

ITEM NO. 2 CPA-2008-10 (DDW)

CPA-2008-10: Amend Horizon 2020 Chapter 6, Commercial Land Use, to include the SW corner of Clinton Pkwy and Crossgate Drive as a potential location for a new Neighborhood Commercial Center.

ITEM NO. 3A RSO TO CN-2; 3.324 ACRES; SW CORNER CLINTON PKWY & CROSSGATE DR (SLD)

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

ITEM NO. 3B RSO TO INCLUDE PD OVERLAY FOR CN-2; 3.324 ACRES; SW CORNER CLINTON PKWY & CROSSGATE DR (SLD)

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

ITEM NO. 3C PRELIMINARY DEVELOPMENT PLAN FOR WALGREENS; SW CORNER CLINTON PKWY & CROSSGATE DR (SLD)

PDP-05-04-08: Preliminary Development Plan for Walgreens, located on the SW corner of Clinton Pkwy and Crossgate Drive. Submitted by Mission River LLC, for Inverness Park Limited Partnership, property owner of record.

Mr. McCullough said that the applicant requested items 3B & 3C be deferred. If the rezoning for item 3A was approved then the Preliminary Development Plan would convert to an administrative site plan and could be approved with additional review.

ACTION TAKEN ON ITEMS 3B & 3C

Motioned by Commissioner Singleton, seconded by Commissioner Hird, to defer items 3B & 3C.

Unanimously carried 9-0.

STAFF PRESENTATION FOR ITEMS 2 & 3A

Mr. Dan Warner presented item 2. Items 2 & 3A were heard together.

Ms. Sandra Day presented item 3A.

APPLICANT PRESENTATION

Ms. Jane Eldredge, of Barber Emerson, gave the history of Walgreen locations in Lawrence. Ms. Eldredge stated that the proposed site had severe limitations. There is a 60' drainage easement on the west side of the property. On the north, south, and east side is a major arterial collector and another street. The proposed property is small and confined with stringent building locations. She said that it was not suitable for residential or office building because of the size being so small. It was suitable for the proposed use which they are requesting be a CN2 use. She said that at the time of the new Development Code adoption in July of 2006 the zoning district RSO permitted 'retail sales general' and that remained a permitted use until June of 2007 when there was a 104 page amendment to the Land Development Code, that included the deletion of two uses in the RSO district. The two uses deleted were 'repair services' and 'retail sales general.' The property owner, Mr. Gary Conwell, entered into an

agreement to purchase the land before the change in the zoning code so now he was trying to regain what he had contracted for at the time he had made the initial agreement. In reviewing the proposed findings of fact in the staff report there was a great deal of discussion with conformance to the Comprehensive Plan. She said that staff was careful to point out that in its opinion that the application did not conform to the land uses of the Comprehensive Plan. She felt that it conformed to the policies.

Mr. Anthony Golden, Swartz Design Architect, worked on several Walgreen stores and stated that the proposed one was unique because it was designed to blend with the neighborhood. It will have covered walkways and a 15' wall trash enclosure, and all the elements are stone or brick.

Commissioner Harris asked about the size of the facility compared to the other Walgreen facilities in Lawrence.

Ms. Eldredge said the other two facilities have 13,000 gross square feet and the proposed project would have 15,000 gross square feet.

Commissioner Rasmussen asked about the relationship between the current property owner and the original developer.

Ms. Eldredge said it consists of some of the same original ownership group. The applicant includes Walgreens and HT Paul.

Commissioner Moore asked if a traffic study had been completed.

Ms. Eldredge said the traffic study was completed and submitted on May 19, 2008. Access was proposed onto Crossgate Drive. On June 16, 2008 an addendum to the study was submitted.

Mr. Leon Osburn, Kaw Valley Engineering, said the amended traffic study converted the entrance off of Crossgate to a right-in-only.

Commissioner Blaser asked if there were any other street changes necessary besides the right only turn. He also asked if a median was required.

Ms. Eldredge replied no.

Commissioner Dominguez asked if the applicant was correct in saying they should avoid strip development and that because of the geography or stormwater issues they would be allowed but that nobody else could do it behind them.

Mr. McCullough said that there are no entitlements today for stripping out sections of Clinton Parkway, west of Crossgate Drive. There is always the potential for the request but has little to do with the topography of the area. The site is a 3 acre site in an urban setting so there are no hindrances to developing the site or anything west of the drainage channel. There are some access issues, much like 6th Street where some developments have obtained access to 6th Street. There are currently no-access easements on the plat for the property. One of those would have to be lifted to gain access to Crossgate Drive. He said there are currently no entitlements to strip out Clinton Parkway west of the floodplain.

Commissioner Harris asked how the access would work.

Ms. Eldredge displayed a large map showing access.

Commissioner Rasmussen asked if the public only submitted four letters and one email for communications.

Mr. McCullough said that was correct.

