



**PLANNING COMMISSION MEETING**  
**September 22 & 24, 2008**  
**Meeting Minutes**

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September 22, 2008 – 6:30 p.m.

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

Staff present: McCullough, Stogsdill, A. Brown, Day, Leininger, J. Miller, Rexwinkle, and Ewert

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**MINUTES**

Reconsider the June and July Planning Commission minutes to consider Commissioner Harris' suggested revisions.

Motioned by Commissioner Blaser, seconded by Commissioner Singleton, to approve the revised June and July 2008 Planning Commission minutes incorporated with Commissioner Harris' suggestions.

Unanimously approved 8-0.

Receive and amend or approve the minutes from the Planning Commission meetings of August 25 & 27, 2008.

Commissioner Rasmussen stated that he had said during the August Planning Commission meeting that he had ex parte communications regarding the High School Special Use Permits with his spouse and daughter and asked that it be reflected in the minutes.

Motioned by Commissioner Singleton, seconded by Commissioner Chaney, to approve the August 25 & 27, 2008 Planning Commission minutes, including Commissioner Rasmussen's change.

Motion carried 7-0-1, with Commissioner Harris abstaining.

**COMMITTEE REPORTS**

Receive reports from any committees that met over the past month.

Commissioner Finkeldei said that CPC will report during the Wednesday Planning Commission meeting.

Commissioner Hird said the Boulevard & Gateways Committee met but he will review during the Wednesday Planning Commission meeting to give him time to review his notes.

**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.

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**ITEM NO. 1 RMG TO MU; .483 ACRES; 1420 CRESCENT ROAD (JCR)**

**Z-05-10-08:** Consider a request to rezone a tract of land approximately .483 acres from RMG (Multi-Dwelling Residential-Greek Housing) to MU (Mixed Use), located at 1420 Crescent Road. Submitted by Jayhawk Bookstore, for William P. Muggy, property owner of record.

**STAFF PRESENTATION**

Mr. Joe Rexwinkle presented the item.

**APPLICANT PRESENTATION**

Ms. Jane Eldredge, Barber Emerson, representing Jayhawk Bookstore, thanked staff for their work.

Commissioner Rasmussen asked what would they would be able to develop with Mixed Use zoning.

Mr. Rexwinkle said the Mixed Use zoning district is designed to permit a variety of residential and non-residential uses so there are a number of Commercial uses that would be permitted. Last month the Planning Commission recommended approval of a Text Amendment for tweaking the retail uses category. Some eating and drinking establishments are permitted. Bars are not permitted in the zoning district.

Commissioner Harris asked what setback would be allowed with Mixed Use zoning.

Mr. Rexwinkle said the minimum setback is zero so they could build to the property line. It would be limited by the maximum building coverage of 85% so they could not build over the entire property.

Commissioner Harris asked if there was guidance for the mix of uses for how many types of uses.

Mr. Rexwinkle said the Mixed Use zoning district only requires at least one residential and one non residential use.

Commissioner Harris asked if an accessory bar was allowed.

Mr. Rexwinkle said he believed so but that he would have to double check.

Commissioner Harris asked if a brewpub was allowed.

Mr. Rexwinkle said it would be allowed with a Special Use Permit.

Commissioner Harris asked if a fast food restaurant would be allowed.

Mr. Rexwinkle said he would have to get his Development Code book to answer that question.

Commissioner Harris said that the other uses that stood out to her were sexual media store, manufacturing and production, and a small recycle facility. She asked if the uses were allowed by right. She also inquired about the maximum height of 36' and asked if that was two or three stories high.

Mr. Rexwinkle said that 36' would be about three stories, depending on the height of each floor. He said that was in the tertiary zone and that in the secondary zone it would be 24' high.

Commissioner Harris was concerned that some of the uses might be inappropriate and she wondered if

staff had the discretion to say that certain uses were not allowed.

Mr. Rexwinkle said an accessory bar would be permitted but it had to be accessory to a quality restaurant. He gave the restaurant example of Applebees. He stated that staff would not have the ability to restrict the use if it were with a quality restaurant. He stated that brewpub is allowed with a Special Use Permit. He said that fast order food with drive-in would not be permitted but that fast order food without the drive-in would be permitted. Sexual oriented media store, small collection recycling facility, and limited manufacturing and production are all permitted uses.

Commissioner Harris asked what kind of concerns the neighbors had when Mr. Rexwinkle met with them.

Mr. Rexwinkle said the majority of the meeting was about the zoning district in relation to the property and that most of the questions were about the zoning district. He said they seemed satisfied that the Mixed Use zoning district had more development control than a typical zoning district. He said they seemed to indicate that this worked better than previous zoning requests. The property had a history of zoning requests and this is the first zoning district that balanced the neighbors concerns.

## **PUBLIC HEARING**

Mr. Bill Mitchell, read the following letter he wrote:

"Although I have, over the years, written countless letters and spoken to you and your predecessors many times in opposition to rezoning 1420 Crescent, there'll be no letters and not much to say – only a copy of these remarks to staff so this time the minutes can accurately reflect what I said. Staff has – in order to eliminate the nuisance of non-conforming uses – created a new zoning category designed to accommodate 1420 Crescent. What is convenient for staff, I fear, will prove to be discomfiting to the west-of-campus soon-to-be-new-student-ghetto. In a single-family neighborhood our only small hope against commercial encroachment lies in having this illicit island remain a non-conforming use so that when use changes are asked for, we will have an opportunity to speak up and to petition. The neighborhood was dealt a deadly blow, sotto voice, by the new Development Code which changed the zoning on the northwest corner of Crescent/Naismith to U-KU. First, that enabled 1420 Crescent to say that it was bordered chiefly by U-KU and RMG, only minimally by RS7 even though the use of the NW corner has remained single-family. Second, how long do you think it will be before KUEA sells the 2 single-family residences they inherited on the NW corner for commercial, "campus-related" development? Nor will it take long for Goldie Goldsmith's house, on the SW corner, to follow. Really good planning folks. I've grown increasingly uncomfortable as I've watched operate the eleemosynary function of the City's various bodies which control zoning. Zoning upgrades are monumental monetary windfalls to those who play the system. The owner of 1420 Crescent was uncharacteristically ingenuous in at least a couple of his earlier rezoning requests. In the 1980's rezoning was "required" in order to enable him to get financing for his expansion. He didn't get the charity of rezoning but somehow managed to get the financing anyhow and expand. In 2007 he applied for the charity again this time because it would make the property 'more credit worthy.' Momentarily ingenuous he might have been but he reverted to his usual disingenuousness this go-around by answering question 2, 'To what extent will....rezoning detrimentally affect nearby properties?' by saying 'None. The rezoning will simply make the legal non-conforming use and structure a conforming use and structure that is compatible with the neighborhood.' Compatible? That takes disingenuousness to a new level. But it's also technically wrong as I read the Code. 20-233 (f) 'Any structure which existed prior to being rezoned... [MU] may become nonconforming with regard to the Development Standards of Sec. 20.1108.' 1420 Crescent has a 'history' but I won't take you clear back to the 1948 beginning; I will say only that it seems to me morally wrong to reward, in your eleemosynary function, the King of site-plan-violations. I think David Guntert,

who shepherded the 1980's expansion, would not disagree with that title. The neighbors have been assured the owner has no plans to change the use from bookstore to something else. I'll take him at his word. But when rezoning has provided his golden parachute, what will happen to that corner? Oread Inn II? A heads up to any land speculators: Goldie Goldsmith's house on the SW corner, is currently on the market – just buy and hold. No finder's fee required. I retire, firm in my opposition to granting this rezoning, futile though it may be. Firm, too, in my belief that this town ought to plan, ought to have been planning, to preserve the neighborhood west-of-campus instead of allowing it – encouraging it – to go the way of east-of-campus."

Ms. Muff Kelly, 1531 Crescent, thanked Mr. Rexwinkle for talking to the neighbors and answering their questions. She was concerned about increased parking.

Mr. Rexwinkle said that with the exception of permitting on street parking, all the parking would be required on the property as with any other zoning district. The regulations for on street parking would require it to be in front of the property. A parking requirement is a limitation on how much you can develop the site. Even though you may be able to develop the site to 85% coverage, you still have to provide parking for the site. He went on to say that the only exception is a 10% parking reduction allowed for being located near a transit stop, which this property is.

#### **APPLICANT CLOSING COMMENTS**

Ms. Jane Eldredge, said the rezoning application is to bring the property into compliance and that there are no plans to make any changes in the use as it stands now. She stated that this is a matter of making the property credit worthy so it can be maintained.

*Commissioner Dominguez arrived at the meeting at 7:00pm.*

#### **COMMISSION DISCUSSION**

Commissioner Singleton asked what would happen if the rezoning is not approved and left as is.

Mr. Rexwinkle said it would remain RMG zoning and the uses would remain non-conforming. He stated that any time they would want to make a physical improvement on the property it would require a Site Plan or expansion of uses that would have to be processed differently than other Site Plans. It would have to be approved by City Commission, so procedurally it would be handled differently. The rezoning would allow them to make such an expansion with an administrative Site Plan.

Commissioner Harris asked if underground parking would be allowed at the location.

Mr. Rexwinkle replied yes.

Commissioner Harris asked how the rezoning would provide more certainty and comfort for the neighbors versus conventional zoning.

