



PLANNING COMMISSION MEETING

April 20 & 22, 2009

Meeting Minutes

April 20, 2009 – 6:30 p.m.

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

Staff present: McCullough, Stogsdill, Day, J. Miller, and Ewert

MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of March 23 & 25, 2009.

Commissioner Harris had a few minor change that she emailed to Ms. Denny Ewert.

Motioned by Commissioner Moore, seconded by Commissioner Harris, to approve the March 23 & 25, 2009 Planning Commission minutes with the suggested changes by Commissioner Harris.

Unanimously approved 8-0.

COMMITTEE REPORTS

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

Commissioner Harris said that the Comprehensive Plan Committee met last week and talked about some policy considerations for the chapter and will meet again in May to review the first draft.

COMMUNICATIONS

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

Receive written action of any waiver requests/determinations made to the City Engineer:

City Engineer approval of waiver for access associated with MS-09-10-08: **Hallmark Addition 2nd Plat**; 101 McDonald Dr; located at the NW corner of McDonald Dr & W 2nd St.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- Ex parte:
Commissioner Harris said she is a member of the Barker Neighborhood association and there was a communication sent out about the rezoning of 19th Street and Learnard Avenue. The communication was regarding concerns about increased traffic.

Commissioner Dominguez said he is in the same neighborhood association and received the same communication.

- No abstentions.

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ITEM NO. 1 IG TO IL; 4.48 ACRES; 725 N 2ND ST (SLD)

Z-1-1-09: Consider a request to rezone approximately 4.48 acres located at 725 North 2nd Street from IG (General Industrial) to IL (Limited Industrial). Submitted by Steve Glass for North Town Development, LLC; Rick E. & Lori J. Combs; Bishop Properties, LLC; Richard L. Jantz; Big Bear Investments, LLC; and Bruce S. Liese & Cathy A. Tripp, property owners of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

APPLICANT PRESENTATION

Mr. Steve Glass, was present for questioning.

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Commissioner Harris, seconded by Commissioner Moore, to approve the request to rezone (Z-1-1-09) approximately 4.48 acres located at 725 North 2nd Street, from IG (Industrial General) to IL (Industrial Limited) based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Unanimously approved 8-0.

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ITEM NO. 2 CONDITIONAL USE PERMIT FOR LONE OAK SPORTING TRAP; 1718 E 150 RD (LF)

CUP-2-5-09: Consider a renewal of CUP-02-01-03, a Conditional Use Permit for Lone Oak Sporting Trap, a Recreational Facility located at 1718 E 150 Road, Lecompton in the S ½ of section 24-12-17. Submitted by Bart Christian, property owner of record.

Item 2 was withdrawn by the applicant prior to the meeting.

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ITEM NO. 3 SPECIAL USE PERMIT FOR RESEARCH SERVICES; 647 MASSACHUSETTS ST (SLD)

SUP-2-1-09: Consider a Special Use Permit to allow Research Services in Downtown Commercial district at 647 Massachusetts Street, [Lot 19 on Massachusetts Street, 2nd Floor Only]. Submitted by Barber Emerson, LC, for GCB Holdings, LC, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

Commissioner Harris asked if there was an elevator in the building and how supplies would get to the second floor.

Ms. Day said she would let the applicant respond to that question because she did not know about the interior layout of the building.

Commissioner Rasmussen inquired about how toxins were being defined.

Ms. Day said staff did not define them in the staff report and used the wording from the applicant. She stated that some of the things were specific to water quality tracking and that would be part of the building permit review and fire code review during the tenant finish. She said there is a lengthy list from the Utility Department of what can and cannot go into the waste systems.

APPLICANT PRESENTATION

Mr. Mark Anderson, was present on behalf of the landowner/applicant. He stated that regarding the elevator it was his understanding that an elevator would be added. He said the hope was that the second floor of the adjoining building would be leased with the space. He stated that regarding the definition of toxin they were looking at definitions found in the dictionary. He said that there should be nothing going through the waste system and that the potential company occupying the site would be required to abide by state and local laws. If there is anything to be disposed of it would not be going down the drains.

Commissioner Rasmussen was concerned with staff's understanding of 'toxins.'

Commissioner Harris expressed concern about the possibility of substances spilling down to the first level.

Mr. Anderson said the quantities involved are so small that spillage down to the first floor would not be in the realm of likely possibility. He said the substances are in eyedropper type quantities. He stated that the landowner of the second floor is also the landowner of the first floor as well. He said that the activity planned for the second floor is what would be found in an office with very little chemical activity.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Harris inquired about approving a Special Use Permit without knowing what specific business it was for.

Mr. McCullough said Special Use Permits can be used for businesses such as medical offices and daycare centers where the exact business may not be known, but the use is. He felt that Planning zones the land use impact, not businesses.

Commissioner Moore asked if the Special Use Permit would transfer to other uses.

Mr. McCullough said yes, the Special Use Permit would run with the property.