Commissioner Carter asked about additional sites that staff mentioned in the staff presentation and asked staff to display on overhead. He also inquired about the history of the property and the property owner purchasing the land under a code that then changed. If the zoning changed from what his initial intent

Ms. Eldredge said the general retail services zoning went into effect July 2006, and Mr. Conwell negotiated and came to the agreement in May 2007, relying on the retail service being one of the uses and therefore the drugstore was appropriate. One month later the 104 page amendment to the Development Code was approved striking that use. She said the only thing for Mr. Conwell to do at this point is to seek a rezoning.

Ms. Day displayed other commercial sites in proximity to the subject property and stated that she looked specifically for properties that still had open pad sites.

Commissioner Carter asked staff about other uses for that site that would be more conducive to the neighborhood or area plan.

Ms. Day said the uses identified as being allowed in the RSO district include various residential uses and office uses such as banks, engineering firms, real estate offices, yoga center, school, day care facility, and medical offices.

Commissioner Harris inquired about determining the use of a location. She asked when retail use is allowed in a zoning district is it automatically allowed or do other factors need to be looked at.

Ms. Day said that if the base district allowed the use in the use table, than yes it was allowed. Then there needs to be compliance with development or site criteria, such as parking, building setbacks, landscaping, screening, etc. She said there were lots of conflicts in the Development Code which lead to the text amendments. There were a number of things that were carried over in the original use tables that should not have been. The RSO district was not designed for commercial uses and that was one of the text amendment changes.

Commissioner Singleton said that Ms. Eldredge stated in 1993 there were changes in the zoning so that the other Walgreens could be brought in and that those were residential areas initially. She inquired about the current Walgreen sites surrounded by commercial uses.

Ms. Eldredge said that both of the sites have some commercial uses and some residential surrounding them. Walgreens believes they are a residential pharmacy and they want to be in residential areas. She believed the surrounding commercial sites were in place before both Walgreens were built.

Commissioner Rasmussen asked if when the property was originally developed and the zoning was established as RO-1B, would the type of use been acceptable at the proposed site.

Ms. Day replied, no, and that in the RO-1B district there are even fewer uses allowed than in today's Development Code.

PUBLIC HEARING

Ms. Gayle Sigerdson, neighbor of the site, supported staffs recommendation of denial. She did not see a need for a Walgreens in the area and was concerned about the traffic increase.

Commissioner Rasmussen asked where she lived.

Ms. Sigerdson said she lives at the corner of 24th Street and Crossgate Drive.

APPLICANT CLOSING COMMENTS

Mr. Gary Conwell, general council for Mission River LLC, said he was anxious to build another Walgreens in Lawrence and that there is a need for a Walgreens at the proposed location. He said they looked at the site at the northeast corner of Clinton Parkway and Wakarusa and there were infill problems. He also said they are looking at other sites on 6th Street. The proposed site is a unique site with the drainage ditch and easement and some of the land is not usable.

COMMISSION DISCUSSION

Commissioner Carter said that it sounded like they were trying to amend Horizon 2020 for something that is a created need because it would be a quarter mile from other pharmacies. When development happens to the west of the property there may be enough demand to have such things as daycare or a karate studio, that might fit the neighborhood better. He said that there are spots for pharmacies all over town that comply and that it sounds like the proposed site was never intended to be a pharmacy. He said he was not compelled at this time to amend Horizon 2020.

Commissioner Hird asked if until the amendments in June of 2007 the Walgreens would have been allowed at the proposed site.

Mr. McCullough said that between July 2006 and June 2007 the Development Code permitted general retail sales in the RSO district.

Commissioner Finkeldei asked if Horizon 2020 did not have to be amended to approve the project.

Mr. McCullough said that was correct, Horizon 2020 is a guide plan and state statute does not require strict adherence to it. It was requested at staffs direction. He stated for the record, staff did not recommend the PD overlay because staff did not support the project. He said Commissioner Finkeldei was correct, they did not need to amend the plan to support the rezoning.

Commissioner Finkeldei said he felt this was a good way to proceed in cases where there would be a denial based on the Comprehensive Plan to give them the option to look at both.

Commissioner Carter thought that prior to the text amendment changes in June 2007 that the Code was more restrictive and there could not have been a pharmacy at this location.

Mr. McCullough said that the property was annexed into the city and the rezonings occurred in 1999, which rezoned the property to RO1B. The zoning would not have allowed the pharmacy. In July of 2006 zoning category RO1B transferred into zoning category RSO. After awhile it was discovered that there were incompatibilities which lead to the text amendment in June of 2007. He went on to say that for about a year the zoning district permitted retail uses.

Commissioner Carter asked if the current owner purchased the property during that time period intending to put a pharmacy on it.

Mr. McCullough said that per testimony, yes.

Commissioner Singleton asked about what would be behind the proposed project and if there would be an apartment complex with large parking lots.

Ms. Day said there was a proposed apartment complex which included roughly 2 ½ acres of open space so the density would be within the center portion of the project.

