

PLANNING COMMISSION MEETING

July 20 & 22, 2009

Meeting Minutes

July 20, 2009 – 6:30 p.m.

Commissioners present: Carter, Chaney, Dominguez, Finkeldei, Hird, Moore, Singleton, and Student Commissioner Shelton

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

MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of June 22 & 24, 2009.

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

Motioned by Commissioner Hird, seconded by Commissioner Dominguez, to approve the June 22 & 24, 2009 Planning Commission minutes with the suggested changes by Commissioner Harris.

Motion carried 6-0, with Student Commissioner Shelton voting in favor. (Commissioner Carter was not present yet for the vote)

COMMITTEE REPORTS

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

There were no committee reports.

COMMUNICATIONS

Mr. Scott McCullough reviewed new attachments/communications that were posted to the online Planning Commission agenda after the initial posting date. He stated that Commissioner Harris sent him an email requesting that Item 6 be deferred to Wednesday night when she would be present.

No written action of any waiver requests/determinations made to the City Engineer.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- No ex parte.
- Abstentions:
Commissioner Chaney said he would abstain from Item 7.

ITEM NO. 1 SPECIAL USE PERMIT FOR A BED & BREAKFAST; 603 TENNESSEE ST (LBZ)

SUP-4-3-09: Consider a Special Use Permit for an Adaptive Reuse of Designated Historic Property located at 603 Tennessee Street for a Bed & Breakfast. Submitted by Rainbow Works LLC, property owner of record.

STAFF PRESENTATION

Ms. Lynne Braddock Zollner presented the item.

Commissioner Finkeldei asked staff to discuss the idea of an owner occupied Bed and Breakfast versus a licensed Bed and Breakfast.

Ms. Zollner said that if there are three or fewer bedrooms in a Bed and Breakfast then it has to be owner occupied. If there are four or more bedrooms then it is considered a Bed and Breakfast Inn and there must be an onsite resident manager which could be the owner or someone else. This particular adaptive reuse was kind of a hybrid because the owner at the time was not sure if they were going to live there or hire a resident manager. They chose the three bedrooms to meet the parking requirement. She said since that time the owner has had some consideration of being the owner and resident manager.

Mr. McCullough displayed on the overhead the use table that showed the standards. He stated that adaptive reuse has a different code reference than Bed and Breakfast. Bed and Breakfast has a Code reference to section 20-504 which he read aloud. He addressed the communication letter from O'Malley & Kressin on page 65 of the July Planning Commission packet. He stated that no mailed notice is required by the Code for Historic Resources Commission. He said the applicant agrees to condition the use to be owner occupied. Staff recommendation was to hold the hearing and make a recommendation.

Commissioner Hird asked if staff provided notice of this meeting.

Mr. McCullough replied yes, for this Special Use Permit hearing mailed notice was provided to property owners within 200'. He stated that mailed notice is not required for Historic Resources Commission.

Commissioner Finkeldei inquired about the state provision.

Mr. McCullough referenced section 20-1311(c) of the Development Code:

The filing of a complete application for an appeal of administrative decision stays all proceedings in furtherance of the action appealed, unless the official whose decision is being appealed certifies to the Board of Zoning Appeals, after the appeal is filed, that, because of facts stated in the certification that (a) a stay would cause immediate peril to life or property or (b) the situation appealed from is transitory in nature, and therefore, an appeal would seriously interfere with enforcement of this Development Code. In each instance, the official whose decision is being appealed shall place in the certificate facts to support the conclusion. In such case, proceedings will not be stayed other than by a restraining order, which may be granted by the Board of Zoning Appeals or by a court of record.

He stated that staff position is that if the applicant agrees to have owner occupied that would render item 2 on the appeal letter mute. Staff questions whether item 1 is appealable.

Commissioner Singleton expressed concern about the stay. She felt it was stayed if an appeal has been filed.

Commissioner Dominguez asked if the item could be appealed regardless of what Planning Commission does.

Mr. McCullough said it is being appealed but that they have to be careful when allowing appeals that may not be valid.

Mr. John Miller said decisions of Planning Commission by Code are not appealable to the Board of Zoning Appeals. If the public hearing were held today and action were taken by the Planning Commission that recommendation would go to City Commission and would not be appealable to the Board of Zoning Appeals. That is not within the Board of Zoning Appeals jurisdiction. Planning Commission can hold the public hearing and staff can hold the Planning Commission recommendation until after the Board of Zoning Appeals meeting.

Commissioner Carter asked if Mr. Miller agreed that the notice was properly done. He also asked if Planning Commission makes a recommendation tonight and it turns out that the appeal is upheld, the worse case scenario is that Planning Commission would hear it tonight and then hear it again in the future.

Mr. Miller replied yes. He also said that all of the notice requirements have been met for the Special Use Permit. He stated that published notice was provided for the Historic Resources Commission and that the Code does not require mailed notice. He said Mr. O'Malley's letter suggests that notification is required.

Mr. McCullough said the fact that there is a typo in the Code, Section 20-501(8), that says Historic Resources Commission instead of Planning Commission has created some confusion.

Commissioner Hird asked when the mailed notice was sent to the neighbors.

Mr. McCullough replied 20 days prior to the meeting.

Commissioner Hird asked when the staff report was made available.