Commissioner Singleton said she would prefer to know exactly who the tenant would be and if special regulations were needed. She was also concerned about the visible location in downtown.

Commissioner Dominguez said the Special Use Permit has safe guards that regulate any industry that comes in and that they should not pick and chose what business can go in there.

Commissioner Finkeldei agreed with Commissioner Dominguez. He said there are several quarries and day care centers with Special Use Permits that have changed owners. He felt that the Special Use Permit should be based upon the use, not the owner.

Commissioner Singleton said that an air strip or daycare is a more specific activity, whereas a research facility is a broad category.

Commissioner Harris said she was on the fence on the issue. She had reservations approving a Special Use Permit for a research facility without knowing more information.

Commissioner Rasmussen said he would like more information about what would be located there and what type of research would take place.

Commissioner Finkeldei said there are toxins in all the buildings on the KU campus and it is not the land use stage where that should be a concern, it is the building permit stage that would look at those issues.

Mr. McCullough read the definition of research services as defined by the Development Code.

Commissioner Harris asked if any other Special Use Permits have been approved for 'research services.'

Mr. McCullough said that this is the first request since the adoption of the new Development Code in 2006.

Commissioner Singleton asked if this is really something they want on downtown Massachusetts Street without the specifics being known.

Commissioner Finkeldei said yes, he would like to see scientists working downtown.

Commissioner Blaser asked if the only reason the item came to Planning Commission was because of the exhaust hoods.

Mr. McCullough said the type of use, research service, needs a Special Use Permit to exist downtown.

Commissioner Blaser said he would be in favor of approving the Special Use Permit because there are enough state, federal, local regulations and inspections to govern it.

ACTION TAKEN

Motioned by Commissioner Moore, seconded by Commissioner Dominguez, to approve SUP-2-1-09, a Special Use Permit for Research Service uses located at 647 Massachusetts Street [Lot 19 on Massachusetts Street, 2nd Floor Only], 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 ordinance per Section 20-1306(j).
3. Applicant shall provide a revised site plan to include the following listed restrictions:
 - a. No manufacturing or production activities shall be conducted on-site;
 - b. No radioisotopes or other radioactive materials shall be used on-site;
 - c. No known type 1 mutagens or carcinogens shall be used on-site
 - d. No known toxins or pathogens shall be used on-site; and
 - e. No animal research shall be conducted on-site.
4. Applicant shall provide a revised site plan to include the following note: "SUP is granted approval for 10 years. A new SUP shall be required before July 2019 to continue Research Service uses."

Commissioner Harris said she would vote against the motion. She said that if the Special Use Permit were tied to a specific business then she would be more inclined to approve it.

Motion carried 5-3, with Commissioners Single, Harris, and Rasmussen voting in opposition.

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ITEM NO. 4 SPECIAL USE PERMIT FOR DAY CARE; 1023 HIGHLAND DR (SLD)

SUP-2-2-09: Consider a Special Use Permit for a Day Care Center at 1023 Highland Drive. Submitted by ABC Imagination Center, for Richard R. Pine, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

Commissioner Rasmussen asked if this were a home daycare instead would a Special Use Permit be required.

Ms. Day said no, it would be filed as a Home Occupation in the Planning Department.

Commissioner Finkeldei asked if parking requirements are referring to off street parking.

Ms. Day said that was correct, off street parking.

APPLICANT PRESENTATION

Ms. Mary McGee, was present for questioning.

Commissioner Finkeldei asked if Ms. McGee would run the daycare herself.

Ms. McGee said yes.

Commissioner Harris asked Ms. McGee why she was proposing a professional daycare rather than a residential daycare.

Ms. McGee said she does not live at the property.

Commissioner Dominguez asked how she found the location.

Ms. McGee said she found the property through her boyfriends father. She said her residence would not be a good facility for a daycare because it does not have the same amenities, such as being near a school and a fenced backyard.

Commissioner Finkeldei asked if she intended to be the only employee.

Ms. McGee replied yes, but that there would be a substitute employee for days that she is ill or on vacation. She suggested that parking could be on Yale Street and that there is parking on both sides of Hillcrest. She said the driveway would hold two cars but she needs parking for five cars.

Commissioner Blaser asked Ms. McGee if she had talked to the school across the street about using a few spots during the day time.

Ms. McGee said she contacted the school twice and they had not responded.

Ms. Day said she spoke with Mr. Tom Bracciano and he said that if the school principal was willing then they would try and work with Ms. McGee.

Commissioner Moore inquired about the number of children.

Ms. McGee said she would have about 6-10 children to begin with.

PUBLIC HEARING

Ms. Virginia Anderson, owner of 1035 Highland, said she lives in Ottawa but that her son lives in the house at 1035 Highland. She expressed concern about the following items: potential traffic problems, no parking on the same side of the street as the daycare center, Hillcrest school driveway exit is directly in front of the daycare. She asked that the following conditions be included: only one employee, comply with parking requirements of five off street parking spaces, application be approved for two years only and resubmitted for review.

