



City of Lawrence

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CITY COMMISSION

MAYOR
ROBERT CHESTNUT

COMMISSIONERS
MIKE AMYX
ARON CROMWELL
LANCE JOHNSON
MICHAEL DEVER

August 25, 2009

The Board of Commissioners of the City of Lawrence met in regular session at 6:35 p.m., in the City Commission Chambers in City Hall with Mayor Chestnut presiding and members Amyx, Cromwell, Dever, and Johnson present.

Commissioner Johnson said he needed to abstain from the vote regarding Ordinance No. 8446, rezoning (Z-5-10-09) of approximately .981 acre from CS (Commercial Strip) and RS10 (Single-Dwelling Residential) to CS (Commercial Strip), located at 1223 East 23rd Street.

CONSENT AGENDA

As part of the consent agenda, **it was moved by Cromwell, seconded by Amyx** to receive the Public Health meeting minutes of June 15, 2009; the Community Commission on Homelessness meeting of July, 14, 2009; the Sustainability Advisory Board meeting minutes of July 8, 2009; the Traffic Safety Commission meeting minutes of July 6, 2009; the Lawrence Cultural Arts Commission meeting minutes of June 10, 2009; and, the Hospital Board meeting minutes of June 17, 2009 and July 14, 2009. Motion carried unanimously.

As part of the consent agenda, **moved by Cromwell, seconded by Amyx** to approve claims to 499 vendors in the amount of \$981,888.70. Motion carried unanimously.

As part of the consent agenda, **moved by Cromwell, seconded by Amyx** to approve the Drinking Establishment Licenses for Fatso's, 1016 Massachusetts; Crosstown Tavern, 1910 Haskell No. 6; and Biggs Bar & Grill, 2429 South Iowa. Motion carried unanimously.

As part of the consent agenda, **moved by Cromwell, seconded by Amyx** to waive bidding requirements and approve the sole source purchase of five (5) Motorola MW 810 Mobile



Data Computers for the Police Department from Topeka FM for \$26,469. Motion carried unanimously. (1)

The City Commission reviewed the bids for one (1) sign truck with options for the Public Works Department. The bids were:

BIDDER	BID AMOUNT
Laird Noller Automotive	\$52,989
Midway Ford, Alternate	\$53,442
Midway Ford	\$53,911
Altec Industries	\$54,983
Shawnee Mission Ford	\$56,205
Midway Ford, Alternate	\$58,755
Midway Ford, Alternate	\$63,214
Olathe Ford	\$59,277
Olathe Ford, Alternate	\$60,485

As part of the consent agenda, **moved by Cromwell, seconded by Amyx** to award the low bid to award the bid to Laird Noller Automotive, in the amount of \$52,989. Motion carried unanimously. (2)

The City Commission reviewed the bids for depot roof replacement for the Parks and Recreation Department. The bids were:

BIDDER	BID AMOUNT
Davidson Roofing Inc.	\$29,849
Alpha Roofing	\$39,480

As part of the consent agenda, **moved by Cromwell, seconded by Amyx** to award the low bid to award the bid to Davidson Roofing Inc, in the amount of \$29,849. Motion carried unanimously. (3)

As part of the consent agenda, **moved by Cromwell, seconded by Amyx** to approve the sale of surplus vehicles on Gov Deals. The following vehicles meet or exceed the criteria for replacement.

Equipment	Make	Year	Unit	Dept.	Mileage	Points
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Crown Victoria	Ford	2000	189	Police	78,882	30.89
Crown Victoria	Ford	2004	86	Police	77,806	26.33
Crown Victoria	Ford	2005	69	Police	83,261	27.33
Half Ton Pickup	Ford F150	1999	728	Public Works	113,313	36.33
1 Ton Flatbed	Ford F350	1997	536	Parks & Rec.	53,661	32.37
Sedan	Chevrolet Lumina	1997	710	Public Works	63,950	31.40
Sedan	Chevrolet Lumina	1997	570	Parks & Rec.	72,275	34.23
1 Ton Ext. Cab	Chevrolet 3500	1995	744	Public Works	77,173	37.72
Flatbed Truck	Ford F600	1994	778	Public Works	62,040	31.40

Motion carried unanimously. (4)

Ordinance No. 8436, amending Section 4-117 of the City Code to allow sales at retail of alcoholic liquor at the Farmers' Market as authorized by Kansas law, was read a second time. As part of the consent agenda, **it was moved by Cromwell, seconded by Amyx** to adopt the ordinance. Aye: Amyx, Cromwell, Dever, Chestnut, and Johnson. Nay: None. Motion carried unanimously. (5)

Ordinance No. 8450, incorporating by reference the Standard Traffic Ordinance for Kansas Cities, was read a second time. As part of the consent agenda, **it was moved by Cromwell, seconded by Amyx** to adopt the ordinance. Aye: Amyx, Cromwell, Dever, Chestnut, and Johnson. Nay: None. Motion carried unanimously. (6)

Ordinance No. 8451, replacing Ordinance No. 8426, for the rezoning (Z-4-6-09) of 135 and 137 Pawnee Avenue from RS5 (Single-Dwelling Residential) to RSO (Single-Dwelling Residential-Office) was read a second time. This ordinance was being readopted with a new ordinance number because the conditions of approval were not included in the ordinance that was previously adopted on first and second reading and a subsequent ordinance approved on first reading on August 11 had been revised to more accurately reflect the PC recommended conditions of approval. As part of the consent agenda, **it was moved by Cromwell, seconded by Amyx** to adopt the ordinance. Motion carried unanimously. (7)

Ordinance No. 8447, rezoning (Z-5-7-09) of approximately .735 acre from RS10 (Residential/Commercial) to CS (Commercial Strip), located at 1547 East 23rd Street, was read a second time. As part of the consent agenda, **it was moved by Cromwell, seconded by Amyx** to adopt the ordinance. Aye: Amyx, Cromwell, Dever, Chestnut, and Johnson. Nay: None. Motion carried unanimously. (8)

Ordinance No. 8448, approve a Special Use Permit (SP-5-7-09) 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 Drive Ste. A & B, was read a second time 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; and
2. An ordinance per Section 20-1306(j) shall be published by staff.

As part of the consent agenda, **it was moved by Cromwell, seconded by Amyx** to adopt the ordinance. Aye: Amyx, Cromwell, Dever, Chestnut, and Johnson. Nay: None. Motion carried unanimously. (9)

Joint City Ordinance No. 8415/County Resolution 09-21, for Comprehensive Plan Amendment (CPA-3-2-09) for revisions to Horizon 2020 Chapter 4 – Growth Management and Chapter 6 – Commercial Land Use to expand the possible locations of conference, recreation, or tourism facility uses in the rural area of Douglas County, was read a second time. As part of the consent agenda, **it was moved by Cromwell, seconded by Amyx** to adopt the ordinance.

Aye: Amyx, Cromwell, Dever, Chestnut, and Johnson. Nay: None. Motion carried unanimously. (10)

As part of the consent agenda, **it was moved by Cromwell, seconded by Amyx** to approve the request from the Lawrence Cultural Arts Commission to reallocate approximately \$12,000 of budgeted 2009 funds designated for the Outdoor Sculpture Exhibit for an effort to improve community awareness of arts activities in the community. Motion carried unanimously.

(11)

As part of the consent agenda, **it was moved by Cromwell, seconded by Amyx** to authorize the City Manager to execute an Extension of Lease Agreement for Health Care Access to extend the current lease agreement until October 31, 2014. Motion carried unanimously. (12)

As part of the consent agenda, **it was moved by Cromwell, seconded by Amyx** to authorize the City Manager to sign a Memorandum of Agreement with the Federal Aviation Administration concerning navigation aid facilities supporting the Municipal Airport. Motion carried unanimously. (13)

As part of the consent agenda, **it was moved by Cromwell, seconded by Amyx** to receive a report from Sister Cities Advisory Board outlining activities to date regarding exploration of third sister city relationship. Motion carried unanimously. (14)

Ordinance No. 8446, rezoning (Z-5-10-09) of approximately .981 acre from CS (Commercial Strip) and RS10 (Single-Dwelling Residential) to CS (Commercial Strip), located at 1223 East 23rd Street, was read a second time. **It was moved by Amyx, seconded by Dever** to adopt the ordinance. Aye: Amyx, Cromwell, Dever, and Chestnut. Nay: None. Motion carried 4-0-1 with Commission Johnson abstaining. (15)

CITY MANAGER'S REPORT:

David Corliss, City Manager, presented the report. He said the City was proceeding with implementation of downtown parking rate and fine changes and were on schedule to begin enforcement of the new fines effective September 1; Public Works was hosting public meetings for the Airport and Kasold Drive Projects; Ridership was up at the Lawrence Amtrak Station; The annual Employee Appreciation Picnic was held August 29th; the Street Division had completed several improvements around KU and Oread Development; Public Works were installing occupancy detectors to enhance energy efficiency; and a beacon was installed at High Intensity Activated Cross Walk Beacon on Peterson near Arrowhead Drive. (16)

Consider authorizing the City Manager to enter into an agreement with L. G. Barcus & Sons, Inc., for \$2,279,130.36 for repairs to Bowersock Dam. Consider authorizing contingency expenditures for \$170,000 and consider authorizing a total project maximum expenditure not to exceed \$2,450,000. Consider authorizing the Mayor to execute the Extension and Modification Agreement between the City of Lawrence and Bowersock Mills and Power Company.