Commissioner Dominguez inquired about the cost of building the site and if there would be extra cost because of the location.

Mr. Golden said the typical Walgreens costs approximately \$1.8 - \$2.2 million to build. The proposed project would cost about \$3.8 million. He said it was a substantial increase due to the site. The west side of the site goes down into the floodplain.

Commissioner Carter asked if the building would be mostly brick.

Mr. Golden said that was correct and that the \$1.8 million dollar buildings are typically brick.

Commissioner Harris said this was a tricky decision for her because there was a year time period where the Code would have allowed the use at the location. She did not feel commercial development was appropriate for the area and was concerned about the traffic it would draw to the neighborhood. She said she would not vote in favor of the project.

Commissioner Rasmussen thanked the applicant for trying to propose something that looked nice and would be a beautiful addition to Lawrence. He stated he used to live just south of the area and at the time when the Getto property was originally annexed into Lawrence people in the area did not want a store that would generate more traffic. He thought it was interesting that the Planning Commission received letters of support from neighbors who would not be affected by the traffic and the two people who wrote letters in opposition were near the site and would be affected by the traffic. He did not feel it was a good idea and said he would be voting against the plan.

Commissioner Blaser said that the plan did not seem to fit Horizon 2020 and that he would vote against the project.

Commissioner Hird said that if someone can take a piece of vacant land and turn it into something that is useful and aesthetically pleasing then they should move forward with it. He said the same services are available right down the road but the larger issue for him was that Clinton Parkway was an opportunity to do things right, where they have nodal plans and difficult to depart from that. He also stated that the land owner bought the property under the impression that they could build a pharmacy.

Commissioner Finkeldei said this is the second time they have addressed Horizon 2020's focus on nodal development. He said he was a big proponent of traditional neighborhood design and said that a more walkable and pedestrian friendly city could not be achieved if they continue to focus on nodal development in commercial centers. He supported having more walkable access to services and the proposed project would go in that direction.

Commissioner Hird had reservations about this being a walkable facility considering the drainage ditch. He said this was an isolated unique piece of real estate that has sat empty and useless for years.

Commissioner Harris felt that they needed to look at the bigger picture of what they intend for the area.

ACTION TAKEN ON ITEM 2

Motioned by Commissioner Harris, seconded by Commissioner Carter, to deny the comprehensive plan amendment to *Horizon 2020* to amend Chapter 6 to include the southwest corner of Crossgate Drive and Clinton Parkway as a potential location for a new Neighborhood Commercial Center and recommend forwarding the comprehensive plan amendment to the Lawrence City Commission and the Douglas County Board of County Commissioners with a recommendation for denial.

Motion failed 4-5, with Commissioners Blaser, Carter, Harris, and Rasmussen voting in favor. Commissioners Dominguez, Finkeldei, Hird, Moore, and Singleton voting in opposition.

Motioned by Commissioner Hird, seconded by Commissioner Moore, to approve CPA-2008-10 to amend Horizon 2020 to include the southwest corner of Crossgate Drive and Clinton Parkway as a potential

location for a new Neighborhood Commercial Center in Chapter 6 Commercial Land Use, based on the applicants' response as set forth in the staff report on each of the proposed issues, and forward to the Lawrence City Commission and the Douglas County Board of County Commissioners.

Motion carried 5-4, with Commissioners Dominguez, Finkeldei, Hird, Moore, and Singleton voting in favor. Commissioners Blaser, Carter, Harris, and Rasmussen voting in opposition.

Motioned by Commissioner Moore, seconded by Commissioner Hird, to authorize the Chair to sign the PC resolution 2008-07.

Motion carried 5-4, with Commissioners Dominguez, Finkeldei, Hird, Moore, and Singleton voting in favor. Commissioners Blaser, Carter, Harris, and Rasmussen voted in opposition.

ACTION TAKEN ON ITEM 3A

Motioned by Commissioner Moore, seconded by Commissioner Dominguez, to approve rezoning a tract of land approximately 3.324 acres from RSO (Single-Dwelling Residential-Office) to CN-2 (Neighborhood Commercial Center), located on the SW corner of Clinton Pkwy and Crossgate Drive, based on the applicants' response dated July 21, 2008 included as an attachment to the staff report and restrict the use to the personal services category.

Commissioner Rasmussen asked if there was certainty that Walgreens would be built there and not a different commercial development instead.

Mr. McCullough said that it can be conditioned to a certain use. The applicant would voluntarily place a condition on the approved rezoning that would limit it to a neighborhood pharmacy use.

Ms. Eldredge said that was correct.

Mr. McCullough said that they would need to match up the request with the use category by the time it is heard by City Commission. In concept form that is what was volunteered by the applicant.

Motion carried 5-4, with Commissioners Dominguez, Finkeldei, Hird, Moore, and Singleton voting in favor. Commissioners Blaser, Carter, Harris, and Rasmussen voted in opposition.