Commissioner Dominguez asked if there was a current issue with traffic.

Ms. Anderson said yes.

Mr. McCullough said he was not familiar with any specific traffic problems.

Ms. Day said there were no traffic concerns identified by City Traffic Engineers. She said there were general discussions about the intersections of Yale and Harvard with Iowa.

Commissioner Dominguez asked Ms. Anderson if her son lives at the property she owns at 1035 Highland.

Ms. Anderson said that was correct.

Commissioner Moore asked if Ms. Anderson was aware of the prior daycare use.

Ms. Anderson said no.

COMMISSION DISCUSSION

Commissioner Rasmussen asked if Ryan Grey park was open to the public during school hours.

Ms. McGee said she did not know.

Commissioner Blaser asked if there was opportunity to widen the driveway.

Ms. Day said that stacked parking would need a variance.

Commissioner Rasmussen asked if they were to approve expanding the driveway pavement would the applicant need a variance.

Ms. Day said that the design would have to be laid out first to see if a variance would be needed.

Commissioner Singleton asked what the easiest way would be for the applicant to comply with the parking requirements without her having to do anything else.

Ms. Day said that shared parking with one of the nearby businesses or school, or a variance.

Commissioner Singleton asked if the variance would be reviewed by the Board of Zoning Appeals.

Ms. Day said that was correct.

Commissioner Rasmussen asked why there was no staff recommendation for a time limit on the Special Use Permit.

Ms. Day said that there are existing provisions to revoke a Special Use Permit if needed.

Commissioner Finkeldei said that Planning Commission has approved several daycare centers without a time limit. He asked staff what neighbors should do if they have a complaint about the activity.

Ms. Day said complaint calls can be made to the Planning & Development Services Department and staff would try to meet the applicant on site to find out what the issue is. The item would be brought back to Planning Commission if compliance cannot be reached. The Special Use Permit could be revoked or conditions revised.

Commissioner Blaser asked if the item could be delayed until the parking was resolved in some manner.

Mr. McCullough said that Planning Commission could approve the item and the variance could be reviewed by the Board of Zoning Appeals prior to the item being heard by City Commission. He said there were different ways to resolve the parking issue.

Commissioner Finkeldei asked if Ms. McGee could not open the daycare until the parking was resolved.

Mr. McCullough said that was correct.

Commissioner Rasmussen said that Planning Commission should send support to the Board of Zoning Appeals to grant a variance.

Commissioner Singleton felt that the daycare was an excellent use of the neighborhood and area and she did not think there would be a substantial increase in traffic if the 12 children also attend Hillcrest school.

Commissioner Harris said that she would like condition 3(b)(i) not be included in the conditions.

Commissioner Singleton agreed with Commissioner Rasmussen about sending the message to the Board of Zoning Appeals that Planning Commission supports a variance being granted.

ACTION TAKEN

Motioned by Commissioner Harris, seconded by Commissioner Moore, to approve SUP-02-02-09, a Special Use Permit for a Day Care Center use located at 1023 Highland 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 ordinance per Section 20-1306(j).
3. Applicant shall provide a revised site plan to show the following changes:
 - a. Show and note that fence shall comply with section 20-507 for a minimum 4' fence of the outdoor play area.
 - b. Show and note approved parking:
 - i. ~~either expanded driveway pavement per staff approval or~~
 - ii. execution of a shared parking agreement with the school or
 - iii. note approval of a variance for reduced parking granted by the Board of Zoning Appeals.

- c. Add a note that states that a maximum of 12 children are allowed at a given time.
- d. Add a note that a change in provider shall require re-approval by the City Commission.

Unanimously approved 8-0.

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ITEM NO. 5 RS7 TO RM12D; 2.83 ACRES; SE CORNER OF E 19TH ST & LEARNARD AVE (SLD)

Z-2-3-09: Consider a request to rezone approximately 2.83 acres located at the southeast corner of E 19th Street & Learnard Avenue from RS7 (Single-Dwelling Residential) to RM12D (Multi-Dwelling Residential). The property is identified as 423, 431 & 533 E 19th Street; 1926, 1930-32, 1934-36 & 1938-40 Learnard Avenue; and the parcel east of 1934-40 Learnard Avenue. Submitted by Jill Gretchen Windholz for Jill G. & Timothy L. Windholz; Carolyn L. & James R. Hemphill Trustees; Clara & Philip Hemphill; Wendy A. Stauffer, Jennifer Hemphill, Jill G. Windholz & Carolyn Hemphill, property owners of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

Commissioner Harris asked how the duplexes get in an area that was not zoned for it.

Ms. Day said that the duplexes predated the zoning code.

Commissioner Harris inquired about the two other parcels possibly being rezoned.

Ms. Day said it is possible for the future. The applicant attempted to contact the property owners for those two parcels to be included in this request. There was no response.