David Corliss, City Manager said earlier this summer Chuck Soules, Public Works Director, presented a general scope of the Bowersock Dam Project and a budget was agreed upon. Some maintenance items were being deferred such as the Oread Tank Project and other important infrastructure projects. Staff had taken the Commission's direction to make the project happen and thanked Chuck Soules for taking a leadership role in coming up with a good solution.

Chuck Soules, Public Works Director, said in July the City Commission discussed the proposed Bowersock Dam rehabilitation and repair plan which included a sheet pile wall approximately 30-35 feet from the upstream face of the dam, filling the space and capping the area with concrete.

He said bids were received and Barcus & Sons submitted the winning proposal for City Commission approval. He said staff and Barcus believed that construction of a causeway/work platform was not necessary to complete the project.

He said Barcus proposed to use borings to establish the pile length and additional boring cost could save the City money

He said a significant amount of materials would be brought down Elm Street detour which added more traffic to that area. The project was on track to begin October 1st. This project would be occurring the same time as the 2nd and Locust project as well as the airport project. There would be a significant impact on traffic, but the staff was trying to minimize that impact.

He said staff was working on a design memorandum for the Federal Energy Regulatory Commission (FERC).

Vice Mayor Amyx said if FERC agreed the couple hundred feet remaining on the dam was in good shape.

Soules said if the improvements were completed, the flashboard would be put back. He said staff would draft monthly reports to keep the City Commission informed.

Vice Mayor Amyx said if the proposed improvements would place additional pressures or cause any further deterioration on the south end of the dam.

Soules said no, the improvement would reinforce that structure.

Toni Wheeler, Legal Services Director, said the City Commission authorized staff to execute a final extension and modification agreement at the City Commission meeting on July 14th. This agreement governed the maintenance responsibilities that the City was undertaking with the Bowersock Mills and Power Company.

The City Commission authorized the Mayor to execute that agreement, however, after finalizing that agreement there were two substantial changes to the agreement since July.

The first change was requested by the representatives from Bowersock Mills and Power Company, to include language that allowed Bowersock to bring a cause of action if believing the City was not following through on maintenance responsibilities. A sentence was added in paragraph one that Bowersock had the authority to assert claims and pursue a legal action, if a Court determined that the maintenance of the dam was required for the City's interest.

Secondly, a mutual indemnification provision was added to the agreement. Bowersock agreed to indemnify the City for any claims arising out of its use of the land and the City indemnifies Bowersock for any claims that might arise from the City's maintenance of the agreement.

The extension agreement extended the City's maintenance responsibilities through year 2077.

Vice Mayor Amyx said the agreement stated the City had maintenance responsibilities such that the Dam was in compliance relating to safety in maintaining the millpond necessary for the City's water supply. He said if the City would make that determination.

Wheeler said yes.

Vice Mayor Amyx said because of those improvement to Dam, could FERC ask the City to make those remaining improvement in the next couple of years.

Corliss said FERC could ask the City to make those remaining improvements. Staff's first response would be if it was in the City's interest and after an engineer reviewed the issue, the City could determine if they agreed. If staff did not agree to fix those remaining improvements, staff would interpret those changes that it was not necessary for the City's ability to take water for water treatment purposes related to the maintenance of mill pond for the ability to take water for water treatment purposes and the City was not under any legal obligation to do maintenance on the dam.

Vice Mayor Amyx said if the City had the control to determine whether or not it was in the City's best interest to make maintenance improvements to the dam.

Corliss said that was correct. However, the new language that Bowersock requested to be inserted, would allow Bowersock to go to Court. If the court determined it was in the City's interest to maintain the dam, then the City had that responsibility.

Vice Mayor Amyx said only for the City's interest.

Corliss said yes, for the City's interest and not for the hydro electric power purposes which was staff's concern. He said because this was a long-term agreement, someone such as FERC or their successor would indicated the City needed to do a dam project, but was not necessary for the City's water intake purposes and this agreement bounded the City . He said staff tried to write those changes in way that t he City was only committed to maintaining the dam for the City's mill pond interests and not for hydro electric purposes.

Vice Mayor Amyx said he would like to see the City pay-off this agreement first, unless it was determined that it was needed to protect or improve the City's water system. He said if there could be a time frame to pay-off the obligation for the maintenance agreement.

Mayor Chestnut said Bowersock had standing to make claim against the City anyway, if Bowersock could get the Court to interpret the City was not maintaining the dam for the City's own interests. The time bounded part was a challenge because there were things that were out of the City's control.

Vice Mayor Amyx agreed, but he was concerned with the obligation in the agreement to pay back. He said if the language gave the City control to make the determination on the City's interests for the mill pond for the City's water consumption.

Corliss said staff believed the agreement was written that way.

Mayor Chestnut called for public comment.

Sarah Hill Nelson, Bowersock Mills and Power Company, thanked everyone for the work that went into the agreement as well as the maintenance work. They wanted to make it clear the community understood that maintenance on the dam was specifically for the benefit of the City of Lawrence. In no situation, would the City of Lawrence undertake maintenance that was specifically for the benefit of the Bowersock Mills and Power Company. She said Bowersock supported maintenance of the dam and it was a strong public private partnership, but in no way did the agreement obligate the City to do work that was not specifically for the City's benefit.

Mayor Chestnut said it was a big number and appreciated the fact that Utilities gave up that from their budget. The dam served a variety of functions. He wished that more stakeholders were willing to pay a share, but were not willing to contribute at this point. The bottom line was the dam could not be decommissioned because it would cause millions of dollars of deteriorating investment.

Corliss said the staff planed on making contact with KDOT. They were not anticipating much assistance, but the City was paying for borings that would be of value for the bridges. He

said KDOT had been helpful to this project as well. However, Westar was declining to participate.

Vice Mayor Amyx said the City was working to maintain important infrastructure along the river. He said he could not imagine the effect that a failure in the dam would have on economic development. He said he wanted staff to discuss the dam repairs to Westar and other stakeholders about participating in this project.

Commissioner Dever said that there were cities that were trying to showcase their riverfront and Lawrence had yet to do so. He said Westar needed to be contacted again to at least to get Westar to admit the value of the bank full river than a braided stream.

He said he was excited about the investment of Bowersock as well as other stakeholders investing in the project. The City owed it to the community to maintain the highest level of aesthetic downtown. The project was expensive, but the City knew this project was coming.

Commissioner Cromwell said the project was expensive, but the extension of the maintenance agreement and required maintenance on the dam was critical for a variety of reasons including safety, recreation, drinking water supply and the environmental benefits of having the State's only Hydro Electric Plant and those things put together would help Bowersock to triple its capacity and make Lawrence a showcase for the green movement.

Commissioner Johnson agreed with all the comments made.

Moved by Dever, seconded by Cromwell, to authorize the City Manager to enter into an agreement with L.G. Barcus & Sons, Inc., for \$2,279,130.36 for repairs to Bowersock Dam, authorize contingency expenditures for \$170,000 and set a total project maximum expenditure not to exceed \$2,450,000; authorize the Mayor to execute the Extension and Modification Agreement between the City of Lawrence and Bowersock Mills and Power Company. Motion carried unanimously.

(17)

Consider an appeal of the Planning Commission's approval of a Preliminary Plat for Fifth Street Bluff Subdivision, including variances related to dedication of rights-of-way and frontage, a 0.29 acre subdivision consisting of one lot, located at 427 Country Club Court and accept dedication of easements for PP-04-01-08.

Vice Mayor Amyx said due to potential conflicts of interest regarding this Preliminary Plat, he needed to be excused.