Mr. McCullough said the staff report was made available on the city website July 16th, 2009.

Commissioner Moore said he felt they should go ahead and hear the item.

Commissioner Carter agreed with Commissioner Moore.

Commissioner Finkeldei said he felt the item was stayed due to the language in section 20-1311(c) of the Development Code and he was not comfortable moving ahead with it.

Commissioner Carter asked if the appeal is valid.

Mr. McCullough said that is one concern. Staff agrees that appeal item 2 deals with a standard in the Code and that staff's position, written in the staff report, is that staff does not believe the applicant is bound to be an owner occupied three bedroom bed and breakfast because it is an adaptive reuse. The worse case scenario is that the applicant would have to go through the whole process again.

Commissioner Moore asked who the determining body on an appeal was.

Mr. McCullough the Board of Zoning Appeals.

Commissioner Hird stated the statute says this is stayed pending a decision by the Board of Zoning Appeals. If Planning Commission takes action then it is on the presumption that the appeal would fail

or that the Board of Zoning Appeals does not have the jurisdiction to hear the appeal. He said he did not like deferring things but he felt there was no other choice.

Mr. Miller said Planning Commission has the decision about whether they want to hold the public hearing.

Commissioner Carter said if Planning Commission does hear this tonight and the Board of Zoning Appeals upholds the appeal then the applicant would need to start over. If it is not a valid appeal it would not come back to Planning Commission and would move forward.

Mr. McCullough said that is correct but does not get at some of the concerns of some of the Planning Commissions that are looking at the Code language regarding appeals.

Commissioner Singleton suggested holding the public hearing and making a recommendation based on the findings of the Board of Zoning Appeals.

Mr. Miller said that it could be an option for the Planning Commission to consider but there still may be issues that the Planning Commission could contemplate based on what the Code says.

Commissioner Dominguez asked why Planning Commission would want to prevent it from going forward.

Commissioner Finkeldei inquired about the appeal letter.

Mr. McCullough said he thought number one in the appeal letter is asking for a text amendment to add notice requirements for Historic Resources Commission. He said it is difficult to appeal something that is not in the Code. Staff needs more time to clarify the appeal but it is highly likely that staff will not consider number one in the appeal letter to be appealable because there is no notice requirement for Historic Resources Commission.

Commissioner Finkeldei said he was uncomfortable making arguments. He stated that in the Code in section 20-1311(a) it says you can appeal three things; an error in any order, an error in any requirement, or an error in any decision or determination. The only thing stayed is in section 20-1311(c) the appeals of administrative decision, so appeals of errors in orders and errors in requirements are not stayable. If an administrative determination was not made, even if there was a mistake on the notice requirement, that does not stay. If appeal number one was not an appeal of an administrative decision that does not apply a stay, and also if number two the administrative decision is withdrawn. He stated he was uncomfortable proceeding.

Commissioner Dominguez asked what would prevent someone from filing an appeal just to delay a project.

Mr. Miller said nothing in the Code would prevent that from happening.

Commissioner Singleton said her gut instinct is that they should not proceed but that there could be harm to the applicant by delaying their business. She did not see any harm in proceeding with a recommendation but there would be harm to the applicant in not proceeding.

Commissioner Carter agreed with Commissioner Singleton.

Commissioner Hird agreed with the arguments but the law states that an appeal stays an item. He did not want to defer the item but he was not comfortable with moving forward with the item. He said the statute does not give the option of moving forward.

Commissioner Dominguez expressed concerns about precedence.

Mr. McCullough said this is only the second appeal that staff has seen.

Commissioner Dominguez said he wanted to move forward with the hearing tonight.

Commissioner Singleton asked to take a break for few minutes to think about her vote.

5 minute recess

Mr. McCullough said staff recommends the Planning Commission defer the item for a month to allow staff to further time to clarify the appeal.

APPLICANT PRESENTATION

Mr. Tony Backus was present for questioning.

PUBLIC HEARING

The Commission did not take public comment.

ACTION TAKEN

Motioned by Commissioner Hird, seconded by Commissioner Carter, to defer the item and direct staff to supply an update report at the August Planning Commission meeting for further clarification.

Commissioner Carter said he was comfortable deferring the item based on staff's recommendation.

Commissioner Dominguez said he will vote against the motion because he felt the item should move forward.

Mr. McCullough said that staff could provide further clarification about whether or not the first item in the appeal is valid at the August Planning Commission meeting.

Motion carried 7-0, with student Commissioner Shelton voting in favor.

Motioned by Commissioner Finkeldei, seconded by Commissioner Hird, to initiate a text amendment to amend section 20-1311 of the City of Lawrence Land Development Code to review the language in the section to address issues discussed this evening.

Motion carried 7-0, with student Commissioner Shelton voting in favor.

Motioned by Commissioner Finkeldei, seconded by Commissioner Singleton, to initiate a text amendment to amend section 20-501(8) of the City of Lawrence Land Development Code, to change 'Historic Resources Commission' to 'Planning Commission'.

20-501(8)

After the appropriate approvals have been granted, the Special Use application shall be scheduled for public hearing before the ~~Historic Resources Commission~~ Planning Commission.

Motion carried 7-0, with student Commissioner Shelton voting in favor.