APPLICANT PRESENTATION

Mr. Tim Windholz, was present for questioning.

PUBLIC HEARING

Ms. Denise Stone, 1937 Learnard, was opposed to the rezoning due to increased traffic. She said that the access road on Learnard would affect her quality of life because it would be in front of her property. She said that if she did support this she would be in favor of single family. She was also concerned about noise.

Commissioner Dominguez asked Ms. Stone how many more cars she thought it would generate.

Ms. Stone said she was not a traffic engineer, but she would be right across the street from it.

Commissioner Dominguez asked if any of the other neighbors would be directly impacted.

Ms. Stone said her house is positioned directly in the impact path.

Mr. Steve Costello, 2006 Learnard, asked if the property was within the historic environs of the Zinn-Burroughs House.

Ms. Day said it was reviewed by the Historic Review Commission and received a favorable recommendation.

Mr. Costello said the current duplexes are well kept but he expressed concern about increased traffic if more were built. He said he has three little children and there are no sidewalks along Learnard. He was confused about how many vacant properties there are.

Ms. Day said there is one other property that is landlocked and there is a storage structure on it.

Mr. Costello said he would like to know what the duplexes would look like.

Ms. Day said the structures would be subject to Historic review and that Historic Resources Commission is a monthly public meeting.

Mr. James Carpenter, was concerned about flooding. He was also concerned about having more duplexes instead of single family. He said his neighborhood association was pretty dormant.

APPLICANT CLOSING COMMENTS

Mr. Windholz said he was willing to work with the city to figure out what would be best for the neighborhood.

COMMISSION DISCUSSION

Commissioner Harris felt that the area should stay single family because the area is already mixed with rentals and duplexes. She thought it would change the character of the neighborhood.

Commissioner Rasmussen inquired about the number of lots included.

Ms. Day said there were two platted lots but a total of seven parcels in the request. She said some of the properties were built on partial lots.

Commissioner Dominguez inquired about a traffic study.

Ms. Day said a traffic study is not required for rezoning but that if a residential subdivision was proposed then yes a traffic study would be required.

Commissioner Blaser asked if the rezoning was approved could single family still be built on the two lots.

Ms. Day replied yes.

Commissioner Dominguez inquired about the duplexes that currently exist within the single family area.

Ms. Day said the duplex structures were built prior to the zoning code.

Ms. Stogsdill said the duplexes were built in the 1950's.

Commissioner Finkeldei said that it made sense to change since there were two pieces of property surrounded by duplexes.

Commissioner Singleton was concerned for the neighborhood that it is in. She said that rental properties are usually not maintained well.

Commissioner Harris was concerned about the character of the area and said that at that in a previous time someone decided that the area was appropriate for single family not duplex.

Commissioner Moore inquired about why it was replatted as single family.

Mr. Windholz said the property had been in the family for 60 years and was split up to be donated to family members as a memorial.

Commissioner Rasmussen asked if the landlocked lot could be merged with one of the other vacant lots.

Ms. Day said that each parcel would need to have access to a public street. It could be merged with one of the lots to make a larger lot but it would still be limited to development based on the zoning.

Commissioner Rasmussen asked if it could be a private street.

Ms. Day said that would require a planned unit development and she did not think there would be enough property to meet the minimum area requirement.

ACTION TAKEN

Motioned by Commissioner Harris, seconded by Commissioner Singleton, to recommend denial of the rezoning based on the character of the neighborhood and the vision of the area to be single family.

Commissioner Moore said he would vote against the motion based on the staff report findings.

Commissioner Blaser said he would also vote against the motion.

Motion failed 2-6 with Commissioners Harris and Singleton voting in favor and Commissioners Blaser, Chaney, Dominguez, Finkeldei, Moore, and Rasmussen voting in opposition.

Motioned by Moore, seconded by Commissioner Blaser, to approve the request to rezone approximately 2.83 acres, from RS7 (Single-Dwelling Residential) to RM12D (Multi-Dwelling Residential) based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Commissioner Rasmussen asked if something larger than a duplex could be built with the RM12D zoning.

Mr. McCullough said no.

Motion carried 6-2 with Commissioners Harris and Singleton voting in opposition.

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MISCELLANEOUS NEW OR OLD BUSINESS

MISC NO. 1 Final Development Plan (FDP-04-04-06) Extension request for Lake Pointe PCD; NW corner of Clinton Pkwy & Lake Pointe Dr (MKM)

STAFF PRESENTATION

Mr. McCullough presented the item.

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Harris to approve, seconded by Commissioner Moore, to approve the request to extend the approval of the Final Development Plan an additional 24 months. The extension will expire on November 22, 2010 unless a written request for extension is provided to the Planning Office prior to the expiration date.

Unanimously approved 8-0.

MISC NO. 2 Receive request from Rockwall Farms, LC and initiate CPA-3-2-09 for future public hearing, if appropriate.