Mary Miller, Planner, presented the staff report. She presented the Preliminary Plat for Fifth Street Bluff Subdivisions as well as an appeal from the Planning Commission's decision. The one lot subdivision was a little less than 13,000 square feet, located on West 5th Street, east of Iowa.

She said the plat was originally considered by the Planning Commission at their May meeting, with a 7-0 vote to approve the Plat and forwarded the plat to the City Commission for acceptance and dedications.

An appeal from the Planning Commission's decision was filed and the City Commission considered the appeal and dedication of easements and rights-of-way their June 23rd meeting. At that meeting, the City Commission voted to not accept the dedication of right-of-way and returned the plat to the Planning Commission.

Based on the City Commission's decision to not accept the dedication of right-of-way, the proposed lot did not have the required frontage for the RS-10 zoning district. The applicant requested a variance from the requirement to dedicate right-of-way and requested a variance to permit a lot to be created with fewer frontages than required in the zoning district. The lot had 37.35 feet of frontage, which was 2.65 feet less than the 40 feet required by the code

The Planning Commission considered the variance requests at their July meeting and determined the necessary criteria had been met and voted 7-0 to grant the variances and approve the plat and forward it to the City Commission for acceptance of dedication of easement. An appeal was filed from the Planning Commission's actions on the variances and

plat based on the opinion that the criteria for variance were not met and the plat and the appeal were before the Commission tonight.

In Section 20-813(g)(2) of the subdivisions regulations contained the necessary three criteria which must be met for a variance to be granted. T

The first criteria stated that strict application of those regulations created an unnecessary hardship upon the subdivider.

The lot frontage was limited by the Grandview Heights Subdivision built in the 1950's. The plat omitted the subject property. Current practice was to plat only contiguous properties so those types of situation were not created. The amount of lot frontage available was caused by the platting of Grandview Heights Subdivision.

Alternate ingress/egress was suggested from other lots, from Country Club Court through the platted lot to the north, which was owned by the applicant at the time the plat was submitted or from Iowa Street through the unplatted properties to the west. Section 20-810(b)(2) prohibited joint use driveways for residential uses. Joint use approach areas (area within the right-of-way, or behind the sidewalk) might be used, but "individual driveways which were separately maintained were required beyond the street right-of-way line." In order to utilize the alternate ingress/egress it would be necessary to obtain a variance from this standard. It was important to note that even with alternate ingress/egress, the amount of frontage would not be adequate and a variance would be necessary.

The hardship was not a 'mere financial' hardship, in that it would not simply cost more to provide the additional frontage, but it was not possible to provide the additional 2.65 feet of frontage and the lot was undeveloped without the variance.

The second criteria stated that the proposed variance was in harmony with the intended purpose of those regulations.

The granting of the variance of the right-of-way requirements met the purpose of the regulations as the City Engineer indicated that it was unlikely that this portion of West 6th Street would be widened.

The granting of a variance from the frontage requirement to permit a frontage of 36.35 feet rather than 40 feet met the criteria, in that the reduced frontage would not negatively impact the area.

The appeal stated the criteria was not met because of the safety issues that would be caused with the platting of this lot and the resulting driveway onto West 6th Street and because the aesthetics were being damaged, due to the trees which were being removed with this development.

The safety of the driveway had been evaluated to the sight distance study which indicated there was adequate sight distance for a driveway in this location. The Planning Commission placed a condition on the plat that the driveway be designed to permit head first egress. The Traffic Safety Commission reviewed the safety of this section of West 6th Street and felt that traffic calming or other measures were warranted. There was no evidence presented which showed this driveway had a negative impact on the safety of the street.

She said regarding the aesthetics of this area, there was a lot of tree cover in the area. The plat showed the area where trees were proposed to be removed.

The third criteria were the public health, safety and welfare would be protected. As mentioned earlier, there was no evidence received which indicated that the driveway would have a negative impact on the safety of the area. The site distance study indicated there was adequate sight distance for this driveway and the head-first egress would increase the safety of this driveway. The City Stormwater Engineer would review the drainage issues when a building permit was applied for.

Staff recommended the City Commission uphold the Planning Commission's decision and accept the dedication of easements based on the findings in the staff report, or Planning

Commission meeting minutes of July 22, 2009. If the City Commission would vote to not uphold the Planning Commission's decision and not accept the dedications of easements, staff recommended the City Commission develop a set of findings for the record.

Mayor Chestnut called for public comment.

Paul Werner, Paul Werner Architects, representing the owner of the property, said it was good the preliminary plat did go back to the Planning Commission. The head first egress out of the driveway was a good point because they could design a house and the footprint showed a hammerhead to turn the car around so the cars left head first on that street.

He said they agreed to submit a grading plan to the Stormwater Engineer when the building permit went forward which was not normally required.

Some neighbors asked when the variance was too much and how it was decided. He said the client could dedicate the five foot of right-of-way that was required by the subdivision regulations and then had the 40 feet mark. The only reason the variance was needed because they were not allowed to meet the subdivision regulations.

Jerry Wells, Attorney, representing a group of adjacent property owners to the lot in question, said his clients wanted to speak about the various aspects of this application and concentrate on the definition of "unnecessary hardship" as defined in section 20-815 of the Subdivisions Regulations. It was important because when analyzing and deciphering regulations, every word had a meaning. With that in mind, there were two important parts in the definition of "unnecessary hardship." The applicant had to show that he was a victim of "unnecessary hardship", in order to be granted a variance to the regulations. The first sentence stated that the applicant had the burden to prove the application of those regulations were so unreasonable that they become "arbitrary and capricious" interference with his right to do whatever he wanted to with that property.

He said Section 20-815 also stated that, "mere financial loss or the loss of potential financial advantage does not constitute unnecessary hardship". He said in the language

“arbitrary and capricious” was not defined in the regulations and therefore, needed to use the ordinary dictionary meaning of those two words. The last sentence stated that “mere financial loss or the loss of a potential financial advantage was not sufficient. In effect there had to be more than that financial loss in order to succeed. He said there was a piece of property that was going to be developed by the applicant to build a house to sell for profit and potential financial advantage, in that profit which met the definition. He said this was about the applicant who came forward, wanted a variance from the regulations to build a house on this lot for profit which was prohibited under this regulation unless the applicant could show more than potential financial advantage.

Wells said the definition of arbitrary was “selected at random and without reason.” There was nothing to indicate in the progress of this application that anything was done unreasonably or at random when the regulations were applied. The applicant knew or should have known what was required. The applicant knew there was a certain amount of frontage feet that was required and there was nothing hidden. He was not misled by the planning staff, he did not misunderstand the regulation or that a new regulation was brought up by Planning Staff and it was not a surprise. He said it was his clients positions the applicant had not met the explicit definition in order to meet the requirements of that particular section because clearly the applicant was in this for profit. If it was just financial gain, a person would not meet the requirements of this regulation.

The unnecessary hardship criteria, as defined in the zoning regulations, stated, “The variance request arises from such conditions which are unique to the property in question and not ordinarily found in the same zoning district and are not created by actions of the property owner or applicant.” In other words, in the zoning definition, it underscored what their position. The applicant knew what regulations he was facing by the regulations and there was nothing hidden. Yet, the applicant bought the property for the purpose of development. He said there was nothing wrong with buying the property, but the applicant had to adhere to the rules and

regulations. He said if this matter ended up in the district court and a judge took a look at the regulations and definitions, the judge would take a look at those facts and apply the law of strict construction to those regulations and determine that the applicant did not meet the definition.

Jacqueline Schafer, Lawrence, said the 5th Street Bluffs Subdivision was in her side yard. First of all, she said trying to participate as an informed citizen was a full time job. In order to understand the planning staff's position on this issue, she had tried to read the City's subdivision regulations, land use code and Horizon 2020. Together, those documents comprised more than 725 single spaced pages and their language was very complex. The idea of reading and understanding those documents was a mind numbing proposition for people that had jobs and families.

Second, she said she learned that, in order to be taken seriously by the Government, the average citizen must hire an attorney. A person did not stand a chance of being taken seriously without an attorney. You will be listened to, patted on your head and sent on your way while the people you spoke to do exactly what they wanted in the first place. In their case, she found this especially appalling because they were just asking that the City enforced the regulation they had written.

Third, it appeared that unless a person agreed with the position advocated by the powers in charge, that person's input into an issue was not welcomed. She said she understood the expediency behind that position, but found it insulting and contrary to democratic principles.