ITEM NO. 2A PRELIMINARY PLAT FOR ORSCHELN ADDITION; 1541 E 23RD ST & 1223 E 23RD ST (SLD)

PP-5-2-09: Consider a 1 lot, 3.083 acre Preliminary Plat for Orscheln Addition located at 1541 E 23rd Street and 1223 E 23rd Street Submitted by Peridian Group Inc, for Orscheln Farm & Home LLC, property owner of record.

ITEM NO. 2B CS & RS10 TO CS; .981 ACRES; 1223 E 23RD ST (SLD)

Z-5-10-09: Consider a request to rezone approximately .981 acres, located at 1223 E 23rd Street, from CS (Commercial Strip) & RS10 (Single-Dwelling Residential) to CS (Commercial Strip) for Orscheln Farm & Home. Submitted by Peridian Group Inc, for Orscheln Farm & Home LLC, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented items 2A & 2B together.

APPLICANT PRESENTATION

Mr. Aaron Gaspers, Peridian Group, was present for questioning.

PUBLIC HEARING

No public comments.

ACTION TAKEN ON ITEM 2A

Motioned by Commissioner Finkeldei, seconded by Commissioner Carter, to approve the Preliminary Plat of Orscheln Addition and forwarding it to the Lawrence City Commission for acceptance of the requested dedication and vacation of easements and rights-of-way subject to the following condition:

1. Provision of a revised preliminary plat that shows shared cross access easement to the west property line.

Unanimously approved 7-0, with student Commissioner Shelton voting in favor.

ACTION TAKEN ON ITEM 2B

Motioned by Commissioner Finkeldei, seconded by Commissioner Chaney, to approve the rezoning of approximately .981 acres, located at 1223 E 23rd Street, from CS (Commercial Strip) and RS10 (Single-Dwelling Residential) District to CS (Strip Commercial) District based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval and subject to the publication of an ordinance.

Unanimously approved 7-0, with student Commissioner Shelton voting in favor.

ITEM NO. 3 RS10 TO CS; .735 ACRES; 1547 E 23RD ST (SLD)

Z-5-7-09: Consider a request to rezone approximately .735 acres, located at 1547 East 23rd Street, from RS10 (Residential/Commercial) to CS (Commercial Strip). Submitted by Susan Hitz, for Melrose Properties, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

APPLICANT PRESENTATION

Mr. Herb Hitz was present for questioning.

PUBLIC HEARING

No public comments.

ACTION TAKEN

Motioned by Commissioner Singleton, seconded by Commissioner Carter, to approve the rezoning of approximately .735 acres from RS10 (Single-Dwelling Residential) District to CS (Strip Commercial) District, located at 1547 E 23rd Street, based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval and subject to the publication of an ordinance.

Commissioner Finkeldei thanked the applicant for coming forward ahead of time and their cooperation on cross-access.

Unanimously 7-0 approved, with student Commissioner Shelton voting in favor.

ITEM NO. 4 SPECIAL USE PERMIT FOR A DRIVE-THRU WINDOW; 1520 WAKARUSA DR (SLD)

SUP-5-7-09: Consider a Special Use Permit for the addition of a drive-thru window for an eating and drinking establishment in the CN-2 Zoning District Wakarusa Market Place, located at 1520 Wakarusa Dr Ste A-B. Submitted by Peridian Group Inc, for Block & Company Inc Realtors, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

Commissioner Hird asked if there was any comment received from Brandon Woods.

Ms. Day replied no.

APPLICANT PRESENTATION

Mr. Aaron Gaspers, Peridian Group, was present for questioning. He stated that they are working with Westar Energy for an encroachment agreement.

Commissioner Carter inquired about the queue for the drive-thru.

Ms. Day said the backup will be in secondary traffic areas, not in front of stores. She said the area meets the provision of four cars worth of space in the drive thru lane. She said the use is not fast food and there will not be an no order box.

PUBLIC HEARING

Ms. Donna Bell, Brandon Woods, asked if this was going to be a drive thru for Zig & Macs.

Mr. McCullough said no.

Ms. Bell asked what the use would be for.

Ms. Kim Bartulos, representative for the property owner, said it would be a business serving coffee and breakfast items with a lunch component.

ACTION TAKEN

Motioned by Commissioner Hird, seconded by Commissioner Chaney, to approve SUP-05-07-09, a Special Use Permit for the addition of a drive-thru use in the CN2 District located at 1520 Wakarusa Drive, based upon the findings presented in the body of the staff report and subject to the following conditions:

1. Prior to the release of the site plan for issuance of building permits the applicant shall provide a copy of the Westar Encroachment agreement.
2. An ordinance per Section 20-1306(j) shall be published by staff.

Unanimously approved 7-0, with student Commissioner Shelton voting in favor.

ITEM NO. 5 H2020 PRESENTATION (DDW)

H2020 Presentation.

STAFF PRESENTATION

Mr. Dan Warner gave a presentation update on Horizon 2020 and said more would be presented at the August 12th Mid-Month meeting.

PUBLIC HEARING

No public comment.

NO ACTION TAKEN

ITEM NO. 6 PLANNING COMMISSION WORKSHOP REPORT (MJL)

Planning Commission workshop report.