STAFF PRESENTATION

Mr. McCullough presented the items.

PUBLIC HEARING

No public comment

COMMISSION DISCUSSION

Commissioner Harris said the League of Women Voters had some good points in their letter.

Mr. McCullough said there was an error in the League of Women Voter map.

ACTION TAKEN

Motioned by Commissioner Singleton, seconded by Commissioner Moore, to initiate CPA-3-2-09 for text amendments necessary to allow consideration of amending Horizon 2020 to allow for expanding the possible locations of conference, recreation, or tourism facility uses in the rural area of Douglas County. Planning staff will review the changes proposed by Rockwall Farms, LC and bring back a recommendation to the Commission for review at a future public hearing.

Unanimously approved 8-0.

Consideration of any other business to come before the Commission.

Commissioner Finkeldei talked about the Planning Commission Orientation and said since there may not be new commissioners it may just be one day instead of two. He asked for volunteers to serve on the new Planning Commission Orientation Committee. Commissioners Blaser, Dominguez, and Finkeldei all volunteered to serve on the committee.

Recess at 8:41pm until 6:30pm on April 22, 2009.

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Reconvene April 22, 2009 – 6:30 p.m.

Commissioners present: Blaser, Carter, Dominguez, Finkeldei, Harris, Hird, Moore, and Singleton
Staff present: McCullough, Stogsdill, J. Miller, A. Brown, and Ewert

BEGIN PUBLIC HEARING (APRIL 22, 2009):

COMMUNICATIONS

No communications.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- No parte.
- No abstentions.

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ITEM NO. 6 CPA-2004-02; AMENDMENT TO HORIZON 2020, CHAPTER 7 (AMB)

CPA-2004-02: Consider revision to a Comprehensive Plan Amendment to Horizon 2020, Chapter 7: Industrial and Employment Related Land Use. City Commission referred the item back to the Planning Commission to define soil conserving agri-industries and how such definition works with the protections of Class 1 and Class 2 soils.

STAFF PRESENTATION

Ms. Amy Brown presented the item. She stated that the focus was on specific direction from the City Commission to look at the definition.

Commissioner Finkeldei reminded the public and Commission that the focus of discussion would be regarding the definition of soil conserving agri-industries.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Harris inquired about the language "Future Industrial and Employment land use sites not included on Map 7-2, Potential Locations for Future Industrial and Employment Related Development, should balance the agricultural significance on the site against the need for industrial and employment related development."

Mr. McCullough said the Planning Commission had previous discussions about whether or not high quality agricultural land would be a locational criteria or discussed in the chapter more generally. The decision of the Planning Commission as a whole was that it should not be a locational criteria by which to specifically factor in whether or not a site should be industrial or not, and that the general discussion should occur in the chapter. These are the two paragraphs that the Planning Commission took up after that discussion. Then there was additional debate at the governing bodies and ultimately the words 'soil conserving' in the second sentence of the second paragraph was included at the County Commission level. When it went back to City Commission there was discussion about how the phrase soil conserving agri-businesses was defined. That is when the Planning Commission was given the charge to help clarify what soil conserving agri-industry business means.

Commissioner Hird asked if 'research' would be considered a soil conserving agri-business.

Mr. McCullough said it could be depending on how far it is taken to clarify what the use is. Staffs interpretation would be agricultural production that protects or utilizes the soil element of the land. There are all kinds of agricultural uses that do not necessarily take up the soil part of the land.

Commissioner Hird inquired about 'production.' He gave the example of a seed company doing research on seeds using the soil to grow crops would not be producing an agricultural product.

Mr. McCullough said a seed company still may preserve it for agricultural use because it would be using the soil.

Commissioner Finkeldei said in his opinion the soil conserving agri-business is a good definition and that is what they are asked to rule on this evening.

Commissioner Dominguez asked why soil conserving agri-industry business could not just be called farming.

Mr. McCullough said the intent is to open it up to industries such as a seed company that is not pure farming.

Commissioner Hird said if he were a land owner and wanted to object to someone using a farm site for creating new seeds, he would say they are not preserving it for future agricultural use but rather using it for a scientific purpose and that is not agricultural production. He said he had no real bone to pick with the definition but did not think it was a good definition due to it being too vague and seemed to exclude everything except agricultural production or preserving it for future agricultural use. He asked if the assumption would have to be made that whoever is using the land has the intent to preserve it for future agricultural use. He said it did not define what they can do with it while they are using it. He said he had reservations about the definition.

Commissioner Harris suggested changing agricultural production to agricultural use. She agreed the definition was vague about what is trying to be accomplished. She felt that the sentence should be stronger to clearly reflect the intent of preserving the soil and the quality of the soil.

Commissioner Dominguez asked if a farm parts store could be put there.

Commissioner Finkeldei said that soil conserving is the key component. He went on to say that the County Commission said that agri-industry did not go far enough so they added the term 'soil conserving agri-industry business.' Planning Commission has been asked to help define that and the intent of the County Commission was to conserve the soil.