Four, she had learned the Planning Staff existed for the sole purpose of facilitating the desires of the town's developers. If the written regulations were contrary to the developer's desires than the planning staff would find a way around those regulations. She said as a tax payer, she found this as criminal. If the planning staff was going to exist for the benefit of special interest group then that group should pay their salaries.

Finally, she had learned that one could not trust all of the written records produced by City Hall. Specifically, the written transcript of the July meeting of the Traffic and Safety

Commission contained a major error. Traffic Safety Commissioner Ziegelmeyer did not say that a traffic calming device made no sense. He said that putting a drive way at this location made absolutely no sense. Three members of the neighborhood heard him say this and others could hear him say it too if the meeting was audio taped.

She said that she grew up believing that the government worked for the people it served. However, the experience she had over the past few months had shattered this belief. It appeared to her that rules existed for some groups of people, but not for others. The neighborhood believed that a rule was a rule and should be enforced in an unbiased manner. She said they were hopeful that the City Commission believed that too and would act accordingly.

Chris Caldwell said that he has had many good experiences with City employees over the years. He said that was why his experience in this matter was so disconcerting. It stood in such stark contrast. Bluntly, the process reeked of due process denial, tax payers concerns trivialized to the vanishing point, and blatant disregard of repeated pleas for simple enforcement of the City's own rules. Tonight the process also reeked of something more ominous. The information given internally that was inaccurate, incomplete and often completely one sided. The City's internal reporting to the Commission had strayed widely from key facts essential to decision making. For a snap shot example, consider just a few facts arising from the July Traffic Safety Commission meeting. As Schafer mentioned, one Traffic Safety Commissioner stated that putting a driveway at the proposed death trap location made no sense at all. He said tonight's packets material misquoted and misrepresented the statements entire meaning. Further, the Traffic Safety Commission minutes failed to mention that his request to put the Commissioners sincere "made no sense" in writing was immediately squelched by another Commissioner's follow up remarks. The Commissioner shushed the other Commissioner that had the audacity to make an honest, independent and objective opinion on a matter of traffic safety. Presumably, the death trap driveway matter was steered to the TSC out of the City

Commission's concern for safety. Presumably, the City Commission would have valued an honest, open, and meaningful opinion from the TSC meeting. He said they were denied this input and given an erroneous report and a slanted public record.

The capable City engineer already stated that the proposed driveway introduced new conflict points on West 5th Street. He said how additional opportunities for crashes could not reduce the safety of the street. He said how could a staff letter be trusted that contradicted engineering expertise three times in bold face inaccurate assertions.

Elsewhere, the City engineer reported the speed data, collected by City staff on the subject hill showed that 85th percentile speed was much higher than the recommended speed limit of 10 miles per hour. However, staff failed to connect the dots clearly for the City Commission and include that the earlier site distance study was originally based on the posted 10 miles per hour speed limit. He said if the studies calculations could be relied on for accuracy at 20 miles per hour, 25 or 30.

He asked the Commissioners to not approve the flawed bluff proposal, to become an approved hoax. He asked the Commissioner to restore some public trust in the City's government and planning process. He said to put an end to City's resources to oppose and thwart tax payer's legitimate request for code compliance. He said to continue to lead, not submit.

Werner said their hope would be to make the impact on the neighbors as minimal as possible. He said hopefully there were no negative impacts however his client had the right to build on the property. He struggled with the ideas that they did not meet the regulations. He said the applicant could dedicate the right-of-way and have the frontage to meet the subdivisions regulations.

If, by chance, this owner had been the person who had done those previous plats, then the owner would have created this problem. He said the plats were built in 1955 so the owner did not create this problem. He said some of the information the City Commission received did

not apply but he thought they could work through this issue and make it as little impact on the neighbors as possible.

Commissioner Dever said he would like clarification about the hardship. He said if someone willingly and knowingly bought a parcel that did not conform to the subdivision regulations, tried to give the City right-of-way which the City did not accept, and asked for a variance to the Subdivision Regulations, the argument was whether or not there was a hardship and financial was enough. He said he needed clarification on the term "hardship" and the strict legal definition and where the City stood with that interpretation.

Scott McCullough, Planning and Development Services Director, said hardship could mean various things depending on the site specific circumstances. It could be a topographic hardship that prevented one from accessing or dedicated right-of-way. It was also a decision that was ultimately made by the Planning Commission, or if appealed, the City Commission. In this set of circumstances, it was the action of not accepting the dedication for the right-of-way that created the need for the variances which the applicant pursued and there was a decision by the Planning Commission that it was a unique situation capable of meeting the definition of hardship. However, the definition could take various forms.

Commissioner Dever said there was some question as to whether or not it was legal and/or if the decision would stand based on this plat. He said he had a concern about how often the City did not accept right-of-way. It did not make sense, but it was one way to get around the subdivision regulation which was to give the City five feet and then the owner would be compliant. He did not know where the City stood on this issue.

McCullough said it was important to review that coming into compliance with the code sometimes placed a person out of compliance with sections of the code. Therefore, there was a need for variances. Fulfilling the code requirements, which in this case was dedicating the right-of-way, actually brought the property into compliance with the frontage requirement. It was not about loopholes or getting around certain sections of the codes, but from staff's prospective, it

was about consequences of meeting codes and what impact it had on other section of the code from their perspective. He said he agreed the code was complex, but in platting, it was fairly straight forward. There was an action, but there might be a reaction or a consequence of meeting certain sections of the code that place the plat outside of the code. In those instances, staff saw variances.

Staff tried to provide findings to the Planning Commission and the Planning Commission accepted those findings. It was now before the City Commission to look at those findings and agree whether there was an unnecessary hardship in this instance.

Mayor Chestnut said if the property was recently acquired or was the property owned for a while.

Werner said it was acquired in 2008.

Mayor Chestnut said in talking about compliance with the entire development code, there was public comment about Horizon 2020 and this area was RS-10 zoning and the structure that was proposed would be in compliance with RS-10 regulations. He said that area was planned for low density housing. Therefore, the residential use was not an issue. As far as the dedication of right-of-way, he remembered the discussion the City was violating State law by dedicating the right-of-way. However, the conclusion which seemed reasonable, that everyone agreed, based on the street, that there was not going to be need for that right-of-way because a sidewalk would not be practical.

He said that there were two variances. The question was the frontage and was the only thing in this particular plan that would be considered a variance.

McCullough said technically there were two variances because not accepting the dedication of the right-of-way was a variance. He said development of the lot was hinged upon whether or not the plat was approved.

John Miller, Staff Attorney, said the request was an appeal from the Planning Commission which was coming before the City Commission. He said the City Commission, on

the record, needed to find those three elements of the variance had been met if that was the direction of the City Commission in going forward. He said the City needed to be clear under the 20-813(g)(2), that the Commission made findings on the record for all three of those items.

Mayor Chestnut said if anyone else attended the Planning Commission meeting from staff. He said he read the Planning Commission minutes, but wanted to note that the Planning Commission made a 5-0 vote. He said he was not sure about the Traffic Safety Commission minutes, but Commissioner Zigglemeier did vote. The issue at hand was the traffic calming device so he wanted to go back and look at the minutes if those minute were in error.

Commissioner Johnson said he would stand behind the Planning Commission unanimous recommendation. As far as process, for one lot, he did not know how much more process the City Commission could go through.

He said he was trying to be respectful of the comments, but this proposal was addressed and Staff did a good job. Again, he said he would uphold the Planning Commission decision and wanted to move this proposal forward.

Commissioner Cromwell said public input was valued and important. This was the second City Commission meeting held concerning this proposal and which had taken up a good majority of the of this City Commission meeting.

The mistake in the minutes of the TSC needed to be taken up with that Commission. However, there was no dispute of the 5-0 vote. The discussion led to the decision that the traffic calming device was unnecessary so it upheld the public health, safety and welfare clause.

He said he was not an attorney and could not clarify “unnecessary hardship.” All of the Commissions, including Planning, Traffic, and the City, had examined the plat. He said he upheld the Planning Commission’s decision.

Commissioner Dever said it was important to consider everyone’s interests in this matter, but this was a legal use. Although it seemed like a loophole, by denying the acceptance

of the five foot right-of-way, it was not. It was difficult to know how it would impact the neighborhood.

He said he was concerned about people's opinion of the process and the City. A number of committees and commissions gave their time freely to the City and were not paid by the City. He said he would like to move forward and was important to know the City Commission was complying with the rules.