Mr. Rexwinkle said that because the Mixed Use zoning district requires development zones within it, the burden of the transition and compatibility is on the developer within that zoning district. The Jayhawk Bookstore building site is reserved for more intense development. Taller buildings have greater development potential than the areas to the north and west. In a conventional zoning district there would not be any difference. You could build the same height right up to the boundaries of the zoning district. He said for instance, CN2 zoning district the maximum height does not change the zoning districts so 40' buildings could be build throughout the entire district. This zoning would control the scale and density through the zones of the district.

Commissioner Finkeldei asked if there was an appeal process.

Mr. Rexwinkle replied yes, the Planning Director's decision can be appealed. He also stated that the neighbors are notified of site plans.

Commissioner Singleton inquired about the process and asked if under the current zoning could they put in a sexual oriented media store.

Mr. Rexwinkle said that under the current zoning they could not have that use so they would not be able to proceed with a Site Plan to document that change of use. He went on to say that under the Mixed Use zoning district, since that use is permitted, they would have to undergo Site Plan review and notification would be sent to the neighbors. It would be the responsibility of the person who received the letter to appeal the decision of the Planning Director.

Commissioner Carter felt that Mixed Use zoning was correct for this location. He said that if they were looking to exclude uses then they need to revisit Mixed Use zoning.

### **ACTION TAKEN**

Motioned by Commissioner Carter, seconded by Commissioner Chaney, to approve the rezoning of approximately .483 acres from RMG (Multi-Dwelling Residential-Greek Housing) to MU (Mixed Use) and forwarding it to the City Commission with a recommendation for approval based upon the findings of fact outlined in the staff report.

Commissioner Harris said she had mixed feelings about Mixed Use zoning at this location. She said that the Code could allow a building or some uses that would not be what they would want to see there. She did not like having a non-conforming use at that location but did not feel comfortable approving as is.

Commissioner Rasmussen agreed with Commissioner Harris. He said that this location is a transition point from neighborhood to campus and that it concerned him what the wide variety of uses could be. He felt that a sexual oriented business would not be appropriate at that location.

Commissioner Finkeldei said that section 20-528 of the Land Development Code does not allow a sexual oriented media store within 600' of any school. He inquired about the definition of school and if that included Universities.

Mr. McCullough said that the definition does not include Universities.

Commissioner Finkeldei said a sexual oriented media store could not be located on the same block as any R zoning district and asked if there were any R zonings on the same block as 1420 Crescent.

Mr. Rexwinkle said it is located on the same block as RMG.

Mr. McCullough said that the standards of the Code still need to be adhered to. Staff was attracted to the potential for vibrant pedestrian friendly redevelopment or expansion to include other types of uses at the property that would be compatible with the mixture of uses in the campus, residential, and Greek system.

Ms. Eldredge said that the applicant would not object to having uses that seem objectionable excluded from the zoning.

Commissioner Singleton said she would rather the owner have a specific proposal that could be

approved. She felt that Mr. Mitchell's comments were well taken. She said she would not be very supportive of this.

Commissioner Rasmussen asked if a firearm store would be a permitted use.

Mr. Rexwinkle replied yes, under the retail sales category.

Commissioner Hird said that the Mixed Use district was created for this type of thing and felt that Mixed Use seems the most appropriate zoning. He wondered if they would face the same type of questioning on every Mixed Use application. He asked staff if they rezone the property to Mixed Use would the Planning Commission have any control over the type of use.

Mr. McCullough said that they have the same control as a CN1 or CN2 zoning district. He said that the use table from the Code grants the property owner the ability to request a use through the site planning process. Through the site planning process staff makes sure the parking will serve the use, but do not question the use if it is in the Code. The standards are based on the use.

Commissioner Hird felt it might not be wise to not zone the location appropriately because of fear of misuse of the property in the future.

Mr. McCullough said the applicant did offer to place conditions on the rezoning to exclude certain uses.

Commissioner Hird said he would be in support of conditioning zoning.

Commissioner Harris said the uses she listed earlier were just from a quick review and not necessarily a comprehensive consideration.

Commissioner Carter did not want to defer the item and that their job is to apply the Code as written. He shared Commissioner Hird's concerns about gun sales and sexual oriented business. He withdrew his motion.

Commissioner Harris felt that a Mixed Use area was not meant for a site this small as infill. She felt the guidelines for the use were for bigger areas.

Mr. Rexwinkle listed the uses that Commissioner Harris identified: accessory bar, brewpub, fast order food with drive-thru, sexually oriented media store, small collection recycling facility, and manufacturing and production limited.

Mr. Finkeldei said he was not opposed to the uses and thought that a recycling center might be useful at that location and a Subway might be a good pedestrian oriented use.

Mr. McCullough said that firearms fall under the general retail category and is technically not a use.

Commissioner Singleton did not think they could pick from a list right now and make special provisions.

Motioned by Commissioner Hird, seconded by Commissioner Carter, to approve the rezoning of approximately .483 acres from RMG (Multi-Dwelling Residential-Greek Housing) to MU (Mixed Use) with the addition that the property be conditionally zoned to exclude the uses of sexually oriented media store and manufacturing and production limited, and forwarding it to the City Commission with a recommendation for approval based upon the findings of fact outlined in the staff report.

Commissioner Harris did not feel that a small recycling facility, fast food business, brewpub, or accessory bar to a quality restaurant would be good uses at this location.

Commissioner Hird shared Commissioner Finkeldei's opinion that a fast food restaurant might be appropriate for that corner.

Commissioner Rasmussen said he would vote in opposition and felt that a fast food restaurant would not be appropriate at the location.

Mr. Rexwinkle said that the property is within the historic environs and would have to go through Historic Resources Commission and the emphasis would be on design, not use.

Motion carried 5-3-1, with Commissioners Blaser, Carter, Chaney, Finkeldei, and Hird voting in favor. Commissioners Harris, Rasmussen, and Singleton voting in opposition. Commission Dominguez abstained from voting since he arrived at the meeting late.

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**ITEM NO. 2 PRELIMINARY PLAT FOR BOARDWALK ADDITION; FRONTIER ROAD & FIRESIDE DRIVE (SLD)**

**PP-07-08-08:** Preliminary Plat for Boardwalk Addition, a 3 lot multi-family residential plat containing 1.07 acres, located at the intersection of Frontier Road & Fireside Drive. Submitted by Paul Werner Architects, for Boardwalk Apartments, LC, property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

Commissioner Harris asked about the relationship between how the lots are divided and how the Site Plan is done.

Ms. Day said the relationship has to do with where buildings get located, so establishing that envelope within the context of the individual lot line is required. This Preliminary Plat is difficult to read because there is a lot of other information. She said in this particular case there are existing buildings as well as a vacant lot so it involves establishing what the setbacks, easements, and space within each lot to build.

Commissioner Blaser inquired about the height of the buildings. He suggested that they be built as only 2 stories so that they would not be as high in comparison to the area.

Commissioner Finkeldei asked staff if they were discussing height.

Mr. McCullough said the discussion was about the Preliminary Plat.

Commissioner Finkeldei said the height would be administratively approved and could be appealed to the City Commission.

Mr. McCullough said that was correct.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, said they will go before City Commission to show them the final product. He said that they do have letters from the neighbors and he met with a few of them on Friday. He said that he did not see the Site Plan going anywhere for 4-6 weeks so there is still time to work with it.

**COMMISSION DISCUSSION**

Commissioner Harris inquired about the density of the project.

Ms. Day said the density is set by the zoning district. She said the number of units was comparable to what was originally there.

Mr. Werner said there are 231 units now and the concept plan showed 240 units, so it is not a huge expansion in density.

**ACTION TAKEN**

Motioned by Commissioner Carter, seconded by Commissioner Blaser, to approve the Preliminary Plat of Boardwalk Addition and forwarding it to the City Commission for consideration of the requested vacation of right-of-way and dedication of easements, subject to the following condition:



1. Provision of a revised preliminary plat to include dimensions of the existing buildings from the new property lines.

Unanimously approved 9-0.

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**ITEM NO. 3      CPA-2008-11; AMENDMENT TO THE SOUTHEAST AREA PLAN (MJL)**

**CPA-2008-11:** Consider amending the Southeast Area Plan to change the area designated for high-density residential north of 25<sup>th</sup> Terrace to Community Commercial and change the Land Use Descriptions in applicable areas to reflect the change.

**STAFF PRESENTATION**

Ms. Michelle Leininger presented the item.

**APPLICANT PRESENTATION**

Mr. Bill Newsome, developer and one of the owners of the land, was not aware that the Southeast Area Plan had been approved. He said the amount of land for CC200 would not work for what was laid out on the plat and that they need the amount of land expanded to allow CC200.

**PUBLIC HEARING**

No public comments.

**COMMISSION DISCUSSION**

Commissioner Hird said he had no problem giving up the High Density Residential to make Community Commercial work. He said it would benefit the neighbors to the south.

**ACTION TAKEN**

Motioned by Commissioner Hird, seconded by Commissioner Rasmussen, to approve the comprehensive plan amendment to *Horizon 2020* to amend Chapter 14, Southeast Area Plan to change the high-density residential area designation north of 25<sup>th</sup> Terrace to the community commercial designation and recommends forwarding this comprehensive plan amendment to the Lawrence City Commission and the Douglas County Board of County Commissioners with a recommendation for approval and recommends authorizing the chair to sign PC Resolution 2008-08 regarding this amendment.