Mr. McCullough said that instead of talking about what uses will be allowed or not allowed with the language they need to think about if the language provides enough clarity for the Planning Commission and governing bodies to provide guidance in future development.

Commissioner Hird said his issue with the second phrase 'preserving for future agricultural use' was that if someone is doing anything other than leaving the soil alone it is not being preserved for future use. He expressed concern about the definition being too limiting and said there are things that could be done with the land that would be consistent with good conservation and would protect the soils but do not fit within the definition.

Commissioner Carter did not agree that preserving the soil for future use limits it too much. He did not think it should be limited too much because there might be unintended consequences. He felt it needed to be sufficiently vague so interpretations can be made.

Commissioner Hird said he understood the concept but that the language 'businesses that preserve land for future agricultural use' did not mean much to him. He felt that all it did was invite a challenge of it later.

Commissioner Moore said the intent is to preserve the soil and this is how it can be done by encouraging businesses that are soil conserving.

Commissioner Finkeldei felt there were only two ways to protect class 1 and class 2 soils, either use it as agricultural or preserve it. He said it would absolutely limit the uses but that seemed to be the County Commissions intent.

Commissioner Hird said what they are doing is defining what type of business they would encourage to be there and if that is what the County Commission wants then he has no problem restricting it to that.

Commissioner Harris suggested the following language 'will protect the quality of existing high quality agricultural land either through agricultural use or preservation for future agricultural use.'

ACTION TAKEN

Motioned by Commissioner Hird, seconded by Commissioner Carter, to approve the following changes, including the suggested change by Commission Harris, to the second sentence of the last paragraph on page 7-8 that references high-quality agricultural land: (added language is in ***bold italics*** while language to be removed is in ~~strikethrough~~)

"The preservation of high-quality agricultural land, which has been recognized as a finite resource that is important to the regional economy, is of important value to the community. High-quality agricultural land is generally defined as available land that has good soil quality and an produces high yields of crops. Within Douglas County these are *capability class* (non-irrigated) 1 and 2, as identified by the National Resources Conservation Service.

At least one of the sites identified above (Airport) has some amount of high-quality agricultural land. Soil conserving agri-industry businesses that ***will protect the*** ~~would benefit from high-quality~~ ***of existing high quality*** agricultural land ~~by either through utilizing it for~~ ***production or preserving*** ***preservation it for future agricultural use*** should be encouraged to locate in these areas. Future Industrial and Employment land use sites not included on Map 7-2, Potential Locations for Future Industrial and Employment Related Development, should balance the agricultural significance on the site against the need for industrial and employment related development."

Commissioner Finkeldei said he did not support the inclusion of 'soil conserving' but that he would vote in support of the definition.

Unanimously approved 8-0.

Motioned by Commissioner Hird, seconded by Commissioner Moore, to authorize the Chair to sign the Planning Commission resolution.

Unanimously approved 8-0.

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ITEM NO. 7 AMENDMENTS TO DEVELOPMENT CODE (SDM)

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. Scott McCullough presented the item. He went over the packet information including the definitions of Temporary Shelter, Social Service Agency, Community Meal Program, and Religious Institutions.

Commissioner Harris asked if a management plan would still be required.

Mr. McCullough replied a management plan will only be required for larger (Special Use Permit) shelters, not for a limited 'accessory shelter.'

Commissioner Blaser asked what happened to the day center.

Mr. McCullough said the day center was incorporated in the definition of the Social Service Agency.

Commissioner Blaser asked if one could still be permitted in a private neighborhood without a Special Use Permit.

Mr. McCullough said Social Service Agencies are permitted in RSO and RMO zoning districts. Social Service Agencies are not permitted, by right or Special Use Permit, in any other zoning district.

Commissioner Finkeldei asked if Penn House/Ballard Community Services (located at Pennsylvania & 10th Street) would be considered a Social Service Agency.

Mr. McCullough said this would not create any non-conformities that the new zoning code adopted in 2006 didn't create. The amendment would not make anything more non-conforming.

Ms. Sheila Stogsdill said Penn House was permitted originally through a former version of a Special Use Permit and the Development Code does provide some language about the process for former Special Use Permits so there would be a process for them to go about complying with the Code in the future.

Commissioner Harris asked if neighbors would be notified if a church has a temporary shelter as an accessory use.

Mr. McCullough said no.

PUBLIC HEARING

Mr. Bob Dinsdale, Family Promise board member, thanked staff for their work on the issue. He said they support the language and it does allow them to serve families that are facing homelessness. He said they did notify neighbors and the total attendance from neighbors was 19 people. He said there has only been one complaint and it was from a guest who was working late and got locked out of the church.

Ms. K.T. Walsh, said she appreciated the issue being treated as a land use issue. She asked what Penn House would do if there was a fire and they wanted to replace the building.