Mayor Chestnut said that he appreciated the comments. He said when talking about the strict application of regulation creating an unnecessary hardship, there had not been one in-fill development project that had not had some degree of variances. That was part of the issue with trying to create density in the community or the City would continue to expand their footprint because green-field development was easier than in-fill development. He said the majority of time lots were a non-conforming use. He said if the use was different from the intent, he would have a lot more concern, but for RS10 zoning, the house was a conforming use and when talking about that one variance, it did not seem to be a significant issue. He said to hold the line he believed that strict application was an unnecessary hardship. It was important to have clearance but did not know if the distance of two and a half feet would make that much difference in the development. He said he was most concerned if the extra driveway created a significant issue with public health, safety and welfare. He said there was a significant issue, regardless of the driveway because of the topography.

He said regardless of the ruling, he wanted to continue to pursue traffic safety to look at that area again because they were chartered with very narrow criteria. He said he upheld the Planning Commission's recommendation, but wanted the City Staff and the Traffic Safety Commission to look at that area.

Relative to the public comments, he was sorry some of the citizens felt that way. He said he intervened in half a dozen issues every week and about 1% of those involved an attorney. He said he received a constant stream of emails about curbs and gutters and he tried

address every email, as well as getting staff engaged. He said he agreed with Commissioner Dever that there were a lot of people that work on a volunteer basis to serve the community. He said City Staff did not exist for the developers and developers would not agree with that assessment. The whole safety issue needed to be studied further, regardless of the driveway and the Traffic Safety Commission and Public Works needed to be involved in looking at the design and suggested digging into the street maintenance budget, next year, to try and mitigate the issue. He said he wanted to get the vote right from a legal standpoint.

David Corliss, City Manager, said the Planning Commission made a determination that was based on the Staff report. He said the Staff Attorney was emphasizing wanting it to be based on certain criteria.

Miller said that he believed the City Commission could uphold the Planning Commission's decision. However, this was an appeal to the City Commission of the variance.

Mayor Chestnut asked what the statute was specifically.

Miller said it was section 20-813(g)(2) in the subdivision regulations of the Code of the City of Lawrence. He said he also felt it was important the City Commission made a determination in upholding the Planning Commission's recommendation and a determination on the variance based on those three criteria. It was not only the approval of the variance, but also the dedication of the easements for the plat.

Moved by Johnson, seconded by Dever, to grant variances related to dedication of rights-of-way and frontage, making a finding pursuant to Section 20-813(g)(2) that strict application of these regulations will create an unnecessary hardship upon the subdivider; that the proposed variance is in harmony with the intended purpose of these regulations; and that the public health, safety and welfare will be protected; and to accept dedication of easements. Aye: Chestnut, Cromwell, Dever and Johnson. Nay: None. Abstain: Amyx. Motion carried.

Moved by Cromwell, seconded by Johnson, to uphold the Planning Commission's approval of the Preliminary Plat (PP-04-01-08) for Fifth Street Bluff Subdivision, a 0.29 acre

subdivision consisting of one lot, located at 427 Country Club Court. Aye: Chestnut, Cromwell, Dever and Johnson. Nay: None. Abstain: Amyx. Motion carried. (18)

Review staff report concerning City policies for the selection of professional service contracts for the City.

Diane Stoddard, Assistant City Manager, presented the staff report. She said the report was a follow-up to a study session held in May regarding the selection of professional services. The discussion particularly focused on the selection of architectural or engineering types of services. The City Commission, at that meeting, had requested some staff follow-up related to some specific procedures of various cities as well as some follow up to Federal regulatory requirements that dealt with Federal funds that were utilized in design contracts.

She said the City had purchasing procedures that were outlined for the contracting of professional services. It was important to note the procedures related broadly to professional services. It included a variety of professional services in addition to engineering and architectural services, including financial and banking services.

The policy indicated that award would be made to the vendor that was best qualified based on demonstrated competence and qualification for the type of service required and at fair and reasonable prices. The policy called for a request for a breakdown of estimated project costs. However, costs were not routinely provided, related to the acquisition of engineering services. Typically, Staff requested a summary of estimated required effort related to a project and standard billing rates. The primary reason the total cost was not provided by vendors was because, in most cases, the specifics of the scope of work had not yet been defined. In the City's process, negotiation of scope and fees occurred once the best qualified vendor was selected and the City entered into negotiations phase where the scope was discussed in more detail and a fee negotiated related that scope. The idea was that it allowed the selected consultant the opportunity to help shape the scope and bring their specific ideas related to the project.

She said staff looked at a variety of procurement processes in other cities and a summary was provided. She said she wanted to credit Michelle Stevens, intern in the City Manager's Office, for the work she did related to looking up this information. There was a variety of different processes from various cities. The Commission was particularly interested in process utilized by Johnson County.

One of the issues discussed in the May meeting was the Brooks Act. The Brooks Act was a Federal law that required the utilization of qualifications based selection, which was looking only at qualifications first and not requesting cost information up front for any kind of design services that involved federal funds that went into the design service cost. The Commission asked how other cities utilized other procurement processes other than qualification based selection and still complied with the Brooks Act. One of the findings was either the City or County was suspending some of their process if it related to any kind of federal project and followed a qualifications based selection process. Or some cities decided not to spend any of the federal dollars on the design services as long as federal dollars go only to the construction part of the project then any type of selection process could be utilized.

She said it would be appropriate for the City Commission to provide direction to Staff related to this topic. Also, if seeking any changes in the City's current process, Staff would be happy to look at those changes and bring back any language that met City Commission direction. It was important for the Commission to comment if the changes made applied broadly to all professional services or if there was a desire to only have changes related to architectural and engineering processes. The City's current process encompassed all of those professional services.

Commissioner Cromwell said what types of firms were currently using the process.

Stoddard said the City utilized the process for procurement of any type of professional service. It was a fairly board outline in the City's procurement policy that specified the different elements of a RFP as well as different factors that were taken into consideration.

Commissioner Cromwell said what other services besides architectural and engineering services.

Stoddard said banking services and financial services came to mind, but any type of other professional services where a consultant was utilized.

Mayor Chestnut said in the projects, especially those that had engineering services involved, he asked if there was any percentage of the projects on what had federal dollars and what did not.

Stoddard said she did not have a good feel for that answer.

Chuck Soules, Public Works Director, said that any of the maintenance projects had some kind of federal funding. However, that money might not be used for engineering services.

Corliss said that most of the special assessment projects did not have any federal funding. But any money that touched the State was probably going to have some Federal funding.

Stoddard said from staff research, it was specific that as long as the funds were utilized for construction only and not design services, the City had the flexibility to utilize a different design process.

Commissioner Cromwell said how long Johnson County had implemented their hybrid system.

Stoddard said Johnson County spoke in detail related to their process, but did not know the length of time it was in place.

Mayor Chestnut called for public comment.

Scott Heidner, Executive Director for American Council of Engineering Companies of Kansas (ACEC Kansas), said they were at the May meeting and had been in contact with Stoddard since then and hoped to have been a resource in providing information. He said Stoddard was great to work with, through this issue.

He said he as advocate for qualified based selection. Price was something that was negotiated along with the scope of services after a top ranked firm was selected. That was more or less what the City currently had as a policy and they were a strong advocate for maintaining that system. They believe it was the best of value for the tax payers and would urge extreme caution if looking to make a change to that system.

Qualifications Based Selection (QBS) was by far the most commonly used procurement system in the Country for professional services. The Brooks Act also required that any projects with Federal dollars used for design used the QBS process. He said 46 out of the 50 states, including Kansas, had a similar requirement. Meaning, QBS was required when State dollars were used for design. Many local governments also had this policy voluntarily. There were several states in the Union that had state statute mandating it at the local level, but Kansas was not one of those states. He said in several states, the licenser board for engineers in their code of conduct, prohibited engineers from providing a price before final negotiations and draft of the scope took place. It was felt strongly that it was bad public policy and forbid their licensed engineer from submitting a price prior to that time in the process.

There were also several trade associations and professional organizations that were strong advocates of QBS. He said the most powerful endorsement was the American Public Works Association, APWA. Those were professionals in Public Works and Utilities and their professional association, whose only job was to provide maximum value for the tax payer dollar and provide for the public health, safety and welfare, they had no financial stake in the game and they have long had a policy in favor of QBS as the most preferred procurement process for design.