Unanimously approved 9-0.

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**ITEM NO. 4A RM-24 & UR TO CC-200; 44.259 ACRES; E OF O'CONNELL ROAD BETWEEN K-10 & 25<sup>th</sup> TERRACE (SLD)**

**Z-06-13-08:** Consider a request to rezone a tract of land located east of O'Connell Road between K-10 and 25<sup>th</sup> Terrace, approximately 44.259 acres from RM-24 (Multi-Dwelling Residential) & UR (Urban Reserve) to CC-200 (Community Commercial) for Fairfield Farms East Addition No. 2. Submitted by Peridian Group Inc, for Eastside Acquisitions LLC, property owner of record.

**ITEM NO. 4B UR TO IL; 14.784 ACRES; E OF O'CONNELL ROAD BETWEEN K-10 & 25<sup>th</sup> TERRACE (SLD)**

**Z-06-14-08:** Consider a request to rezone a tract of land located east of O'Connell Road between K-10 and 25<sup>th</sup> Terrace, approximately 14.784 acres from UR (Urban Reserve) to IL (Limited Industrial) for Fairfield Farms East Addition No. 2. Submitted by Peridian Group Inc, for Eastside Acquisitions LLC, property owner of record.

**ITEM NO. 4C PRELIMINARY PLAT FOR FAIRFIELD FARMS EAST ADDITION NO. 2; SE CORNER OF K-10 & O'CONNELL ROAD (SLD)**

**PP-06-07-08:** Revised Preliminary Plat for Fairfield Farms East Addition No. 2 located on the SE corner of K-10 & O'Connell Road. The plat proposes to amend 6 commercial lots and 1 industrial lot all north of 25<sup>th</sup> Terrace. The entire subdivision contains 119 acres and 470 total lots. Submitted by Peridian Group Inc, for Eastside Acquisitions LLC, property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented items 4A-4C together.

Ms. Amy Brown went over the retail market study.

Commissioner Hird asked if the lots north of Exchange Place would be visible from K-10.

Ms. Day said that those would certainly be key but that it would depend on the building arrangement.

Commissioner Hird asked if the lots were large enough to develop the use.

Ms. Day replied, yes.

Commissioner Harris asked if the market study included projected population in the southeast area.

Ms. Brown replied that the study included information on population broken down by zip code, and that it also included projected population figures in the demand analysis done in Mr. Kaplan's market analysis.

**APPLICANT PRESENTATION**

Mr. Bill Leek, Peridian Group, was present for questioning.

Commissioner Finkeldei inquired about a possible grocery store.

Mr. Newsome said there were no conversations about a grocery store but they were not opposed to the idea.

## **PUBLIC HEARING ON ITEMS 4A & 4B**

No public comments.

## **COMMISSION DISCUSSION**

Commissioner Finkeldei said he used to live in the area and felt it was a good plan.

### **ACTION TAKEN ON 4A**

Motioned by Commissioner Rasmussen, seconded by Commissioner Harris, to approve the rezoning of approximately 44.259 acres, from RM-24 (Multi-Dwelling Residential) and UR (Urban Reserve) to CC-200 (Community Commercial) based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Unanimously approved 9-0.

### **ACTION TAKEN ON 4B**

Motioned by Commissioner Rasmussen, seconded by Commissioner Singleton, to approve the rezoning of approximately 14.784 acres, from UR (Urban Reserve) to IL (Limited Industrial) based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Unanimously approved 9-0.

### **ACTION TAKEN ON 4C**

Motioned by Commissioner Rasmussen, seconded by Commissioner Dominguez to approve the Revised Preliminary Plat for Fairfield Farms East Addition No. 2 and forwarding it to the City Commission for consideration of the requested vacation and dedication of easements subject to the following conditions:

1. Provision of a revised preliminary plat to show the following name changes
  - a. Change North-south portion of Exchange Place to Fairfield Street
2. Correct zoning graphic on face of preliminary development plan that shows 6<sup>th</sup> lot included in the CC200 zoning request consistent with the legal description for Z-06-13-08.
3. Add L/E to legend and describe use of this symbol on page two of drawing.

Unanimously approved 9-0.

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**ITEM NO. 5      AMENDMENTS TO CHAPTER 20, DEVELOPMENT CODE (JCR)**

**TA-04-03-08:** Consider amendments to Chapter 20 of Lawrence City Code (Land Development Code) to define and permit various homeless facilities.

**STAFF PRESENTATION**

Mr. Joe Rexwinkle presented the item.

**PUBLIC HEARING**

Mr. Price Banks, attorney for the Lawrence Community Shelter, said the amendment was something they could live with. He said there was no provision for distance buffering and he encouraged Planning Commission to retain that. He said that neighborhoods tend to want screening from certain types of uses. He felt that landscaping and fencing work fine and there have been provisions before to eliminate that and encourage landscape barriers. He referenced the design standards that say the landscaping shall not obstruct the view, which he felt should be clarified. He felt it was time to move forward with the text amendment.

Ms. Valerie Miller-Coleman, Director of Family Promise, said that in the course of the year there will be as many as 300 homeless children. She went on to say that most homeless families are homeless for the first time due to circumstances and that they are a different population than the chronically homeless. They are not a disruptive population, they are just working poor folks. The families that come in to the night shelters will stay there for the night and not be coming and going. The lights will go out at 10:00pm and there are regulations. She felt that Special Use Permits for each institution would be time consuming and costly.

Commissioner Rasmussen asked if Family Promise was okay with doing a management plan for the Type A Homeless Shelters and provide notice.

Ms. Miller-Coleman replied, yes.

Commissioner Harris asked Ms. Miller-Coleman what about the Special Use Permit process she did not think would work.

Ms. Miller-Coleman said the institutions have volunteered space and time and then asking them to spend thousands of dollars to draft Site Plan drawings to get a Special Use Permit will deter them from participating.

Ms. Amy Keaton, on behalf of Family Promise, said the most important thing to know is that Family Promise is not a typical homeless shelter or program. She said she used to work in Spokane, Washington where they had the same type of program. Family Promise focuses specifically on sheltering families with children. The Family Promise mission is to house the homeless, provide counseling and guidance, etc. She said that Family Promise can give children hope that good things can happen to good people in a bad situation.

Commissioner Singleton asked if Special Use Permits were used in Spokane, Washington.

Ms. Keaton did not know the specifics but would try to find out.

Commissioner Harris asked if Ms. Keaton felt it was important for residents to stay in the building.

Ms. Keaton said not necessarily.

Mr. Scott Robinson, member of Morningstar Church, spoke in support of the Family Promise program. He said that he and his wife have had the opportunity to speak with a large number of the other churches and there is a lot of support to open up the churches to homeless families. He felt that Family Promise was an opportunity to address problems within the community.

Ms. Jean Redeker, 1535 New Hampshire Street, was in support of the Type A Homeless Shelters. She said it was important to note that the text amendment opens the opportunity up to anyone, not just Family Promise and that the Code does not limit this to Family Promise. She was concerned with the management plan because it does not allow the neighbors to have a voice. She felt that a Special Use Permit should be required for Type A Homeless Shelters. She said that the engineering site plan drawings should not be required. She also said there are quite a few churches in her neighborhood and she showed a map of the churches in the area on the overhead projector.

Mr. Ken Hite, serves on the board of Family Promise and a member of First Baptist Church that will host the homeless shelters, said a Special Use Permit without the engineering site plan drawings would nice as a way to minimize the cost. He did not feel that a Special Use Permit should be required for churches to have type A overnight shelters because he felt that it is a constitutional right for a religious institution. Inquired about social service agencies and felt that the day center would be a social service agency. His primary concern with the Special Use Permit was the delay process.

Ms. Mary Wharff, thanked staff to responding to neighborhood concerns. She was conflicted about night shelters being allowed without a Special Use Permit. She thought that churches by right should be allowed to help people. She was concerned about night Type B Homeless Shelters being set up in industrial areas right next to neighboring yards.

Ms. Deborah McMullen, 1608 Rhode Island, said that this is an issue about zoning and that wanting to enjoy your home does not make you selfish. She felt that 15 people with 2 attendants was too many people. She asked that the Planning Commission please consider setbacks as mandatory with a possible 55' for Type A Homeless Shelters and 75' in Type B Homeless Shelters.

Ms. Jana Montgomery, 1500 New Hampshire, said the focus has been about Family Promise and the issue is not about Family Promise, it is about what will be allowed in the neighborhoods. He said that if they are not allowed to have a buffer he would at least like to discuss having the shelter adjacent to residential properties instead of right next door. He liked the idea of having a Special Use Permit that did not require all the site plan drawings, but felt a type A day center would need to have a full Special Use Permit because the neighborhoods need to be covered.

Ms. Virginia Musser, 1508 New Hampshire, said that this is not about Family Promise, it is about ensuring the neighborhood. She felt that the Type A Homeless Day Centers should not be in residential neighborhoods and that they should be required to have a Special Use Permit. She said that rules were in place for a reason and following due process is important. She felt it was worth going slow and doing this right.

Ms. Orlena Carr, 1512 New Hampshire, summarized her email that she sent and that was included in the Planning Commission online packet. She felt that Special Use Permits should be required for both Type A Homeless Shelters and Type B Homeless Shelters as well and Type B Homeless Shelters and Type B Homeless Day Centers for the health and wellbeing of all neighborhoods in Lawrence.