Ms. Stogsdill said she could not answer that off the top of her head but it could be looked at. Penn House could potentially go through rezoning to rebuild. She said there are ways to go through a process but it may not be an automatic process.

Mr. Joe Reitz, Family Promise, thanked staff for their hard work. He said that Family Promise has not had to go to Topeka and Kansas City to bus in families, they are in Lawrence and Family Promise is at full capacity. He stated that most guests are single mothers with young children.

COMMISSION DISCUSSION

Commissioner Moore asked if this went to the Community Commission on Homelessness.

Mr. McCullough said last year it was heard by the Community Commission on Homelessness several times but this time it went to City Commission and the public was invited.

Commissioner Moore inquired about the threshold.

Mr. McCullough said that staff looked at the group home use, which is a 10 person use, and it was discussed a little bit through City Commission discussions and 15 was the number that kept coming up that everyone was comfortable with. When staff talked to the fire department their occupancy definition was different so staff bumped it up to 20 so that there would be enough volunteers in the structure to support the clients. The statute says group homes of 10 or less can withstand a few more people so 15 was the number that seemed appropriate.

Commissioner Blaser inquired about safety issues being handled by different groups.

Mr. McCullough said safety issues will be processed through appropriate other boards that look at fire/building code issues. Meeting fire code for this type of use was pretty onerous on this volunteer program so staff still need to work separately through some of those issues.

Commissioner Finkeldei said that the definition of Social Service Agencies excludes a lot of issues. He wondered about services such as advancing the welfare of citizens like counseling, life skills, training, food banks, etc. He said the Ballard Center provides Social Services accessory to their child care center. He gave the example of a mortuary that might offer counseling services. He asked if the word 'primarily' could be added.

Mr. McCullough said this provides a pretty good list of typical uses as what qualifies as a social service agency.

Commissioner Dominguez inquired about fire code upgrades for social service agencies.

Mr. McCullough said the direction from City Commission was to look at religious institutions for the fire and building code, not a social service agency. He stated any social service agency that is not going to be a temporary shelter accessory to a religious institution will have to meet the fire and building code.

Commissioner Finkeldei asked if Family Promise could have a day home in any residential neighborhood.

Mr. McCullough said only in RSO and RMO districts they could. He stated there are a lot of RS districts that are adjacent to other districts so there may be a social service agency adjacent to residential property.

Commissioner Hird commended staff for treating it as a land issue and would support this approach.

ACTION TAKEN

Motioned by Commissioner Hird, seconded by Commissioner Moore, 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 based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Approved 7-1, with Commissioner Dominguez voting in opposition.

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ITEM NO. 8 FARMLAND ANNEXATION PLAN

Receive the Farmland Annexation Plan.

Item 8 was deferred prior to the meeting.

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ITEM NO. 9 CONDITIONAL ZONING

Discuss conditional zoning as a method of rezoning properties.

STAFF PRESENTATION

Mr. John Miller, staff attorney, presented the item and went over the memo that he wrote that was provided in the online packet.

Commissioner Finkeldei asked Mr. Miller if he looked at the League of Women Voter letter.

Mr. Miller said yes he reviewed the letter but did not want to necessarily do a point counter point on what the Leagues position is. He said the League has been clear and consistent with their position since the Code was adopted. He stated the City believes there is a strong argument if challenged. He could not find any specific case law on the issue of conditioning conventional zoning.

Commissioner Blaser asked if uses could be more available within certain zones.

Mr. Miller said a use could not be include in a zoning district that was prohibited by that zoning district.

Commissioner Singleton expressed concern about conditional zoning and brought up the example of the recent mortuary rezoning for 1245 Connecticut Street. She stated that during the mortuary business conversation the Planning Commission excluded certain types of businesses from that location and she did not feel it was a reasonable decision. She felt that if the business use changes from the mortuary that the applicant should have to have it reviewed again by Planning Commission. She felt the League of Women Voters had a valid point.

Mr. McCullough said one observation with the rezoning of 1245 Connecticut Street was that it had a different fact set than the other examples of the rezoning and annexation of the NW corner of N 1800 Rd & E 900 Rd and Jayhawk Bookstore at 1420 Crescent Rd. He said the applicant for both, through discussion, brought those prohibitions to the City, whereas with the rezoning of 1245 Connecticut Street, through public comment and Planning Commission discussion, was brought up and introduced and the applicant happened to agree with it.

Commissioner Singleton said the same thing happened with Jayhawk Bookstore, the Planning Commission went through the list and restricted types of businesses that were not desired. She expressed concern about the legal ramifications of conditional zoning.