A good partnership with a design professional began and ended with a clearly defined scope of services. It was the only way a designer could be sure he or she knew what someone wanted as well as the only way the City could be sure they were getting what they wanted and what could be afforded. When a design professional was asked or required to provide a price

prior to having detailed, one-on-one conversation with the owner about the scope of services, that professional was limited to one idea because they had to build a price around something. More damaging yet, the professionals were limited to their own idea. He said any good design professional would say that in depth conversations with their clients were important to best serve their client which included: time deadlines, budgets, neighborhood factors in play. The factors and variables were too numerous to list and any good designer would have several different ideas on the best way to design a project. He said asking for a price upfront inhibits the professional from bringing the professional expertise and innovation to the City because it demanded that professional to commit to a certain project plan up front.

He said he did not have misconceptions about what they were going to was a pure low bid process. It had been referred to as a value selection process. If cost savings was part of what the City was after, he reminded the Commission that design, comparatively speaking, was not a large part of project lifetime cost. Design cost typically were around 1% and up to 5% on more complex projects, so if cost savings were the goal, then it was important to remember that it was a smaller part of gold.

It was also critical to remember that sister cities and counties that used the hybrid process and had not reported any major concerns, he said it was not entirely accurate. He said when price was “a” factor it generally became “the” factor. It was very easy for selection committees to say that all those firms were qualified giving those firms the same score on the components and the only variable was price. That system created a process where price was the only variable that made a difference in the proposals.

In the position of explaining the process clearly to the public, including a price component could confuse the process for the general public. It was a very complex subject and it could be difficult to explain to private citizens why the City did not take the firm that offered the lowest price. A pure QBS process offered a much clearer and more defensible position to getting the engineer that the City felt was best fit.

He said he heard a comment from a Commissioner that the Commission selected a firm and the firm came back to name a price and the City was stuck with that firm. He said it was important to understand, even with the QBS process, the City, as the owner, held the hammer in that situation and those negotiations. The City could terminate negotiations with that firm at any time if the City did not feel that a reasonable fee or scope had been agreed to. It was also important to remember that subpar work from a firm could be taken into account the next time that firm applied for a project. He said under the current QBS ordinance, it was important to remember the City had authority and control of this process.

He said that the other professional services the process applied to was financial, medical, attorneys, auditors, accountants and the list goes further. It was important to remember that engineers were just like those service providers, in that the nature of the work was complex and getting an expert in a certain area with a higher hourly rate could yield cost savings down the line. He said that architects and engineers should be considered in the same light that other services were looked at.

He said the best thing one could hope for was a service provider as well as a partner. It was important that an engineer viewed the opportunity to work with the City as a way to help invest in the city that they lived and worked in. The QBS process gave the City the ability to find the firm that best fits that role. He said they urged the City to stick with the QBS process.

Trudy Aron, American Institute of Architects (AIA), said any particular firm was either going to work or not work. Therefore, the City as a public owner, needed to have a variety of firms to choose from. The City needed to make sure a firm had the qualifications to do the project and meshed with the City. The only way to do this was to get to the negotiating table. Most people think negotiating table only meant price which was wrong because price was only a tiny fraction of what happened at the negotiating table. The City, as an owner, and the architect discussed what the City wanted and what the architect could bring. The answers were not clear until you actually sit down and talk with the firm. It had been said that any given firm could do a

project a hundred different ways, depending on the concepts used and the personnel assigned. When a client used fees, rather than qualifications, there was only one option. That option was what the architect thought the City might want and was probably not the option the City wanted. The City's bids would be meaningless. She said two firms would not be found to have the same idea as the City.

When the City decided the cost was too high at the negotiating table, the firm had two choices. First, the firm could offer to reduce the fee while still making a profit. Secondly, if they could not reduce the fee, the negotiations should be terminated. More than likely, a negotiation would be met regarding the fee.

David Dunfield said a study was conducted in 1985, between Maryland which had a bid system, and Florida, had a QBS system. He said it was an eight year long study that compared the architectural and engineering related cost of construction by Maryland and Florida. Maryland had a complicated hybrid and administration intensive system and was compared to the QBS system in Florida. As a result of that study, they found an increase in the overall costs of architectural and engineering portion of construction projects in Maryland. They also found a significant increase in time delays in the amount of time it took to complete projects in Maryland versus Florida.

He said he would like to bring the conclusion of that study home to Lawrence and suggested hybrid systems required more time, more effort and therefore more cost on the part of Staff. City Staff currently had its hands full with current responsibilities. It would also complicate the cost from the consultant's point of view of responding to those request and ultimately those increased costs for consultants had to be passed on to someone. It also created a potentially adversarial relationship at the start of a project between consultants and staff because the consultants were trying to guess the scope of the project. However, they were not always successful in guessing the scope of the project.

He says that the QBS system was working and suggested the City maintain the current system.

Vice Mayor Amyx asked Dunfield if he had answered an RFQ under a hybrid system.

Dunfield said yes. He said they found themselves in a guessing game in those situations. They tried to understand what was exactly needed, what they could safely exclude and what kind of approach was going to work in the situation. It made it much more difficult to respond to a hybrid process.

Vice Mayor Amyx said if Dunfield's firm was selected as an architectural firm under the current QBS system, his firm knew exactly what to do except for change orders that happened throughout the process and was able to quote billable hours, based on that scope

Dunfield said with the QBS, the quote came during the negotiation, and once the initial selection was made, then they would get together to precisely pin down the scope which was the main difference.

Ron Gaches, Executive Director for Kansas Society of Professional Engineers, said he had worked on QBS issues along side of American Council of Engineering Companies (ACEC) and American Institute of Architects (AIA) in other communities where this same discussion came up.

He said he was not an engineer by training, but an attorney and he was not a professional designer. He had never personally responded to a RFP or RFQ for design services. However, he said it was worth noting the overwhelming majority of public institutions that purchased design services using the Lawrence's current policy. The federal government, an overwhelmingly majority of states and a more municipalities use the QBS system than any other selection system for design services.

He said he had the opportunity to listen to the June study session on that topic. At that time, he said he did not hear anyone explicitly describe a disadvantage for the City of utilizing the QBS system. He said there seemed to be an assumed presumption the QBS was flawed

and somehow the City was not receiving the best price for design services. He said of all of the investment made in this community, he asked what should be provided at a higher quality than infrastructure design services. He said what should cost more and where should the City make the greatest investments, but for the public health, safety and welfare because that was where the design services were invested. They were invested in water systems, sewer systems, and street/bridge infrastructure. Big money was authorized earlier, for work done on the dam at the North end of town and asked if the City would ask for that work be designed through low bid.

There did not seem to be serious consideration to move toward a low bid systems, but a hybrid system. He said if moving to a hybrid system, the City should visit with public officials that were utilizing that hybrid system. Most of those public officials would like explain that hybrid system became a low bid system.

He said there were proposals in response to the City's RFP's and there was a design proposal with a bid. He said if the City did not pick the low price the door would open to litigation from someone who might have provided a lower price. Even if there was no litigation from the design firms that submitted a bid at a lower price, those firms were all qualified under the law because they were licensed architects, he asked how did the City explain to the community the City Commission accepted one proposal from a firm at price higher and someone that was licensed to do that work, the Commission declined to accept their proposal.

He said he had not heard anyone do side by side comparisons that suggested Lawrence was paying any more for design services than any place else in the State of Kansas. He said was staff asked to provide this comparison and did Lawrence know how their cost of design services compared to Johnson County or Wichita, which utilized the hybrid system. He said the QBS system had created a highly competitive environment for design services. If comparing this system to others, Lawrence was receiving tremendous value for those design services. There were shortcomings that Lawrence did not currently experience with the current system.

He said they urged the Commission's favorable consideration of continuing the current QBS policy.

David Comstock, QBS Facilitator for ACEC Kansas, said 16 of his 39 years at KDOT were spent as Chief of Design or Director of Engineering Design. He was responsible for hiring hundreds of consulting engineers to work on the CHP and then the CTP. He now worked as a QBS facilitator for ACEC and AIA to explain why he thought it was in the best interest of the public bodies to utilize QBS.

He said he could not imagine the chaos that would have ensued had they attempted to sort through low bids. He said he could not fathom why a body would not want to be involved in determining the scope of work and the cost. If the City took low bid or some form of system that introduced price in some way, the City had no control over the price. He said it did not make sense the City did not want to be involved in the price.

He said some engineering and architectural firms would not respond to solicitation for something other than QBS. Some firms sent letters that politely declined. Secondly, the Bowersock Dam project seemed like a QBS process because the scope of work was not determined and would collaborate to find a cost.