Ms. Gwen Klingenberg, Lawrence Association of Neighborhoods, said a Special Use Permit is used for

many things such things as group homes and that they need to be consist with the Code. She stated that this issue is not about Family Promise, but rather what the text amendment will do for the community. She felt that pushing this through was a disservice to Lawrence. She said the City neighborhoods are puzzle pieced together and that the Oread neighborhood is mostly RM32 and several RMO's. She would like the amendment to require a buffer that these uses be non-adjacent or directly across the street from single family homes. She felt that they needed to protect their children and they do not know who else besides Family Promise will come forward. She also referenced the Religious Land Use and Institutionalized Persons Act (RLUIPA).

Commissioner Harris asked Ms. Klingenberg to elaborate on RLUIPA.

Ms. Klingenberg said there are cases in court regarding RLUIPA. She thinks that an interpretation of RLUIPA would permit a City to require an Special Use Permit for these types of uses even for those uses that are accessory to religious institutions.

Commissioner Finkeldei asked Ms. Klingenberg if she was referring to all shelters when she said 'non-adjacent and directly across the street from single family homes.'

Ms. Klingenberg said she was speaking about Type B Homeless Shelters specifically.

Commissioner Finkeldei said that Ms. Klingenberg mentioned that this was going through too fast; he asked if she was requesting a deferral.

Ms. Klingenberg felt that the details still needed to be worked out.

Mr. Joe Reitz, Family Promise, said there are a lot of homeless children in Lawrence. He said that Family Promise has everything it needs to get started but the only thing that stands between them getting started is the zoning approval. He said that they have 18 congregations waiting to help and they are all good neighbors. He did not have a problem with the 4 unrelated people language being stricken.

Mr. Scott Montgomery, 1500 New Hampshire, felt that a Special Use Permit should be required but he was not opposed to the site plan engineering drawings being waived for churches. He said the issue was about zoning, not the Family Promise organization. He felt that they should take more time and not rush this through the process. He said that Family Promise wants the neighborhood to be involved but does not want a Special Use Permit, but the Special Use Permit would allow the neighbors a voice. He agreed with the buffering and felt that it was needed.

Mr. Rich Minder, 1218 Delaware, said he was interested in preventing a Type B Homeless Shelter, the Lawrence Community Shelter from moving into the industrially-zoned area near his home and said he would want it to have a Special Use Permit so that he could express his opinions. He felt that an alternative to setbacks should not just be screening. He suggested that a site selection criteria would not place these facilities in a residential area.

Mr. Loring Henderson, Director of Lawrence Community Shelter, asked that the Planning Commission approve the language as recommended by staff which does not require buffering of these uses from single-family residential areas. He was concerned about the language that would prohibit locations that area adjacent to single-family areas because it might still be a lengthy distance. Buffers increasingly limit potential locations for shelters and maybe excludes a shelter from the community. He said there would be a Special Use Permit for the Type B Homeless Shelter. He thanked staff for their work.

Commissioner Harris asked if the process of getting a Special User Permit for Type B Homeless Shelter

was the same process he already goes through.

Mr. Henderson replied yes.

Mr. McCullough, said that the requirement for a management plan for Type A Homeless Shelter is a new requirement from previous drafts of the language.

Mr. Henderson said that the Lawrence Community Shelter has a good neighbor agreement, and they supply the City with annual reports.

Commissioner Rasmussen asked if there was one type of management plan for Type A Homeless Shelters and another for Type B Homeless Shelters.

Mr. Rexwinkle said that was correct. He said that the management plan criteria as set forth in the draft code language for Type A Homeless Shelters is more specific than the management plan criteria for Type B Homeless Shelters, which are more like broad parameters because they need to be more specific since Type A Homeless Shelter management plans are administratively approved. Type B Homeless Shelter management plans would be approved by the City Commission through a public hearing process.

Mr. Michael Fairchild, lives in the Barker neighborhood, he summarized the letter he submitted and was included in the Planning Commission online packet. He thanked the Commissioners, Staff, and Family Promise for their work. He showed a map on the overhead projector of the churches in his neighborhood.

Ms. Hilda Enoch, expressed her support of Family Promise. She thinks that as a community we are finally making progress and would like to move forward with this amendment. She stated that we are more at risk as a community if we do nothing.

Ms. Christine Winters, member of First Christian Church, said she has been working with Family Promise. She said that the homeless children will attend school and that these children are already in the public school system and other peoples children are probably already playing with them at school. She said the churches are already in compliance as far as fire code, etc. She said she did not know much about Special Use Permits but wanted the process to be simple. She said that they could discuss this for six months and that the same thing would be hashed over and over.

Mr. Jonathan Groene, board member of Family Promise, said he would like for the communication to stay open with the neighborhoods. He stated that the use of Sunday congregation at churches is more than 15 people so the neighborhoods are already dealing with this.

Mr. Jerry Wells, attorney for Family Promise, pointed out that none of the faith organizations that will be part of Family Promise are east of Massachusetts Street. He reminded them that the type of people who will be in the Family Promise program are families, not convicts. He said that Planning Commission has the opportunity to solve a real problem. He felt that the issue was about Family Promise because they are the organization that has come forward to take care of the problem for the city, at no cost to the City.

Mr. Andy Bloomer, thanked Family Promise for involving the Barker Neighborhood. He said that just because they have never had a Type A Homeless Shelter use before does not mean that someone will not use the type again after Family Promise.

Ms. Keaton said that she called a contact in Spokane, Washington and they do not have Special Use



Permits for their uses. She said the woman she talked to has never heard of any complaints against any of the residents of the day or night centers.

Mr. Larry Powers, said he was raised by a mother who did not have anyone to help her. He was here to help kids with Family Promise since he was not given the same help as a child.

### **COMMISSION DISCUSSION**

Commissioner Carter said a management plan will be required . He inquired about unrelated persons.

Mr. Rexwinkle said that the Type A Homeless Shelter can have up to four unrelated people.

Commissioner Finkeldei inquired about review of the management plan.

Mr. Rexwinkle explained the distinction between the administrative review and permit process proposed for Type A Homeless Shelters and the Special Use Permit process proposed for the other uses. He said that a Type A Homeless Shelter is proposed to be approved administratively and that the management plan would be reviewed by the Planning Director and approval or denial of the plan would be an administrative decision. The applicant would be required to provide certification that they have mailed notification to neighbors within 200' and to the neighborhood association. He said that Code Enforcement Officers would enforce anything not being followed. He stated that a Special Use Permit would require a pre-application meeting and would also require a Site Plan for review and enforcement. There is a set schedule for Planning Commission items and then it would move forward to City Commission. He said in terms of time it would take 3-4 months to move through the Special Use Permit process. He also said that there is a protest petition time frame between Planning Commission action and City Commission consideration of the Special Use Permit.

Commissioner Harris asked if it was possible to amend the Special Use Permit process to take out the Site Plan requirement.

Mr. McCullough said it was possible but the Code does not discriminate. It is an enforcement tool that provides information and the information is relevant for code requirements.

Commissioner Harris inquired about the site plan process for churches.

Mr. McCullough said that some of the churches will already have site plans on file so they may or may not be required to have site plan drawings drafted by an architect or engineer.

Commissioner Harris inquired about screening for Special Use Permits and what in the management plan would address neighborhood concerns.

Mr. McCullough said there are rules of conduct and a response plan for emergencies at the site.

Commissioner Harris said that the rules of conduct are not defined.

Mr. McCullough said that the intent is to be flexible enough, but make them address rules of conduct for their guests.

Commissioner Harris said that those could be rules for the facility rather than addressing the concerns of the neighbors.

Mr. McCullough said the limited nature of Type A Homeless Shelters and the emphasis on serving

families isn't so far outside of the scope of what some religious institutions already do on a daily basis. The text amendment allows a maximum of 15 people, anything over that is more intense and considered a Type B Homeless Shelter.

Commissioner Dominguez inquired about training for employees/volunteers being in the management plan.

Mr. Rexwinkle said that Type A Homeless Shelters require two staff persons but does not specify the level of training.

Commissioner Dominguez asked which churches would not have site plans.

Mr. Rexwinkle said that churches built prior to the 1960's or those churches that existed prior to the 1960's which have not constructed building additions since then would not have site plans on file. The City started requiring site plan review during the 1960's.

Mr. McCullough said that most churches west of Iowa Street would have a site plan on file.

Commissioner Dominguez inquired about the definition of family.

Mr. Rexwinkle displayed on the overhead the existing definition of family from the Development Code.

Commissioner Finkeldei asked if a family could be a single person.

Mr. Rexwinkle said that was correct.

Commissioner Dominguez asked about the definition of religious institutions.

Mr. Rexwinkle showed on the overhead projector the definition of religious institutions from the Development Code.

Commissioner Rasmussen pointed out a typo at the top of page 139 of packet, a section of the draft language that talks about the standard for revocation.

Mr. Rexwinkle explained that the error was a word-processing error that should cite Section 20-1605(e) of the Development Code which can be easily corrected. This section of the Development Code outlines revocation procedures.

Commissioner Rasmussen said the last draft he saw had no management plan requirement for Type A Homeless Shelters and now a management plan is required with four criteria.

Mr. Rexwinkle said the management plan criteria for Type A Homeless Shelters exclude the requirement that an interior floor plan be provided, a maintenance plan be provided, and that staffing levels be specified.

Commissioner Dominguez asked who would be in charge of screening.