ACTION TAKEN

Motioned by Commissioner Singleton, seconded by Commissioner Carter, to defer item 6 to Wednesday, July 22, 2009.

Motion carried 7-0, with student Commissioner Shelton voting in favor.

MISCELLANEOUS NEW OR OLD BUSINESS

Mr. McCullough said there would be a work session next month on Wednesday, August 26, with Historic Resources Commission. He also stated that Chapter 7 was deferred by the Board of County Commissioners until August. He said the Northeast Sector Plan will be coming forward for public comment in the next few months. He said Conditional Zoning has been added to GIS. The Community Commission on Homelessness is interested in trying to create and review characteristics of what would make for a good location for a homeless shelter.

Consideration of any other business to come before the Commission.

Recess at 8:25p.m. until 6:30p.m. on July 22, 2009.

Reconvene August 22, 2009 – 6:30 p.m.

Commissioners present: Carter, Dominguez, Finkeldei, Harris, Hird, Moore, and Singleton
Staff present: McCullough, Stogsdill, J. Miller, M. Miller, Uddin, and Ewert

BEGIN PUBLIC HEARING (AUGUST 22, 2009):

COMMUNICATIONS

No communications received.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- No ex parte.
- No abstentions.

PUBLIC COMMENT SECTION

Ms. Paulette Strong, said she was unable to attend the Planning Commission meeting last month about the rezoning of 1646 Illinois Street. She inquired about the guidelines used for the decision making parameters. She said she spoke with a Planning staff member who had worked for the city less than a year and she was not familiar with Horizon 2020.

Mr. McCullough said Planning Commission made a recommendation to the City Commission of approval but that City Commission was the governing body that approved the rezoning. Horizon 2020 is one of several criteria used by Planning Commission. He stated that Ms. Strong must have talked to a city staff member outside of the Planning Department.

Commissioner Finkeldei said that the golden factors are used when considering an item. He stated that certainly Planning Commission is influenced by comments from the audience and letters, whether or not they agree with staff.

Commissioner Hird said one of the most difficult things about serving as a Commissioner is that it is difficult to difficult to look at members of the community and vote the other way. He said public comment is very important to the Commissioners and they appreciate people who make the effort to come and give their views on issues. That type of involvement is critical to the process and very much appreciated.

ITEM NO. 7 PRELIMINARY PLAT FOR FIFTH STREET BLUFF SUBDIVISION (MKM)

PP-04-01-08: Consider the Preliminary Plat and variances related to dedication of rights-of-way and frontage for Fifth Street Bluff Subdivision, 0.29-acre subdivision consisting of one lot, located at 427 Country Club Court (W. 5th St east of Iowa St.). Submitted by JMC Construction, Inc., property owner of record. *City Commission referred back to the Planning Commission on 6/23/09 for consideration of variances to dedication and frontage requirements.*

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Commissioner Harris inquired about the compatibility of the neighborhood. She asked about one of the neighbors saying the house would have to be built closer to the road due to the configuration of the lot.

Ms. Miller said the applicant could probably speak more about that. She said it could be built farther back on the lot but then more trees would have to be removed. She stated the lot has the setback requirement.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, said the property owner has the right to build a house on the property. He stated the owner is more than willing to give the 5' R-O-W. He said a one lot plat is usually off the radar and does not typically stir concerns but he would like to solve any concerns the neighbors have. He stated the only reason for the variances is because the City Commission requested that path for this property. He said they were willing to meet with neighbors about drainage concerns. He stated the house has not been designed yet. He said the lot fits in with the neighborhood. He asked for support on both variances.

Commissioner Carter asked if the applicant plans to reside at the house.

Mr. Werner said no, the applicant is the home builder, the house is being built for someone else.

PUBLIC HEARING ON VARIANCE

Mr. Jerry Wells, attorney representing a number of home owners/property owners adjacent to the property. He felt this was not good planning with this piece of property and that access could have easily been from Country Club Court. He stated the proposed driveway puts the neighbors in some danger. He said there is a history of accidents in the area and history of the road being difficult during icy conditions. He stated that the waiver must meet the criteria that it will create an unnecessary hardship. He felt the hardship was self inflicted and that it was more of an issue of money for the developer. He said the developer offered to sell the property to the adjoining property owners. He said he has heard nothing about the safety concerns expressed by neighbors.

Commissioner Hird asked for an example of a hardship.

Mr. Wells said an example of a hardship would be if a family could not move into a house because it could not comply and the family would be out of a place to live. He felt that if it is about money or lost profits then it is not a hardship.

Commissioner Hird asked if Mr. Wells was saying that it should be owner occupied.

Mr. Wells replied, no.

Commissioner Hird said he could not think of an example where it did not come down to money and that he was struggling with the concept.

Mr. Wells said he was struggling with it too but he did not write the regulations and that it is a difficult concept.

Commissioner Finkeldei asked if the two safety concerns that Mr. Wells had were steepness and icy conditions and if he had looked at the site study.

Mr. Wells said he does not feel any of the safety concerns were met. He said he did not look at the details of the site study but that accidents happen on the street frequently.

Mr. Tom Boxberger, 2002 W 5th, said the applicant stated they were willing to work with the neighbors but he has never been contacted about the development of the property. He expressed concerns about trees being removed and stated the applicant has clearcut many trees. He said that in order to get the site distance necessary the plan is to remove an enormous amount of trees on his property.

