approved.~~
4. And restricting the following uses – truck stops, slaughter house, explosive storage, and salvage yards.

Mr. McCullough clarified that the applicant would not be voluntarily doing City buffering because the site would be annexed into the City so they would then be under the Land Development Code of the City and would be required to meet the bufferyard standards. With the straight zoning of IG any Site Planning will be administratively performed.

Commissioner Harris said she would vote in opposition because she felt it was premature and that she did not know what gateway meant. She was also not convinced that they needed as heavy industrial use as IG. She felt that it could be limited by zoning to less than IG.

Commissioner Dominguez asked if there was a statute that would stand up for these considerations for the four restricted uses and the land is sold.

Mr. John Miller said the issue of conditional zoning was not a concept that has been challenged in Kansas courts. There was no current case law on the validity of conditional zoning. The City Land Development Code does allow for both the review body and decision making body to condition the zoning of property. He felt that was statutorily allowable. The Development Code would pass legal muster if it were to be challenged. There is an unknown element to that. He said that conditional zoning is a common practice in other communities in Kansas and has not been challenged.

Motion carried 6-2, with Commissioners Harris and Dominguez voting in opposition.  
(Commissioner Chaney left the meeting after Item 12.)

## **PUBLIC COMMENT SECTION**

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**ADJOURN @ 11:06pm**