Mr. Rexwinkle said that the proposed language would not require screening of guests.

Commissioner Dominguez asked if having a Special Use Permit would require neighborhood notification.

Mr. Rexwinkle replied yes, the Special Use Permit process requires notification and provides the neighbors a public hearing process.

Commissioner Harris asked if they could revise the draft language to state that Type A Homeless Shelters may only be accessory to Community or Campus Religious Institutions, instead of the smaller, neighborhood religious institutions and still allow Family Promise to do what they want to do.

Mr. Rexwinkle said he was not fully aware of all the churches that Family Promise was working with. Prior to the adoption of the Development Code there was no distinction between larger or smaller churches and there have not been any new churches built in the City since adoption of the Development Code.

Commissioner Rasmussen, had comments regarding Type A Homeless Shelters. He said that if his house burned down or had tornado damage nobody would be concerned about a church providing shelter for him for a few nights. He went on to say that if he lost his job and house he could see his church giving him a place to stay for a few nights. He said that if the community starts thinking about ex convicts or drug addicts then it gets more scary. This has gone through an evolution process and he likes what is being developed with the idea that a church is going to try and help a family. He would be in favor of Type A Homeless Shelters being permitted as an accessory use to a religious institution if it was more restrictive. He felt it should be restricted to two or more persons related by blood, marriage, or legal adoption, instead of using the full definition of family.

Commissioner Carter said he would not necessarily agree that four unrelated people should be allowed in a Type A Homeless Shelter since Family Promise is targeting families. He agreed with Commissioner Rasmussen.

Commissioner Finkeldei asked if the management plan could be appealed to City Commission.

Mr. Rexwinkle replied yes.

Commissioner Hird asked if in terms of the definition of family, would it exclude domestic registry. He said there are a lot of non-traditional families that are not on the domestic registry.

Commissioner Carter asked how Family Promise defines family.

Mr. Reitz said that if a family or a person does not have a child or children they do not get accepted into the program but that they do not do DNA testing.

Commissioner Dominguez asked if that would include two gay parents.

Mr. Reitz said sure.

Commissioner Dominguez said that when you buy into a neighborhood you buy into the values. He did not think it was fair to the neighbors to push a program that is run by someone outside of the neighborhood. He felt that the Special Use Permit should be part of the process to get the neighborhood involved.

Commissioner Carter asked if there has been feedback from the neighbors near churches that want to participate in the Family Promise program.

Mr. Rexwinkle said that Staff does not know all the churches involved with Family Promise and which

public correspondence goes with what churches.

Commissioner Harris said the purpose of zoning is to create opportunities in the community for uses needed and eliminate uses in areas where they are not needed. She said the worst case scenario would be a Type A Homeless Shelter, 15 people at night, 365 days a year. She said there are problems with the drop-in center now and they have a management type plan. She wondered how they could allow this without consequences. She did not feel the Code was tight enough.

Commissioner Finkeldei said that there is nothing in the Code today that would stop a church from having an Alcohol Anonymous meeting or meeting of ex convicts. Any church in the city could have ex convicts every day to meet with them and there is not a single rule that would deny them that. He wondered what limits they should put on a church that was present when the neighbors moved in.

Commissioner Singleton felt that Family Promise was a great organization but did not think this was good policy. She felt that Special Use Permits were a good start.

Commissioner Rasmussen asked how the text amendment originally started.

Mr. Rexwinkle said that City Commission initiated it at the request of Lawrence Community Shelter for an amendment to allow Type B Homeless Shelters in industrial areas with a Special Use Permit.

Mr. McCullough said that City Commission was very clear that they wanted standards. They asked Staff and Planning Commission to develop standards, which sent Mr. Rexwinkle through a very intensive and comprehensive analysis of other city's codes. Staff was already on the road of distinguishing between various homeless uses when Family Promise approached Staff. Staff probably should have been doing this a year ago when the Community Commission on Homelessness was finishing their vision.

Commissioner Rasmussen did not see why a time restriction could not be placed on Type A Homeless Shelters.

Commissioner Carter felt that the management plan codes of conduct should be standardized so that neighbors can point to it as reference.

Commissioner Finkeldei said usually it is called a good neighbor agreement.

Commissioner Harris said she did not know what to say about the buffering. She understood the neighbors concerns and their quality of life, but did not know how to approach that. She did not think a fence and vegetation would cover it. She felt that buffers could help.

Commissioner Dominguez agreed with Commissioner Harris.

Commissioner Rasmussen said he would like to find a way to make the Family Promise model work.

Commissioner Hird said that they are actually raising the standards based on the Family Promise organization and addressing more of the concerns of other organizations coming in.

Commissioner Dominguez felt that the text amendment was premature to move forward with.

Commissioner Hird said the original premise of this is talking about homeless families. He did not find that to be scary and did not want to approach the issue out of fear. He was concerned that they were getting into something so complicated that they are missing the point. He felt that they needed to get

past the fear and move forward. He felt that changing the definition of family could eliminate a lot of the fears.

Commissioner Singleton felt that they needed to take a look at the two distinct issues of homelessness.

### **ACTION TAKEN**

Motioned by Commissioner Finkeldei, seconded by Commissioner Hird, to approve Text Amendment TA-04-03-08 to Chapter 20 of Lawrence City Code (Land Development Code) to define and permit various homeless facilities, as set forth by staff with the following revisions:

- 1) Permit Type A Homeless Shelters to operate a maximum of 15 nights per quarter.
- 2) Require that management plans governing the operation of Type A Homeless Shelters be appealable directly to the City Commission.
- 3) Modify the definition of family as it relates to Type A Homeless Shelters and Type A Homeless Day Centers to state that these uses ***"are those that shall serve a maximum of 4 family units defined as 2 or more persons related by blood, marriage, or legal adoption with one such person being less than 18 years of age in the family unit or non-related persons otherwise living together as a family unit with at least one child less than 18 years of age"***.

Commissioner Harris said she would be voting in opposition and if the motion fails she will be motioning to add Special Use Permits.

Commissioner Hird said he was not in favor of Special Use Permits.

Commissioner Blaser did not feel that Special Use Permits should be part of it.

Motion carried 6-3, with Commissioners Dominguez, Harris, and Singleton voting in opposition.

### **MISCELLANEOUS NEW OR OLD BUSINESS**

Consideration of any other business to come before the Commission.

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**Recess at 12:00am, until 6:30pm on September 24, 2008.**

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Reconvene September 24, 2008 – 6:30 p.m.

Commissioners present: Carter, Finkeldei, Harris, Hird, Moore, Rasmussen, Singleton,  
Staff present: McCullough, Stogsdill, Girdler, J. Miller, M. Miller, Patterson, Warner, and Ewert

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**BEGIN PUBLIC HEARING (SEPTEMBER 24, 2008):**

**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**

- Ex parte:  
Commissioner Rasmussen talked to a friend who lives on N 1700 Road about Big Springs Quarry.
- No Abstentions.

**COMMITTEE REPORTS**

Commissioner Harris said that Comprehensive Plan Committee met several times and are developing an environmental chapter. She would like to have public discussion time during the next Planning Commission meeting.

Commissioner Hird said that the Boulevards & Gateway Committee met and will be on the October Planning Commission Mid-Month agenda and will be more specific about guidance.

Commissioner Moore said that the Industrial Design Committee met. He also said that the Transportation Advisory Committee met and worked on bicycle updates, five county study update, the MPO re-designation process, air quality issues, and the US Highway 56 corridor study.

PC Minutes 9/24/08

**ITEM NO. 6A PRELIMINARY PLAT FOR COUNTRYSIDE; 1216 BILTMORE DRIVE (PGP)**

**PP-07-09-08:** Preliminary Plat for Countryside, a one lot non-residential subdivision containing 1.86 acres, located at 1216 Biltmore Drive. Submitted by Landplan Engineering PA, for Free State Development LC, property owner of record.

**ITEM NO. 6B SPECIAL USE PERMIT FOR COUNTRYSIDE; 1216 BILTMORE (PGP)**

**SUP-07-07-08:** Consider a Special Use Permit for Countryside, a proposed Extended Care Facility to serve as an Alzheimer's treatment facility, located at 1216 Biltmore Dr. Submitted by Landplan Engineering PA, for the developer Ray Brown & Associates and the property owner of record Free State Development LC.

**STAFF PRESENTATION**

Mr. Paul Patterson presented items 6A & 6B together.

**APPLICANT PRESENTATION**

Mr. Tim Herndon, Landplan Engineering, was present for questioning.

**PUBLIC HEARING ON ITEM 6B**

No public comment.

**ACTION TAKEN ON ITEM 6A**

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve the Preliminary Plat for 1216 Biltmore Drive [PP-07-09-08] based on the findings found in the body of the staff report and forward the preliminary plat to the City Commission with a recommendation for acceptance of dedication of easements and vacation of a portion of an existing 7.5' utility easement.

Unanimously approved 7-0.