Commissioner Finkeldei asked if trees were being removed from his property or from the R-O-W adjacent to the property.

Mr. Boxberger said the R-O-W in front of his property.

Commissioner Finkeldei inquired about the safety of the street, regardless if the house is built.

Mr. Boxberger said there is already a 10 mile speed limit but nobody abides by it.

Commissioner Carter asked Mr. Boxberger if he attempted to contact the applicant.

Mr. Boxberger replied no, not me personally but neighbors have attempted to contact Mr. Chaney.

Mr. Chris Caldwell, said the street is dangerous. He stated that he repeatedly attempted to speak with Mr. Chaney last year about purchasing the property and he never returned the calls. He said it is a dangerous street, especially during icy conditions. He did not agree with the applicants hardship and said the applicant did not answer the criteria requirements for a variance. He said that infill development suggests something is missing and nothing is missing from the neighborhood. He stated the trees protect Mr. Boxberger house. He stated 'where the frontage does not fit the platting must quit.'

Ms. Jackie Schaefer, 1930 W 5th Street, said the site distance study that was conducted had a recommendation of placing the driveway as close to her lot as possible. Anybody backing out of either driveway would not be able to see a car coming. She felt the solution was to enforce the Subdivision Regulations and deny the variance. She felt the criteria for granting the variance have not been met and that denying the variance is the only legal action. She stated city staff is responsible for creating this situation by asking the developer to ask for a variance. She suggested the city buy the lot and make it an unbuildable lot, comparable to West Hills Parkway.

Commissioner Finkeldei inquired about a possible shared driveway.

Ms. Schaefer said she did not want to share a driveway and that it would create safety issues.

Mr. Lance Antle, 1908 W 5th Street, inquired how 40' road frontage was figured.

Mr. Scott McCullough said the former Development Code stated 35' road frontage requirement. The road frontage has to do with the development pattern in Lawrence and how cul-de-sac access is derived and what is reasonable for a lot to have on a curve on a cul-de-sac. The community has settled on 40' as being a reasonable amount of frontage to provide access to the road and variances are considered for different aspects of unique properties.

Mr. Antle asked if there is an error rate.

Mr. McCullough said a site study was required of the site distance to know that there will be an acceptable measure of safety. There is some objectivity to it where you look at existing development pattern.

Commissioner Moore said he lives on a cul-de-sac on a 40' lot and his thought process was that you get 20' of driveway and 20' of green space.

Mr. Shoeb Uddin said if it is less than 40' then how much less is too less. Would another variance be supported if it is 5' off. He stated it is a hypothetical case because 2 1/2' short is not the only thing taken into consideration. The overall scenario is taken into consideration such as site distance, proximity to the next driveway, the safety record of the road, slope of road, type of surface. There are numerous other factors that come into play. It is difficult to compare those two different cases because each comes with their unique characteristics and circumstances.

Mr. Antle asked if 18' would be allowed.

Mr. McCullough said that no other scenario has been analyzed than what is in front of us. 40' is what is required.

APPLICANT CLOSING COMMENTS

Mr. Werner said the 40' used to be measured at the building line but this lot is unique and the width at the building line is much greater than required, whereas on some cul-de-sacs builders were going too narrow and their solution was to push the house way back. He said that scenario is not here which is an important factor. The big underlying theme is that the Subdivision Regulations can be met. The question is if someone dedicates the R-O-W as required by the Subdivision Regulations would they have the frontage and our answer is yes. He said he could not go to the Board of Zoning Appeals and say that they do not want to put in curbs or gutters in. He said that is a question about money, but that he did get a variance for a church in North Lawrence for no curb and gutters. It was in the floodplain and rarely used and all the curb and guttering did was concentrate the water. That was about a better plan, not money. He said it is one house going on the street but that maybe it needs a curb or gutter to stop a car from going into the ditch. He said he talked to the mayor who recommended the neighbors go before the Traffic Safety Commission to discuss their concerns. This house is not going to make the safety worse on the street. He suggested the option of a hammerhead driveway so that cars could pull out forward instead of backing out. He did not call the neighbors but did contact their attorney. He said the house has not been designed yet so he did not want to put the cart in front of the horse. He did not see the concept of coming off of Country Club Court as an answer and that it would add more pavement and remove more trees.

Commissioner Hird inquired about the dedicated R-O-W. He asked if the Development Code requires 60', the neighbors all have 50', and the applicant agreed to do 50' which now requires a variance.

Mr. Werner said that was correct.

Commissioner Carter asked Mr. Werner to discuss drainage concerns.

Mr. Werner said the applicant has not gotten far enough along in the process to look at drainage yet but they are willing to do what they can.

Commissioner Hird asked if the City Commission required the R-O-W dedication be 50' instead of 60'.