Finally, he referenced a City that had recently solicited bids for an engineering project. There were five firms that submitted proposals and the bids ranged from \$6,800 to \$26,400. The second low price was not close to the \$6,800. He said he did not know what the community would get out of those five proposals. He said he encouraged the City Commission to stick with the QBS process.

Aron said regarding the question from Commissioner Cromwell about Johnson County, she said that Johnson County had their current process in place about 6-8 years. However, Johnson County had a very large staff. They had 8 architects on staff and many more drafters that helped in their facilities.

Heidner said it was mentioned that some firms that use the QBS process would not respond and he debated whether or not to bring up that point because they preached QBS on its value merits. He said many member firms had model selection criteria where they opened a business, where they were willing to expand a business and made continuous decision about where they maintained a business. Municipalities that used QBS were more attractive environments for those firms to come to. The value and safety of the infrastructure project itself, as an economic development piece, there was an impact as well.

Commissioner Cromwell said he had a couple of issues. In general, the public was very confused on the current system. It was difficult to explain the City would find a company that was the best and then ask the company about costs for the project. The fact that only twice in twenty years State projects flipped out of that, could be turned on its end. It could be tough for the firm, but it was also tough for the Staff and the City.

He said he appreciated the compelling arguments brought forth by the various trade groups and individuals. However, a lot of those were against the straight bid system and that was not being suggested, but he failed to see a big disadvantage in selecting a couple of highly qualified firms and comparing the charges for various similar projects. He said the City of Lawrence would find a value of savings by asking companies to provide pricing information up front. It might only be 5% or less of a total project cost, but millions of dollars were being considered. He said that times have changed. It seemed as though Johnson County had already been asked whether their systems worked and they responded their system had worked.

Commissioner Dever said the premises that were put forth were great arguments. However, he said he disagreed with a couple of concepts. A clearly defined scope of work was something that often allowed negotiations on the front end of the process. Qualifications being the fundamental and most important piece of the puzzle but a well defined scope of work could always dictate a good project and price. A QBS system was more suitable for the projects that

did not have a highly defined scope of work or the parameters were not clearly defined. It was hard to understand why the price was asked, after selecting the firm.

He said sometimes they were so down the path in the planning stages of the project and the critical path of project that the odds of a firm pulling back were much less. The argument was a good one that there have been very few projects that had been pulled away but he felt it was because of the critical timing involved in any project. He was 100% agreement the qualifications needed to be considered but it was important the topic was revisited. He said there was nothing wrong with asking for the price if the City wanted to spend the dollars wisely.

He said he did not believe there was a clear answer and he appreciated everyone's feedback. He said on some projects the scope should be defined clearly and tried to get a good price. However, maybe use a different system in projects that required a high degree of integration with the design or engineering firm. Sometimes the work was taken off of Staff and placed on the engineers and the City was paying for that. The City had a smaller Staff and could not afford to determine and approve whether or not the scope or qualifications for a firm. He the City needed to find the best plan for Lawrence. He said he had been involved in many public and private negotiations for engineering services and teams, but he did not have a firm opinion. He said there could be substantial dollars saved by picking the best, most qualified firm and identifying the cost in the process.

Commissioner Johnson said he had a unique perspective on this issue and was a licensed engineer with a consulting firm. He appreciated all the comments and he did not disagree with anything that was said. As a member of the profession, he was struggling with the issue. He said he agree with the arguments made but as a business owner, in a competitive business environment and knowing what his firm's qualifications were on projects, he saw money left on the table.

He said he did think there was any other way but going through the QBS process or there would be a lot of design time tied up with staff. He said there were times when the scope

could be very well defined. He said he was not convinced that price should not be a factor. He said if there were three or four qualified firms and those firms were ranked at 88 points, he asked how that decision would be made and why the City would not look to price.

He said he did not think there was a broken system. QBS had its merits, but the Commission could explore QBS because there might be instances where there was a well defined scope. He said he was not convinced that the QBS did not save the City money and was not the best method. There were instances where it would put him in an advantageous situation to bring cost into the situation, but he did not know if that was the system the City wanted and it might need more discussion.

He said that it was usually forgotten in QBS that staff could say “no” and move to number two. The key was to having staff that had the confidence and willingness to go there. He felt the QBS system worked, if staff understood the marketplace and was willing to go there.

Vice Mayor Amyx said the QBS system was the best for this community based on the information received. The City would defend itself in receiving the best value for any professional services. He said the City’s professional staff did well in the process for RFP’s or RFQ’s which helped the City Commission in their recommendations. He said City staff and the City Commission needed to discuss this issue with other municipalities.

He said one thing always heard was that time was money. He said what the effect on the project would be, after going through an additional process.

He said the City had good plan in place and needed to be convinced there was a better plan. He said that there were good people carrying out the policy.

Mayor Chestnut said some of the elements of QBS were completely opposite of anything he had ever done as a professional. However, he understood that he sat in a different seat at this time.

He said first of all, any process designed or done poorly over time was not going to work, whether it was QBS, Hybrid or whatever. He said poorly executed processes were highlighted.

He said he was sure there were poorly executed QBS processes as well. The fact was that you were only as good as the Staff in the municipality, the process, how it was followed, and the scope of work and what was done. He was not sure if that gave him a lot of credence because the City Commission needed to spend some time dialoging. However, he said that he did not put a lot of credit in the Commission not getting the full story. He said he trusted staff to highlight if they felt like there were some issues, but maybe it was something they did not want to admit because elected officials told them what they were going to do.

He said a good point that was made was that it was a defensible position in the public but not necessarily the best decision. It was a safe decision that kept the City out of litigation. When those words are put together, typically it meant it was going to be more expensive because it was taking the safe road.

He said he believed the City could have detailed one-on-one conversations and scope of work with more than one firm, but did the City have the horsepower to do that. That was the most legitimate point that he heard in the entire process. If the City did not have the horsepower then it would not be done well. If the City designed a great hybrid process and it took four extra people to implement that process, then it might not be worth implementing, but the process needed to be investigated.

He said he would not support any hybrid process where it smacked some lack of integrity to say the City would use the Brooks process on the engineering services, but allocated everything toward the construction part. .

He said how many of previous engineering services had any federal money. He said he heard comments from Commissioners Dever and Johnson that there might be a desire to use another system on smaller types of projects. The larger projects would have federal dollars and smaller projects would not have federal dollars.

He said Corliss made a point about benefit districts and that was probably the one exception where there were big dollar projects.

Corliss said he could not think of any federal dollars that were involved in design, not including FAA projects.

Mayor Chestnut said regarding 2nd and Locust, he said if two million dollars of federal money was going into that project, he would have a hard time saying well.....(The Mayor Did not finish his sentence)

Corliss said the City paid for the design of North 2nd and Locust. That was an example where the City had to do some redesign of the project for the waterline this calendar year in order to get the project moving with the stimulus project. The original design firm, very qualified design firm that provided a good plan, came back with a quote that staff respectfully rejected as too high and worked with another highly qualified firm that provided a quote that was a lot better to do the actual design work. The City successfully bid the project. There had been times that Staff had rejected some quotes.

Mayor Chestnut said it would be a good take away to look at how many of the projects used federal dollars when procuring professional services over the past few years. He said staff needed to look at the entire project, not just engineering services or any project that involved KDOT. He said all geometrics projects would have KDOT money.

Corliss said that the City was paying for one hundred percent of the design on most of those projects.

Mayor Chestnut said some of the City's sales tax projects could potentially have matching funds. He said it would be helpful to look at that information.

Corliss said staff would gather that information because it would be good information.

Mayor Chestnut said another realistic issue was the threat that people would not bid on the project which was stated in a delicate way and a realistic discussion needed to take place about competitors dropping out.

Corliss said staff would talk to municipalities and get that information. He said there was a certain workload of defining the project and right now, that burden was initially placed on the

Staff to prepare the RFP. Staff had to describe it in some level of detail, but staff was not talking a lot about the scope. That burden then shifted to the recommended firm to give a detailed scope of what was going to happen. As he saw this issue, there would be more of a shift of that workload toward Staff to get that description in place, but he was not saying that could not be done or should not be done. That was where they could start comparing what the different quotes were going to be on all of those things.

Commissioner Johnson said regarding the scope development through the QBS system, if firms were brought in for an interview, those firms would have different ways to approach the project as well as unique ideas. If Staff provided the scope in the beginning, firms would come up with a price to make the City happy and other ideas were lost that a QBS process brought to the table.