**ACTION TAKEN ON ITEM 6A**

Motioned by Commissioner Hird, seconded by Commissioner Carter, to approve SUP-07-07-08, a Special Use Permit for an Extended Care Facility, General, located at 1216 Biltmore Drive, based upon the findings presented in the body of the staff report and subject to the following conditions:

1. Execution of a Site Plan Performance Agreement.
2. Publication of an SUP Ordinance per Section 20-1306 (j).
3. Prior to the operation of the facility, applicant shall submit a copy of their license(s) issued by one of the regulatory agencies of the State of Kansas to the Planning Office (as required per Development Code, Section 20-1701 for Extended Care Facility).
4. Recording of the Final Plat at the Register of Deeds Office for the property.
5. Provision of a SWP-3 (Storm Water Pollution Prevention Plan) to the approval of the Stormwater Engineer prior to the issuance of a building permit.
6. Review and approval of the Down Stream Sanitary Sewer Analysis by the Utility Engineer prior to the issuance of a building permit.
7. Provision of minor modifications to the site plan:
  - a. Property Surface Summary, existing summary total needs to equal project completion total.
  - b. Plant Schedule, Turf areas, of should be fescue or sod.
  - c. Lighting information and photometrics for the site per Sections 20-1305(f)(1)(xvi) & 20-1103.

- d. Add ...“to be platted as Lot 1, Block One of a Final Plat for Countryside.” to the end of the legal description.
  - e. Change the plat names on the elevations from ‘Lot 1, Block One, Stormont-Vail Addition No. 2’ to ‘Lot 1, Block One of a Final Plat for Countryside.’”
8. Prior to the release of the site plan for a building permit, the applicant shall provide a written letter of approval from the adjacent property owner to the south (Lot 2, Block One, Stormont-Vail Addition No. 2) for the applicant’s proposed parking lot/landscape improvements to this adjacent property.

Unanimously approved 7-0.



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**ITEM NO. 7      CONDITIONAL USE PERMIT FOR BIG SPRINGS QUARRY; 2 N 1700 ROAD (MKM)**

**CUP-07-05-08:** Consider a Conditional Use Permit for Big Springs Quarry, located at 2 N 1700 Road, revising conditions of the previously approved CUP and expanding the area of the Quarry. Submitted by Mid-States Ventures, LLC, for Nichols, Clifford C. Trustees, Et al, and Mid-States Ventures, LLC, property owners of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item and stated that this Conditional Use Permit consists of five requested revisions to the conditions and restrictions of the Conditional Use Permit and submittal of the reclamation plans for Phases IA & II, and IIA & V. The requested revisions to the Conditional Use Permit are:

- 10 year time extension, the Conditional Use Permit would expire in 2030.
- Increase in the area included within the Conditional Use Permit.
- Increase in the area which may be open, mined, and extracted from at one time.
- Increase in the area which may be open, mined, and extracted from in a subsequent phase prior to reclamation being complete on the previous phase.
- Reduction in the performance bond for reclamation.

**APPLICANT PRESENTATION**

Mr. John Hutton, attorney representing Mid-States Ventures, said this is a very comprehensive proposal which was the result of Mid-States year of experience with the project. He said that they have tried to cover every base possible. He said they met with neighbors and have tried to work with them and get as many view points as possible. He thanked Ms. Miller for her work on the project. He said there were very few things on the staff report that they did not agree with. He was in favor of compliance reviews and welcomed the county staff to visit the site any time. He did not believe that another hydrologic study needed to be done to include the other wells. He thought it would be safer to have 50 acres open at a time and said in order for his client to have the inventory on hand they need more space. He said that the reclamation bond is ten times more than the cost to do the reclamation. (He gave staff a copy of what other states require for bonds.) He said that the amended reclamation plan they recommend is not the same as the one done back in 1990. It will be easier for the county to review under this amendment. He asked that the revised reclamation be approved to amend the original instead of two part, as suggested by staff. He was okay with the changes to the reclamation except for the high wall that runs parallel to the road. He proposed a compromise on the high hill. He said that they can live with the 700' setback on phase V.

Mr. Bruce Klein, Project Manager with Professional Engineering Consultants, he gave a PowerPoint presentation regarding the revisions being requested with the Conditional Use Permit.

Mr. Robert Vincent, groundwater consultant, said he been involved in groundwater consulting since 1957 and was asked to provide his opinion about the effect of quarrying on wells in the surrounding area. He prepared the hydrology study which was provided to the Planning Commission. He stated that in the subsurface the limestone is not an aquifer. In this area which dissolves the limestone and creates cracks and crevices the water tends to percolate to the first limestone ledge and then some secondary solutions form. He said in this area the wells that have been the most successful have been the larger old dug wells which reach only to the first ledge. He said there are a lot of springs in the area. He said this is not a good rural water area.

Commissioner Moore said that Mr. Todd Thompson addressed in his letter the September 16, 1992 conditions of approval prohibited a request for further expansion of the quarry.

Ms. Miller said that was brought up in some of the public meetings because the neighbors thought that it meant that the applicant could never ask for an extension. She asked the county attorney, Evan Ice, if it would be necessary to first revise that condition and then make the request for increase in area. Mr. Ice said that it could be done at once; making the request for additional area constitutes a request to revise the conditions.

Commissioner Rasmussen inquired about the staff recommendation concerning the hydrology study that says 'a revised hydrology study must be submitted if a qualified hydrologist determines that the wells located on the Lone Oak property should be included.'

Ms. Miller said at the time she asked Bart Christian to give her information on the wells and then she was going to forward that on to a hydrologist. She said Mr. Christian hired a hydrologist that gave her the locations and status of the wells because she wanted to know if they were active or abandoned.

Commissioner Rasmussen asked if staff recommendation has changed.

Ms. Miller said that the Conditional Use Permit says that a hydrology study has to be done to study the impact on wells. She said that since there are wells that are not registered she felt that they should be included in the study. She said the Conditional Use Permit does not give a lot of guidance other than to say the hydrology study should be done.

Commissioner Rasmussen inquired about the recommendations concerning the performance bond. He said that the recommendation reads 'the methodology used to determine the reclamation information in the bid must be determined to be acceptable and accurate by an engineer.' He asked if that was a condition that would happen at some point in the future.

Ms. Miller said that was correct. The County is planning on hiring an engineer to look at the methodology if it is approved by Planning Commission.

Commissioner Rasmussen asked if the \$10,250 per acre was to be determined tonight.

Mr. Hutton said yes they would like that determination to be made tonight.

Commissioner Rasmussen asked why it would be important to reduce the height of the storage piles.

Ms. Miller said when the Conditional Use Permit was originally approved it is an important issue for the surrounding neighbors.

Mr. McCullough said the original Conditional Use Permit said there were to be no overburden piles to remain, and this is an overburden hill that was left over and has been the subject of some issue with the neighbors.

Commissioner Rasmussen inquired about the denial of the new reclamation plan.

Ms. Miller said it was her recommendation in the staff report before reviewing the revised plans. The applicant provided the revised plans and they removed many of the high-walls, which would bring the reclamation plan into compliance with the original reclamation plan.

Commissioner Harris asked for the map showing surrounding homeowners to be displayed on the overhead so that public speakers could point to where they live

Commissioner Harris inquired about the brown area on the map.

Ms. Miller said that is the current quarry.

Commissioner Carter said that in a note from Mr. Hutton it said the reclamation plan was available to the public for weeks.

Ms. Miller said it may depend on the neighbors. She said that some neighbors have been in contact with her and she has forwarded the plan to them.

### **PUBLIC HEARING**

Mr. David Buffo, attorney for Lone Oak property to the east of the quarry, felt that the expansion will have an effect on the Lone Oak. He said it was unreasonable for neighbors to look over all of the attachments that were included in the Planning Commission online packet five days prior to the meeting. He felt that the item was not ready to be heard by Planning Commission and that the item should be deferred because there is no rush. He wanted the property owners given the opportunity to have their concerns addressed. He said that the original Conditional Use Permit did not allow for expansion of the quarry. He said the revised reclamation plan was included in the staff report but when the staff report was published the recommendation was that the reclamation plan be denied. He said he did not receive the memo from Ms. Miller with the revised reclamation plan until that morning and suggested that the neighbors have sufficient time to analyze it. He submitted a letter that was included in the online Planning Commission packet that addressed his issues. The proposed compromise regarding the overburden pile, which had been the subject of litigation, and the overburden pile should not exist. He said that his client was not opposed to the reclamation plan, but felt that Mid-States should be held to what the standards were when they bought the property. The overburden pile should be removed because it is not in compliance and is an eyesore. He said he agreed with the staff recommendation that the expansion should be denied if there will be a negative effect on the groundwater. He said his client hired his own hydrologist, Ms. Martha Silks. He gave Ms. Miller a letter written by Ms. Silks that talked about the negative effects on the groundwater.

Mr. Bart Christian, owner of Lone Oak, asked if they had seen the video he submitted to staff.

Commissioner Finkeldei said that the Commissioners had not seen it.

Ms. Miller said she checked with the City Information System Department and the video was not able to be added to the online packet.

Mr. Christian was upset that the Commissioners had not seen the video yet. He asked that the overburden pile be removed and he also wanted the opportunity to go over the new reclamation plan.

Ms. Martha Silks, of Perry, Kansas, hydrologist since 1987, agreed with what Mr. Vincent said except with the statement that there are no aquifers in the area. She showed a visual aide on the overhead. She pointed out minor aquifers on the map. She asked for the wells on Lone Oak to be included in the study.

Mr. Howard (Rick) Henry, owns property to the north of phase V, has discussed the issues brought up in Mr. Todd Thompson's letter with the applicant. He said they have resolved the issues and Mid-States agreed to a 700' setback so they are okay with the proposal.

Commissioner Harris inquired where the 700' setback was located.