Mr. Miller said Planning Commission is an advisory body so the fundamental decision on the rezoning matter goes to the governing body, and they have the ability to look at the minutes for discussion that the Planning Commission had. The governing body can also look under the same review and decision making criteria that Planning Commission does. Planning Commission makes a recommendation and City Commission then has the benefit to be able to look at the minutes and make those decisions. All of the decisions made by the governing bodies are reasonable and lawful and one of the reasons to try and avoid specific conversations about the individual rezoning matters is because there are a lot of things that come into play. In circumstances in which this may become difficult because of the conditions that come up, Planning Commission may want to defer the item for a month and have staff review the factors that have been brought to the attention of the Planning Commission. Planning staff may receive a communication letter on the day of the meeting regarding issues or conditions that someone may want to put on a rezoning. Staff may not have an opportunity to review that. If Planning Commission is

uncomfortable with considering those items or have doubts they can defer the item and have staff review the conditions.

Commissioner Hird brought up the example of the pharmacy rezoning on Clinton Parkway that they approved with the condition that it only be used for a pharmacy. The League of Women Voters is saying that would create a new zoning district and that Planning would have to follow all the laws to create a new zoning district.

Mr. Miller said he believed that was one of the League of Women Voters arguments.

Ms. Sheila Stogsdill said that prior to the 2006 Development Code, it was very common with planned commercial developments to strike out particular uses. That was one of the distinct changes in text that was added to the 2006 Development Code, to provide that authority for conventional zoning districts to get away from having to always use a planned district in order to restrict uses.

PUBLIC HEARING

Mr. Bob Lichtwardt, League of Women Voters, read a statement into the record that was written by his wife Betty Lichtwardt, on behalf of the League of Women Voters, regarding concerns about conditional zoning. They requested an asterisks be added to maps to indicate different zoning. *(the letter was added as communication to the April 20 & 22, 2009 Full Agenda Packet, item 9)*

COMMISSION DISCUSSION

Commissioner Moore agreed with the League of Women Voters regarding being able to identify properties with different zoning. He asked if there was a way in GIS to identify conditionally zoned properties.

Mr. McCullough said that an asterisk could be added and the ordinance could be scanned in. The issue is that it still leaves a little bit of room for error in terms of will that information get conveyed to the inquirer. He stated one issue is the legal ability to do it and another issue is that since it is relatively new from 2006 the Planning Commission may not have taken the time to discuss the appropriateness of it and what practice will be used to reach conclusions about land use.

Commissioner Moore inquired about the availability to the public through GIS.

Commissioner Finkeldei agreed with Mr. McCullough about whether they could do it and should they do it. He stated he is not a big fan of conditional zoning and felt it should be used in a limited manor. He felt that they should try to keep land use issues open and that it was a good discussion for the Planning Commission to have.

Mr. McCullough said that staff has not had much internal discussion or analysis about it and that the three to four examples of it have been a little on the fly to react to an impact that has been brought up through public testimony. He stated that Walgreens on Clinton Parkway had pre-planning consideration in working with the applicant. Most people do not want to self restrict to that level. He said he appreciated the Planning Commission having discussion about it.

Commissioner Harris said if a situation came up that they were uncomfortable with she would prefer that they could use a Special Use Permit for that location rather than conditions. She recognized that it would take more time procedurally and she understood some of the reasons for wanting to rezone. She stated that there are some uses in some categories that are not appropriate or beneficial for neighborhoods so conditional zoning is a way of compromising.

Commissioner Hird inquired if conditional zoning is filed with the register of deeds.

Ms. Stogsdill said that ordinances are published in the newspaper but not every ordinance is filed at the register of deeds so the Planning Department would be the best location to look at zoning.

Commissioner Hird said that notice to the public is important and potential buyers should be aware of what is/is not allowed on a parcel. He asked if it would be possible to interact with the register of deeds office so that buyers would know what the restrictions on their property are.

Mr. McCullough said that could be explored.

Commissioner Carter said generally he does not like doing conditional zoning but regarding infill and other projects in certain areas it makes sense to have the conditional zoning tool. He stated the goal is to get the applicant and neighbors to agree to something and conditional zoning allows that to be accomplished. He said he would still like to have the conditional zoning tool to avoid deferring items.

Commissioner Blaser felt they should still be able to use conditional zoning under certain circumstances.

Mr. McCullough said the League of Women Voters and Planning Commission had good points and he urged them to use the conditional zoning tool sparingly and under thoughtful consideration. He said the weight of the zoning district should not be taken away and it should be consistent and predictable.

Commissioner Dominguez felt that growth and development need to be encouraged.

Commissioner Hird thanked the League of Women Voters for their thoughts and efforts.

NO ACTION TAKEN

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Consideration of any other business to come before the Commission.

PUBLIC COMMENT SECTION

Ms. Barbara Clark, thanked Planning Commission for letting her serve on the Comprehensive Plans Committee. She felt that they have made tremendous progress in protecting soils. She hoped that preservation of soils would have new tools associated with it such as TTR's, mitigation ordinances, etc. She hoped there would be a study session for County Commission, City Commission, and Planning Commission to discuss issues. She said anything to expedite the process would be appreciated.

Adjourn 8:27 pm