Commissioner Cromwell said he was curious if a system could be in place where the firms come up with general ideas. He said the City was not asking firms to completely design the system because that needed to be in a process similar to what they were doing currently. The City could get an idea of hourly rates and similar project costs, but not narrow it down to a specific cost.

He said he had talked to many firms that would not bid on the City's current system. A new system might be losing some firms, but gaining others. Hopefully, if the system was done correctly, they would not be losing any of the firms, but gaining firms.

Mayor Chestnut said he was out of his element because he procured all other professional services, but engineering services no so much.

He said that the genesis of this issue started with what was perceived to be a lack of transparency. In fairness, a discussion was needed about how to improve the transparency of the current system. He said he was asking for some consensus about at least further development of some ideas that were brought up in the memo. He said he if the Johnson County system was the best hybrid method.

Commissioner Dever said the City needed to clearly define how they wanted to change the process such as cost and scope guidelines on certain types of projects and talk with Staff about what were the most time consuming parts. He said that smaller firms might get involved and maybe get some more ingenuity. There were benefits on both sides but the City Commission needed to meet with Staff and get a clearer understanding of time.

Mayor Chestnut said a work plan was needed and received more information on what was adopted in Johnson County for their hybrid QBS.

He said there was lack of clarity about the Lawrence process. He said he knew other things were done other than a QBS model. At times, the City had introduced costs before selecting a firm. He said he was not sure they were necessarily following the model. The City Commission needed to provide a benchmark about where the City stood. He said that the Commission seemed to be divided.

Commissioner Johnson said he was on the fence and was not sure and it needed to be explored.

Mayor Chestnut said how many projects had federal funding involved. He found it hard to say the City was technically complying with the Brooks Act because they are applying the money towards construction.

Corliss said he would get more information. He said it was not uncommon for a lot of the road projects to have engineering and right-of-way was local responsibility and the construction was shared between KDOT, for example, and the City. He said he understood the Brooks Act requirements did not apply to the design, but he wanted to confirm that thought.

Commissioner Chestnut said he understood the legal position, but he did not like the policy decision. He wanted to look at City projects and find out the Federal and State dollars.

Corliss said there were clearly projects where the City used Federal money. All of the Federal money for roads went through KDOT. A classic example was the 31st Street design work. That was a classic example of following all of those requirements.

Mayor Chestnut said it was easy to say that when talking about projects that were benefit districts, the City had some push back from developers due to QBS.

Corliss said one of the challenges was when the developer was paying 100% of the costs of a benefit district the developer would want to use their engineering firm that knew the project well. He said the City had a purchasing policy to follow to select a firm and the developer paying 100% of the bill that wanted to use their firm. He said there was a tension.

Mayor Chestnut said the more information the City received, at some point it would naturally fall out.

Corliss said the City Commission was requesting information about the Johnson County process, improvements on the current process, and how staff arrived at those costs.

Mayor Chestnut said he also wanted information on the various projects.

He said and when staff and Johnson County discussed Johnson County's process, he suggested looking at that county's staffing along with asking how many hours it took internally before getting to a point of looking at that hybrid process.

Corliss said that Staff would ask those questions and knew who to start with.

Mayor Chestnut said he did not want to adopt a process and then realize the City needed five full-time employees next year.

Corliss said no full-time employees would be hired because of that process. However, there was a workload there because someone had to describe the project so the engineers and architects knew what they were committing to and City staff knew what it was getting.

Commissioner Cromwell said he wanted to look at what Johnson County's process. No one was interested in Johnson County model, but he wanted a Lawrence, Kansas model. The said Lawrence wanted the best of everything with a low price and good services.

Mayor Chestnut said he would be interested in how Johnson County delineated those projects because they had a two tier process. He said what was considered "federally funded", could be sort of mushy. He said staff might want to get finite about what that looked like.

Commissioner Dever said that he wanted to firm up the Lawrence process. Only engineering procurement was provided so he wanted to know how it worked for other professional services. He thought the Lawrence procedures and policies needed to be clarified.

Vice Mayor Amyx said if it was the Mayor's intent to put all professional services under the same policy.

Mayor Chestnut said that he did not see why not unless there was some compelling reason not to. He said he understood a lot of the engineering services projects were very complicated, but other projects were also complicated.

Vice Mayor Amyx said the City Manager needed to understand the Mayor wanted all professional services under the same policy due to the effect it would have on staff.

Commissioner Johnson said the local design community needed to be included and he would be willing to lead this effort. He said he would like to hear the design's community input as well as firms to the east that did work in Lawrence.

Mayor Chestnut asked if Commissioner Cromwell wanted to be a part of this effort.

Commissioner Cromwell said yes.

Mayor Chestnut said it might be appropriate to send a summary out to the City Commissioners with clear direction.

Corliss said that staff wanted to make this effort a priority. There were a lot of other projects that he wanted to get moving on. The Commission should see the waste water master plan contract in September. Corliss said that staff would let everyone know when this issue would come back on an agenda. (19)

PUBLIC COMMENT: None.

FUTURE AGENDA ITEMS:

- 09/01/09
- General obligation bond and temporary note sale.
 - Consider bids for street, stormwater, water, and sanitary sewer improvements in the Exchange Place/Fairfield Street benefit district (bids are due on September 1 and the recommendation for award will be posted

late in the day on September 1).

- Consideration of consultant service agreement with Hernly Associates, Inc., for the Phase I Depot report.
 - H1N1 Briefing
- 09/08/09 · Public hearing date to discuss the condition of the dilapidated structure at 426 Perry Street and to consider declaring the structure unsafe and ordering its repair or removal within a specified period of time.
- 09/15/09 · Ordinance No. 8387, for the Rezoning (Z-2-2-09) of 1725 New Hampshire Street from RM24 (Multi-Dwelling Residential) to CS (Commercial Strip)
- 09/29/09 · City Commission Meeting canceled – fifth Tuesday
- 10/27/09 · 2009 LEAP Awards Ceremony
- TBD · City Auditor update on scope and method of performance audit related to solid waste.
- Consider Electrical Board recommendation to adopt the 2008 National Electric Code.
- Discussion of financing methods for traffic calming devices.
- Fairfield East maximum special assessment hearing
- Recycling report
- Consider a request from the Oread Neighborhood Association to enact a moratorium that would prohibit permitting Boarding Houses in the City of Lawrence while a text amendment to the Land Development Code to revise standards pertaining to Boarding Houses is processed.

COMMISSION ITEMS:

Moved by Amyx, seconded by Dever, to adjourn at 9:43 p.m. Motion carried unanimously.

APPROVED:

Robert Chestnut, Mayor

ATTEST:

Jonathan M. Douglass, City Clerk

CITY COMMISSION MEETING OF AUGUST 25, 2009

1. Bid – Waive requirements – sole source 5 Motorola MW Mobile data computers to Topeka FM for \$26,469.
2. Bid – One sign truck for Public Works to Laird Noller for \$52,989.
3. Bid – Depot roof replacement to Davidson Roofing for \$29,849.
4. Sale of Surplus Vehicles on Gov Deals.
5. Ordinance No. 8436 – 2nd Read – Sale of Retail sales of Alcoholic Liquor at Farmers' Market.
6. Ordinance No. 8450 – 2nd Read – Standard Traffic Ordinance of Kansas Cities.
7. Ordinance No. 8451 – 2nd Read – Rezone (Z-4-6-09) 135 & 137 Pawnee from RS5 to RSO.
8. Ordinance No. 8446 – 2nd Read – rezone (Z-5-10-09) .981 acre from RS and RS10 to CS, 1223 E 23rd.
9. Ordinance No. 8447 – 2nd Read – rezone (Z-5-7-09) .735 acres from RS10 to CS, 1547 E 23rd.
10. Ordinance No. 8448 – 2nd Read – Special Use Permit (SUP-5-7-09) for a drive thru window at 1520 Wakarusa.
11. Ordinance No. 8415/County Resolution No. 09-21 – (CPA-3-2-09) Growth Mgmt & Commercial Land Use.
12. Outdoor Sculpture Exhibits – reallocate \$12,000 to improve community awareness.
13. Lease Extension Agreement – Health Care Access until 10-31-14.
14. Memorandum of Agreement – Fed Aviation Admin for navigation aid facilities for airport.
15. Sister Cities Advisor Board – report on exploration of 3rd sister city.
16. City Manager's Report.
17. Bowersock Dam Agreement – LG Barcus & Sons not to exceed \$2,450,000.
18. Preliminary Plat (PP-04-01-08) 5th St Bluff Add, 427 Country Club Ct.
19. Polices – Professional Service Contracts.