Ms. Miller showed on the overhead map where the 700' setback would be.

Mr. William Schaetzel, nearby property owner, said that since they have reinstituted mining there are three large blasts a day. He said there are sirens used before and after each blast and that the ground shakes with each blast. He was concerned about increased activity. He said that the quarry was not in compliance. He felt that the high-wall near E 100 Road was too tall. He said Big Springs is much more busy and active than Martin Marieta ever was. He felt that the hydrology study was needed because quarries affect the water table. He said he knew there was a quarry when he bought his property but never expected the Conditional Use Permit to be extended another 20-30 years. He said that Big Springs is not a good neighbor. He did not feel this was an essential quarry and felt this quarry should be retired. He asked that the Conditional Use Permit not be extended. He also expressed concerns about heavy trucks damaging the roads.

Commissioner Harris asked if the wells in the area have lost capacity.

Mr. Schaetzel said he was not sure.

#### **APPLICANT CLOSING COMMENTS**

Mr. Hutton, regarding Mr. Buffo's comments, said any changes made to the reclamation plan were done in large part in response to neighbor comments. He said he and his client sat down with Mr. Buffo and Bart Christian in June and went over in general terms what they were planning and went over Mr. Buffo's concerns. Mr. Hutton said that if there is no specific basis to delay the project then why delay it. His client would like to push this through to make plans for the future. He said they have been working on this for 6 months and Mr. Buffo has been involved since June. He said that they have bent over backwards to work with the neighbors as much as possible and have made changes as a result of comments from neighbors. He said regarding the overburden pile, they have talked about terracing it since July. He did not feel that another hydrology study would be useful since one has already been done. He said that Big Springs is a necessary quarry and has provided rock for the Kansas University tunnel, the new Wal-Mart, Douglas County Public Works, etc.

#### **COMMISSION DISCUSSION**

Mr. Buffo asked if he could speak.

Commissioner Carter asked to hear Mr. Buffo's comments.

Mr. Buffo said he did not expect that the revisions would be recommendation for approval. He said that they did meet with Mr. Hutton and that the overburden pile needed to be removed. Mr. Buffo said his client has spent real money to take care of this. They did not feel that terracing the hill was an acceptable compromise.

Mr. Christian was upset that the Commissioners did not see the video. He wanted the item deferred.

Commissioner Hird said he was struggling with the concept that the existing Conditional Use Permit said no additional requests could be made. He asked staff attorney Mr. John Miller for his thoughts.

Mr. McCullough said this is a county item and Mr. Miller is a city attorney. County questions would need to be directed to Evan Ice, the county attorney. Mr. Ice had indicated to staff that the applicant had the ability to make that request.

Commissioner Moore agreed with Mr. Ice's interpretation, but said the Conditional Use Permit has not been abided by and did not feel the request should be approved.

Commissioner Carter felt that more time was needed to review the project and that a compromise on the overburden pile should be reached between Lone Oak and the applicant. He also said the video was significant and he would like to see it. He brought up the point that Mr. Vincent was the only one who did a hydrology study and comments had been received from staff the Kansas Geological Survey and another hydrologist, one for and one against.

Commissioner Hird said he would like to see something from Mr. Ice addressing the issue of extending the Conditional Use Permit. He would also like to see the video.

Commissioner Harris agreed with Commissioner Hird and said she would be in favor of deferring the item. She would like a statement from Mr. Ice, the wells added to the study, view the video, and allow property owners more time to view the reclamation plan.

Commissioner Rasmussen said he would like to see the item deferred to allow more time to look at the reclamation plan. He would like to see a revised staff report which included the information on the revised reclamation plan. He would also like to see a table that shows what the applicant agrees with the staff on and why. He would like to see the applicant check their silt fences along 1700 Road. He said he was not a hydrological expert and felt that having a revised study would not help the Planning Commissioners because they are not qualified to judge if it is meaningful and accurate.

Mr. McCullough said it is a factor that tries to measure impact of land use on surrounding properties. He said that if there are studies that conflict each other than an independent study might have to be done.

Commissioner Rasmussen inquired about the scope of the hydrological study and if it just included the land for the Conditional Use Permit.

Ms. Miller said that the Conditional Use Permit says 'the hydrological study shall be completed at the applicants expense prior to any quarrying operation, to provide an inventory of area residential and stock wells and determine their capacities and current volumes and levels of operation, determine the impact of quarrying per phase based on the depth of mining proposed on existing water tables which serve these wells.' With the 2006 revision there was a requirement that if drilling below 1042 elevation was done during any phase that a hydrological study needed to be done, which is why one is required now.

Commissioner Rasmussen asked about the radius for 'area wells.'

Ms. Miller said unfortunately the Conditional Use Permit is not that specific.

Commissioner Finkeldei asked if that was a Development Code requirement or just on the Conditional Use Permit.

Ms. Miller said the requirement was just on the Conditional Use Permit, not in the Development Code.

Commissioner Singleton had concerns about going back and changing the conditions that the land was purchased under. She said the Conditional Use Permit has not been followed and did not think it was fair to say it was a compromise when the applicant bought the land under the Conditional Use Permit with conditions. She recommended the applicant spend more time speaking with neighbors to try and reach a compromise.

Commissioner Rasmussen would like to see a summary of how they are not in compliance.

Ms. Miller said that Keith Dabney, Director of County Zoning & Codes, provided staff a list of items not in compliance, which were mostly complaint based issues. Most of the complaints were about trucks traveling without their tarps on.

Commissioner Rasmussen said there was conflicting information about the overburden pile being a violation of the Conditional Use Permit, but that the overburden pile was properly reclaimed per state requirements.

Ms. Miller said the state has reclamation requirements and the county has reclamation requirements. The county bond cannot be released because the overburden pile has not been reclaimed per reclamation requirements in the Conditional Use Permit.

Commissioner Harris said she read the minutes from the Planning Commission meeting where the Conditional Use Permit was approved and it was important to the Commissioners that the land not be expanded. She really wanted the county attorney to talk about the applicants rights to reapply.

Commissioner Moore asked for a better definition of the adjustment factor for the reclamation bond. He inquired if there was an industry standard. He also wondered would a set percentage be used or would it be adjusted only if a change greater than 5% occurred.

Commissioner Harris had a suggestion about expanding the territory. She said the parcel off to the side could be taken out in exchange for more interior space, which would be a one for one trade and could provide more area to move around, and would also remove the safety issue of the road. She would like Mr. Vincent to respond to Ms. Silks' comments on the hydrologic study.

Commissioner Carter asked Mr. Hutton if there would be more blasting per day at the quarry. He also said he would be interested to know what Mr. Vincent thought about Ms. Silks comments on the hydrology study.

Mr. Hutton said there should be no more frequent blasts, just more area to mine. He did not believe there was enough demand to double the blasting.

### **ACTION TAKEN**

Motioned by Commissioner Harris, seconded by Commissioner Carter, to defer the item to November Planning Commission with the requested information/updates:

- Legal determination on condition #2 approved with CUP-06-06-92, which states no additional requests be made by Martin Marieta and/or its heirs during the remaining of Conditional Use Permit #3500 & #3853, which expires December 19, 2020 to expand the size of the quarry site
- Add undocumented wells to the applicants hydrology report
- Incorporate the staff memo into the staff report
- Table showing the applicants agreement and/or disagreement with staff recommendations and why
- Applicant to check silt fences along 1700 Road
- Summary provided by staff of non-compliance issues
- Summary of how the bonds and reclamation activities work
- Provide recommendation on the performance bond adjustment factor in terms of industrial standards

- Does the applicant concur with Ms. Silks comments on hydrology report that mining could effect area wells given that even 1-2 gallons per minute could be significant to a property owner
- Watch Mr. Christian's video during the Planning Commission Mid-Month meeting on October 8, 2008
- Ask the county attorney what the Planning Commissions duty is to the Conditional Use Permit, given the previous prohibition on requests for expansion.

Motion carried 7-0.

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**ITEM NO. 8 CPA-2008-6; WEST OF K-10 PLAN (DDW)**

**CPA-2008-6:** Consider amending Horizon 2020, Chapter 14 Specific Plans, to add a reference to and incorporate the West of K-10 Plan.

**STAFF PRESENTATION**

Mr. Dan Warner presented the item.

Commissioner Harris thanked Mr. Warner for his work on the West of K-10 Plan.

Commissioner Carter inquired about the traffic with higher density.

Mr. Warner said that roads will be upgraded as the area is urbanized.

Commissioner Harris asked if mixed use zoning had been considered.

Mr. Warner said there are mixed use zoning options in the commercial and residential office categories.

Commissioner Hird asked if the only commercial neighborhood was on the east side of K-10.

Mr. Warner pointed on an overhead map other commercial areas.

Commissioner Rasmussen said that some of the neighbors in the southwest corner would prefer to see commercial as opposed to high density.

Mr. Warner said it boils down to getting the highest use possible.

Commissioner Singleton asked what consideration was given to the letter of comments from the Department of Wildlife.

Mr. Warner said that language was inserted regarding environmentally sensitive lands that is in the Development Code and that was how it was addressed.

Commissioner Harris said that Mr. Phil Struble wrote a letter with comments about not having commercial in intersections to alleviate intersection problems.