Mr. McCullough said the Subdivision Regulations required an additional 5' of R-O-W for this plat, 60' total, there is 50' there now so that is 10' additional feet that is typically split on each side, that gave 5' additional feet that is basically an exaction of when a plat comes in that is required by the Code to be dedicated. The original plat showed 5' dedicated to the City. The City Commission has to accept the dedication. When Planning Commission approved the Preliminary Plat in May, at that time staff's position was that the plat fully complied with the Code. After public comment and consideration, the City Commission made a motion not to accept the dedication of 5'. That left the applicant with the option to request a variance because the City Commission did not accept the 5'. The consequences of not dedicating 5' means that the frontage remains at it's current 37.35' which is under 3' of variance of the 40'. It is staffs position that the original proposal after dedication of 5' that the 40' frontage was met. The consequence of meeting the Code with dedicating the 5' placed the lot in a situation where the other Code requirement of 40' frontage was met so there was no need for a variance. When the governing body did not accept the additional 5' it placed the property in a predicament where the 40' road frontage cannot be met.

Commissioner Carter inquired about the tress and asked if at least 75% of the tress on the lot would be saved.

Mr. Werner said that was correct.

COMMISSION DISCUSSION

Commissioner Harris asked if the public would have the opportunity to have input during the development stage.

Mr. McCullough said there would not be a site plan, only a building permit. That is not to say that staff does not get involved with issues during construction. He gave the example of a rezoning on Illinois Street where there was testimony regarding building issues. Staff met onsite with both parties and mitigated and discussed some issues.

Commissioner Carter inquired about the impact of one additional driveway.

Mr. Uddin said that when an additional driveway is added an additional conflict point is added. Conflict points always have the potential for accidents. He stated the site distance study that was submitted appears based on the posted speed limit has adequate safety.

Commissioner Carter asked if a hammerhead driveway would help.

Mr. Uddin replied, yes. He said City Commission directed staff to look at the safety and potential safety measures for the overall neighborhood. He said he initiated getting it on the Traffic Safety Commission agenda.

Commissioner Finkeldei asked if the Traffic Safety Commission looks at the steepness and condition of the road.

Mr. Uddin said those are collected in the data collection stage and presented in a staff report to the Traffic Safety Commission, but in a general manner it does not come into play.

Commissioner Finkeldei said his parents live in Arkansas on a steep road and they have grooves in the pavement. He asked if Lawrence ever did the same thing.

Mr. Uddin said not that he was aware of. He said there are no records of any reported accidents in the past 5 years on that road.

Commissioner Carter said that the project has brought to light the safety concerns of the neighbors and hoped they could be addressed by the Traffic Safety Commission.

Commissioner Dominguez said he understood the neighbors concerns but that he did not see how one driveway would make such a big difference in safety. He said he would vote in favor of the variances. He felt that all the issues have been looked at that the neighbors just do not want another house on the street. He said it is the property owners right to build a house.

Commissioner Carter said he would also vote in favor of the variance. Said the neighbors testimony regarding safety concerns on the street will bring to light issues that need to be looked at. He stated the developer sounds willing to put in a hammerhead driveway and the City Engineer is looking into the safety issues due to the neighbors input. He stated Planning Commission relies on the City Engineer survey and he says the drainage is fine. As bad as the drainage is there it could potentially improve the drainage. The owner ought to be able to put a single family home on the lot.

Commissioner Harris said she would also vote in favor. She suggested making a change to the condition about the driveway and say something like 'the driveway shall allow for headfirst egress and/or be located as far to the northeast.'

Commissioner Finkeldei asked if the hammerhead driveway could be moved slightly away from Ms. Schaefer's driveway.

Mr. Uddin said that would be fine. He suggested to move the driveway a little closer to the northeast because the available site distance was more to the east side than the west side. He stated that was just a suggestion, not a requirement.

Mr. Werner said he did not have a problem with the condition but he would rather have the condition say that the driveway configuration be subject to the City Engineer approval.

Commissioner Finkeldei said Planning Commission saw this item last month and did not have to grant a variance because they have significant R-O-W and road frontage. City Commission chose not to accept the R-O-W because they did not expect to use it because there were no plans to expand the street. He felt the strict application of the regulations would create an unnecessary hardship because the City put the applicant in the situation by not accepting the 60' of R-O-W that they normally would. He stated that Horizon 2020 suggests infill development and creating an infill lot that is not developable over 3' of frontage goes to the public health safety and welfare. In his opinion the intended purpose of the frontage is to protect the character of the neighborhood. He felt that by granting 2.65' variance it is in harmony with the intended purpose of the regulations. Said he felt the applicant met the three criteria set forth so he will support the variance request. As for the plat itself he believed the major issue is safety and it is clear this is an unsafe road for the people that live there. The City Commission initiated it to have it looked at. He felt it was not an argument that adding one more house would make an unsafe street more unsafe. If it is unsafe it needs to be fixed.

Commissioner Harris restated her previous condition suggestion 'the driveway shall allow for headfirst egress and/or be located as far to the northeast as possible and the property owner shall remove all obstructions within the site triangle of the driveway.' She asked if slightly different wording was wanted after Mr. Werner spoke.

Commissioner Finkeldei suggested something worded like 'should have head first access and the driveway location determined by the City Engineer or the driveway shall be located as far northeast as possible on the property.'

Mr. McCullough expanded on the suggested condition saying 'the driveway shall be designed with sufficient turnaround to allow for head first egress.'

Commissioner Harris stated the condition as 'the driveway shall be designed with sufficient turnaround to allow for headfirst egress and be located in consultation with the City Engineer or be located as far northeast as possible and the property owner shall remove all obstructions within the site triangle of the driveway.'