Mr. Warner said it would require a broad policy change from the Comprehensive Plan Chapter 6, which is completely nodal development on major intersections. He thought that as they get into more traditional neighborhood development it starts to make more sense if they want neighborhood commercial in the neighborhoods instead of all at the major intersection. It would be a huge policy shift and the Comprehensive Plan does not support that idea. He said it is a tradeoff on having it all on a corner or stripping it out like 23<sup>rd</sup> Street, which also has problems.

**PUBLIC HEARING**

Ms. Kristel Lewis, 1430 E 902 Road, said that her neighborhood started talking about development about three years ago. The neighborhood came together and discussed what they would want. She said it was obvious that the neighborhood was not part of the plan for that area. She said they are excited that this plan has come into being because years ago the neighborhood talked with the previous Planning Director and there was not a plan at that time. She said they would like commercial because they feel



that will give them the highest value for their land. She said the neighborhood is willing to go but are not willing to go cheap.

Ms. Lee Radar, N 1452 Road, said she considers it a gift to live on the land she lives on. She said if they had to choose, she would prefer option 2, although she did not agree with either option. She was concerned about the density levels and water issues because her property is the lowest in the area. She was worried that high density would create drainage issues and also concerned about traffic safety issues. She was concerned about her property value decreasing and her property tax increasing.

Mr. Francois Henriquez, 1436 E 920 Road, was here on behalf of multiple neighbors who could not be present. He gave his philosophical perspective. He enjoys rural life and wants to seek a solution to encroaching development. He asked the Planning Commission to have large lot residential within the city and asked them to not force every square mile to look like a cookie cutter development.

### **COMMISSION DISCUSSION**

Commissioner Moore said when the Planning Commission looked at this during a previous Planning Commission Mid-Month meeting the southwest corner at 1452 E 920 was medium residential at that time.

Mr. Warner said it was low density residential previously and it changed because of subsequent comments from property owners. It is more reflective now of the existing condition.

Commissioner Harris felt it was awkward to have medium density residential right next to very low density residential.

Commissioner Carter said he just moved from N 1464 Road, and east of the church is undeveloped, but he still bought the house with the confidence that there would be stair-stepping and not be a high density apartment complex next to his house. One thought might be to be more of a buffer, possibly with a park or open space, in lieu of stair-stepping. He felt that the intersection of K-10 and 1500 Road needed to be upgraded before higher density is developed in the area.

Commissioner Moore said he liked plan option 2 without the medium density 5 acre pocket, and felt it should be switched back to low density residential. He did not know if it was feasible to have commercial for that area. He expressed concerns about traffic.

Commissioner Finkeldei was concerned about the traffic impacts from high density. He said high density should be focused on the south end.

Commissioner Finkeldei said that for the record he would recuse himself on the actual vote for this item because he sits on the board of the First United Methodist Church LLC, and they are about to purchase 5 acres from the church. He wondered if there had been discussion about that corner of land.

Mr. Warner said he had not received any comments about changing that.

Commissioner Finkeldei said the land being purchased sits lower than the church and would probably not be public institutional property.

Commissioner Moore said the transitions could be back to back rather than along the street.

Commissioner Harris said the shape of the area was awkward because there is high density residential west of the road and then long column to the east and a strip of low density. She asked if the vision was that the piece to the west would connect with the piece to the east at the top.

Mr. McCullough said the whole area is right of way for the highway.

Commissioner Rasmussen asked why there would have to be high density in the southwest corner.

Mr. McCullough said that staff received comments from property owners in the area and staff attempted to establish land use patters that meet and balance the needs of the area. Staff does not support the commercial aspect but does support higher density residential, mainly because it is an extension of land use patterns that have already been established along Clinton Parkway. Going to higher density on a frontage road along K-10 Highway was appropriate.

Mr. McCullough thanked the citizens who were present at the meeting for their involvement.

#### **ACTION TAKEN**

Motioned by Commissioner Harris, seconded by Commissioner Hird, to continue the public hearing on this item to the October Planning Commission meeting.

Motion carried 7-0.

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**ITEM NO. 9      AMENDMENTS TO DEVELOPMENT CODE (MKM)**

Revisions to **TA-12-27-07**: Consider revisions to multiple sections of the City Development Code to maintain consistency with proposed language recommended for approval in TA-12-27-07 (Sections 20-1101 & 20-1701, Environmentally Sensitive Areas) by Planning Commission at their July 2008 meeting.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

Commissioner Harris asked staff to respond to the League of Women Voter letter regarding the percentage of environmentally sensitive features.

Ms. Miller said the sensitive features need to be protected with a maximum of 30%. She said she hesitated to set a minimum because if the minimum says 10% of the site must be protected and only 5% of the site has environmentally sensitive features. Areas without sensitive features are required to be protected. Staff wants all of the environmentally sensitive features to be saved, up to 30% of the site.

Commissioner Harris inquired about wording that talked about the proposed changes to cluster housing projects.

Mr. McCullough said it refers them to the Planned Development regulations which may allow some increase in density. He said if it is a straight RS district you cannot include more than 35 dwelling units in the cluster housing project unless environmentally sensitive areas are present. If there are not environmentally sensitive areas and someone wants to do more than 35 dwelling units in straight RS zoning with a cluster housing project, they would have to include a PD overlay with that and justify the increase in density.

Commissioner Harris complimented Ms. Miller on her work for the Big Springs Quarry project.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Rasmussen asked if they should wait until after the environmental Horizon 2020 chapter is complete.

Mr. McCullough said that City Commission has been waiting for the changes due to issues with loopholes that have been encountered with development.

**ACTION TAKEN**

Motion by Commissioner Singleton, seconded by Commissioner Carter, to adopt revisions to multiple sections of the City Development Code to maintain consistency with proposed language recommended for approval in TA-12-27-07 (Sections 20-1101 & 20-1701, Environmentally Sensitive Areas) and forwarded to the City Commission with a recommendation for approval.

Unanimously approved 7-0.

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**ITEM NO. 10 AMENDMENTS TO COUNTY ZONING REGULATIONS (MKM)**

**TA-08-16-08:** Consider comprehensive revisions to the Douglas County Zoning Regulations. Initiated by Planning Commission in 2006.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Hird asked if this was just clean up.

Ms. Miller said yes, reformatting and minor changes are being made.

Commissioner Hird said the two areas that concerned him were Home Occupations and Agri-tourism.

Ms. Miller said she thought the issue with permitting agri-tourism by right is that they do not know what someone will say is agri-tourism.

Commissioner Hird felt there should be more development for what agri-tourism means.

Ms. Miller said that a better definition could be worked on.

Commissioner Finkeldei directed staff to work with county staff on the revisions.

Commissioner Hird suggested using the resources from the state so that agri-tourism can be encouraged.

**ACTION TAKEN**

Motioned by Commissioner Harris, seconded by Commissioner Moore, to continue the public comment period on the revised regulations and provide Staff with comments and direction as to revisions or additions that should be made.

Unanimously approved 7-0.

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**ITEM NO. 11 US HWY 56 CORRIDOR STUDY (RTG)**

US Highway 56 – Corridor Study – Partnership Agreement: Consider approval of an agreement that states that the Lawrence-Douglas County Metropolitan Planning Organization (MPO) will cooperate with KDOT and other local governments in studying the US 56 corridor between I-35 in Gardner and US 59 in Douglas County and be an active participant in this study.

**STAFF PRESENTATION**

Mr. Todd Girdler presented the item.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Harris said the Transportation 2030 Committee was happy to see this being worked on.

**ACTION TAKEN**

Motioned by Commissioner Harris, seconded by Commissioner Singleton, to approve the US Highway 56 – Corridor Study – Partnership Agreement and instruct the Chair to sign it.

Unanimously approved 7-0.

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**MISCELLANEOUS NEW OR OLD BUSINESS**

MPO Consideration of Letter of Support for New State Comprehensive Transportation Program.

**STAFF PRESENTATION**

Mr. Todd Girdler presented the item.

**ACTION TAKEN**

Motioned by Commissioner Rasmussen, seconded by Commissioner Moore, to authorize the Chair, Brad Finkeldei, to sign the Metropolitan Planning Office letter of support for the new state comprehensive transportation program.

Unanimously approved 7-0.

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**ITEM NO. 12 PLANNING COMMISSION BY-LAWS**

Consider revisions to the Planning Commission by-laws related to Ex Parte Communications. Commission will discuss proposed changes and schedule for future meeting.

**STAFF PRESENTATION**

Mr. John Miller, staff attorney, presented the item.

**COMMISSION DISCUSSION**

Commissioner Harris asked what the goals were in making the changes.

Commissioner Carter said when he first joined the Planning Commission he wanted to talk to people other than staff or applicant about agenda items to get up to speed on issues.

Commissioner Singleton said it would be a way to limit litigation.

Commissioner Rasmussen felt that they should be able to get opinions from others in the community because Planning Commission represents the public and it allows them to make a better decision.

Mr. Miller said that if they create rules that are more strict than they would be required to follow those rules in due process.

Commissioner Harris said the issue is whether the information received during ex parte is different than what is included in the staff report. She said when declaring ex parte it would be helpful to mention what was discussed.

Commissioner Finkeldei felt that being more specific was important.

Commissioner Singleton said that if there is a broader term than the public can contact the Commissioners.

Commissioner Finkeldei felt that a conflicts of interest statement would be good.

They directed staff attorney Mr. John Miller to draft a new version.

Consideration of any other business to come before the Commission.

**PUBLIC COMMENT SECTION**

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**Adjourn 11:30pm**