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Carter, to approve the following variances:

- 1) *From Section 20-810(d)(4)(i) which requires 60 ft of right-of-way for local streets to permit the right-of-way to remain at 50 ft in this location.*
- 2) *From Section 20-810(a)(2)(i) which requires that lots be designed to comply with all applicable zoning district regulations to permit the creation of a lot with 37.35 ft of frontage in the RS10 Zoning District.*

Unanimously approved 7-0.

Motioned by Commissioner Finkeldei, seconded by Commissioner Carter, to approve the Preliminary Plat of the Fifth Street Bluff Subdivision and returning it to the City Commission for consideration of dedication of easements ~~and right-of-way~~ subject to the following conditions of approval:

- 1) The preliminary plat shall be revised with the following changes:
 - a. The following note shall be added to the preliminary plat and included on the final plat:
"The driveway shall be ~~located~~ designed with sufficient turnaround to allow for headfirst egress and be located in consultation with the City Engineer or to be located as far to the northeast as possible and the property owner shall remove all obstructions within the sight triangle of the driveway."
 - b. The plat shall be revised to show the sight distance triangle for the driveway.

Unanimously approved 7-0.

ITEM NO. 8A ANNEXATION FOR PUMP STATION 25; NORTH OF 3800 GREENWAY CIR (MKM)

A-5-1-09: Consider annexing approximately 4 acres for Pump Station 25, located in the NW ¼ of S3-T13S-R20E, generally located north of 3800 Greenway Circle. Submitted by BG Consultants, Inc. for the City of Lawrence, property owner of record.

ITEM NO. 8B PRELIMINARY PLAT FOR PUMP STATION 25; NORTH OF 3800 GREENWAY CIR (MKM)

PP-5-1-09: Consider a Preliminary Plat and variance from required street frontage for Pump Station 25, a one-lot subdivision, approximately 4 acres, located in the NW ¼ of S3-T13S-R20E, generally located north of 3800 Greenway Circle. Submitted by BG Consultants, Inc. for the City of Lawrence, property owner of record.

ITEM NO. 8C COUNTY I-4 TO OS; PUMP STATION 25; NORTH OF 3800 GREENWAY CIR (MKM)

Z-5-9-09: Consider rezoning approximately 4 acres from County I-4 (Heavy Industrial) to OS (Open Space) for Pump Station 25, located in the NW ¼ of S3-T13S-R20E, generally located north of 3800 Greenway Circle. Submitted by BG Consultants, Inc for the City of Lawrence, property owner of record.

ITEM NO. 8D OS TO OS-FP; PUMP STATION 25; NORTH OF 3800 GREENWAY CIR (MKM)

Z-5-8-09: Consider rezoning approximately 4 acres from OS (Open Space) to OS-FP (Open Space with Floodplain Overlay) for Pump Station 25, located in the NW ¼ of S3-T13S-R20E, generally located north of 3800 Greenway Circle. Submitted by BG Consultants, Inc for the City of Lawrence, property owner of record.

ITEM NO. 8E SPECIAL USE PERMIT FOR PUMP STATION 25 (MKM)

SUP-5-6-09: Special Use Permit for Pump Station 25, a minor utility serving more than one development. Located in the NW ¼ of S3-T13S-R20E, generally located north of 3800 Greenway Circle. Submitted by BG Consultants, Inc for the City of Lawrence, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented items 8A-8E together.

APPLICANT PRESENTATION

Mr. David Hamby, BG Consultants Inc, was present for questioning.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Finkeldei asked if this is part of the proposal that extended the new waterline serving the other side of 23rd Street, the new Southeast Area Plan.

Mr. Mike Lawless, Utilities Department, said this will serve the pump station that is on the south side of K-10 off of O'Connell Road. He stated that the new pump station would be in place before the

existing pump station would be over capacitated. He said it will help with the farmland property for sewer utility in the future.

NO ACTION TAKEN ON ITEM 8A

ACTION TAKEN ON ITEM 8B

Motioned by Commissioner Finkeldei, seconded by Commissioner Singleton, to approve the variance from required street frontage for Pump Station 25

Unanimously approved 7-0.

Motioned by Commissioner Carter, seconded by Commissioner Harris, to approve the Preliminary Plat of the Pump Station 25 Subdivision and referring it to the City Commission for consideration of dedication of easements subject to the following conditions of approval:

The preliminary plat shall be revised with the following changes:

Include the property to the south, in concept form, to show the location of the access easement

~~The~~ **An** access easement on the property to the south shall be rededicated ~~to match~~ **which includes** the existing access drive, renamed to include 'municipal access' as a purpose and the Book and Page number of the access easement shall be noted on the face of the plat.

The Book and Page number of the recorded appraiser's report shall be listed on the face of the plat as it identifies the property which was included in the condemnation action.

Unanimously approved 7-0.

ACTION TAKEN ON ITEM 8C

Motioned by Commissioner Harris, seconded by Commissioner Hird, to approve the rezoning request for 4 acres from I-4 (Heavy Industrial) District to OS (Open Space) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 7-0.

ACTION TAKEN ON ITEM 8D

Motioned by Commissioner Singleton, seconded by Commissioner Harris, to approve the rezoning request for 4 acres from OS (Open Space) District to OS-FP (Open Space with Floodplain Overlay) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 7-0.

ACTION TAKEN ON ITEM 8E

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve SUP-5-6-09, a Special Use Permit for Pump Station 25, a minor utility 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 with the following changes:
 - a. The wooded areas to remain shall be delineated on the plan.
 - b. The following note regarding protection measures for the trees shall be added:
"Protective fencing should be installed along the dripline bordering the pump station area to prevent construction machinery or vehicles from damaging the trees. No

trenching or grading is to occur within 10 ft of trees which are designated for protection."

Unanimously approved 7-0.

ITEM NO. 9 AMENDMENTS TO DEVELOPMENT CODE; ENVIRONMENTALLY SENSITIVE AREAS (MKM)

TA-12-27-07: Receive update on Text Amendment for revisions to multiple sections of the City Development Code to revise the Protection Standards for Environmentally Sensitive Areas and to provide more precise definitions. TA-12-27-07 with revisions to Sections 20-1101, 20-1109 & 20-1701 (PC Item 18; approved 7-1-1 on 7/23/08). TA-12-27-07 with revisions to Sections 20-701 and 20-702 to maintain consistency throughout the Code. (PC Item 9; approved 7-0 on 9/24/08) *City Commission sent back to Planning Commission on 2/10/09. Deferred by Planning Commission on 5/18/09.*

STAFF PRESENTATION

Ms. Mary Miller presented the item.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Hird inquired about the text language that says 8" caliper for determining a significant tree.

Ms. Miller said that was in the old language in the previous draft but was taken out of the new language.

Mr. McCullough said staff is trying to close up a loop hole regarding sensitive lands being developed.

Commissioner Hird asked if the stream corridors have been identified and mapped.

Ms. Miller said there is a GIS layer of the streams in the county and city.

Commissioner Finkeldei inquired about the non-compliant development activity.

Mr. McCullough said the new way of looking at it is if someone destroys sensitive lands and staff can prove it with mapping that they are sensitive lands then that person can be found in violation at that time and there does not need to be a development activity coming forward.

Commissioner Hird said what happens if someone buys a parcel of land and does not know that 20 years prior it was clearcut improperly.

Mr. McCullough said staff may need to do zoning compliance letters for homeowners. Staff does not have the resources to keep up with every part of a properties history regarding when it goes in and out of compliance with the city.

Commissioner Carter said it would be pretty hard to enforce it on the new owner.

Commissioner Hird said the way it is worded sounds like it would be enforceable on the new owner.

Mr. McCullough said to take it further would be to require a permit for any development activity on a property but he said he was not sure that was the answer.

Commissioner Harris inquired about the League of Women Voters letter and their discussion about how the Code does not help protect contiguous areas of sensitive lands.

Mr. McCullough said understood the direction to go back to the Code and modify it only slightly to get at two issues, not a more comprehensive look.

Commissioner Harris wanted to be sure the changes being made would not create the situation that the League talks about. Their letter implies a new situation is being created with the changes.

Mr. McCullough said he did not believe that was true.

Ms. Miller said some of it will be a judgment call depending on the development and topography of the site.

Commissioner Moore inquired about incentives to protect sensitive lands.

Mr. McCullough said there should be incentives to protect sensitive lands.

Commissioner Harris said the group working on the Environmental Chapter has discussed the need for incentives.

Commissioner Carter inquired about the lookback period.

Mr. McCullough said it does not exist, there is nothing to prevent a property owner from removing woodlands.

Commissioner Moore asked how other communities use lookback.

Mr. McCullough said other communities require a grating permit. He said Lawrence does have a stormwater prevention plan. Staff can look at the concept of a grating permit.

Commissioner Hird asked if staff was getting much input from the community on this.

Ms. Miller replied there has not been much public input.

Mr. McCullough said the League of Women Voters letter was considered in staff review.

NO ACTION TAKEN

ITEM NO. 10 AMENDMENTS TO DEVELOPMENT CODE; PARKING STANDARDS (SMS)

TA-4-4-09: Consider Text Amendments to various sections of Chapter 20 of the Development Code to address implementation issues regarding Parking Standards.

STAFF PRESENTATION

Ms. Sheila Stogsdill presented the item.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Dominguez asked if the city regulates handicapped spaces.

Ms Stogsdill said no that is regulated by the American Disability Association.

Commissioner Harris left the meeting at 9:23pm.

NO ACTION TAKEN

ITEM NO. 6 PLANNING COMMISSION WORKSHOP REPORT (MJL)

Planning Commission workshop report.

Deferred from Monday night.

ACTION TAKEN

Motioned by Commissioner Carter, seconded by Commissioner Singleton, to defer the Planning Commission Workshop Report to the September Planning Commission meeting.

Motion carried 6-0, with Commissioner Harris not present for the vote.

Consideration of any other business to come before the Commission.

Mr. McCullough said they have had additional opportunity to review the 603 Tennessee Street appeal and advised the people that appealed it that it will not go to the Board of Zoning Appeals, staff does not feel it meets the appeal requirements. The Special Use Permit will be heard by Planning Commission during their August meeting.

PUBLIC COMMENT SECTION

Adjourn 9:30pm