

**PLANNING COMMISSION REPORT**  
**Regular Agenda – Public Hearing Item**

**ITEM NO. 1A: UR TO COMMERCIAL; 29 ACRES; NE CORNER OF K-10 & W 6TH (MKM)**

**Z-10-17-09:** Consider a request to rezone approximately 24 acres from UR (RO-1A/RMO pending) to Commercial (CC-400), for the Mercato project located at the NE corner of K-10 & West 6<sup>th</sup> Street (Hwy 40). Submitted by JDS Kansas, L.C.; Kentucky Place, L.C.; Tanglewood, L.C.; Oread, L.C.; Hanover Place, L.C.; Venture Properties, Inc.; TAT Land Holding Company, L.C.; Scotsdale Properties, L.C.; Sojac Land Company, L.C.; K-10/40 Development, L.C., property owners of record.

**STAFF RECOMMENDATION:** Staff recommends approval of the rezoning request for approximately 24 acres from UR (Urban Reserve) District to CC400 (Commercial Center) 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.

**APPLICANT'S REASON FOR REQUEST**

*"The Mercato has been undeveloped since the conditional approval of the initial zonings. It has become evident that the subject tract needs to be re-zoned to CC-400 in order to stimulate the necessary development of this community commercial center. This requested re-zoning would put most of the permitted commercial land use for this CC-400 node on the northeast corner."*

**KEY POINTS**

- Rezoning have been approved for the Mercato Development by the City Commission but publication of the ordinances is pending the recording of the final plat. The approved/pending rezoning of the subject property to the RO-1A (Residence-Office) District [Z-03-06-06] converted to the RMO (Multi-Dwelling Residential-Office) District with the adoption of the 2006 Development Code.
- The subject property is included in the *Intersection of West 6<sup>th</sup> and Kansas Highway 10 (K-10) Nodal Plan (November, 2003)* and the *Northwest Area Plan (December, 1996)*.
- A preliminary plat was approved for the Mercato Development [PP-01-02-06] by the Planning Commission on April 17, 2006 and Mercato Addition 2<sup>nd</sup> Plat [PF-03-04-07], a final plat for the property included in this development proposal, was approved by the City Commission on May 15, 2007. A revised preliminary plat was submitted concurrent with this rezoning request.
- The term 'commercial' is used in this staff report as defined in *Horizon 2020*, to mean primarily retail uses.\*

**GOLDEN FACTORS TO CONSIDER**

**CHARACTER OF THE AREA**

- The property is located at the western edge of the city limits and is bounded on the north by city limits as well. The property is bounded by major thoroughfares on the south and west, W 6<sup>th</sup> St/Hwy 40 and K-10 Bypass respectively. The general area is currently undeveloped; however, several development applications have been approved in the area.

CONFORMANCE WITH *HORIZON 2020*

- The proposed rezoning request from UR (Urban Reserve) District to CC400 (Commercial Center) District is consistent with land use recommendations found in *Horizon 2020*.

**ASSOCIATED CASES/OTHER ACTION REQUIRED**

Associated cases also being considered at the October Planning Commission meeting:

- Revised Preliminary Plat [PP-10-05-09] and associated variance for the property contained within the rezoning request and adjacent lots to the south.

Other action required:

- City Commission approval of the rezoning request and publication of ordinance.
- Planning Commission approval of the preliminary plat and variance and City Commission acceptance of dedication of easements and rights-of-way.
- Previously approved plans for this area, which include the preliminary plat [PP-01-02-06], the final plat [PF-03-04-07], and the Preliminary Development Plan [PDP-08-08-06] shall be revised to incorporate the revisions approved in the revised preliminary plat [PP-10-05-09].
- Revised public improvement plans shall be submitted and approved prior to recording the final plat.
- Development will require site planning prior to obtaining a building permit.

**PUBLIC COMMENT RECEIVED PRIOR TO PRINTING**

- None.

**ATTACHMENTS WITH THIS STAFF REPORT:**

Attachment A: Retail Market Study

**GENERAL INFORMATION**

Current Zoning and Land Use: UR (Urban Reserve) with rezoning to RMO (Multi-Dwelling Residential-Office) District pending; undeveloped.

Surrounding Zoning and Land Use: To the east: Additional property within the Mercato Development zoned UR (Urban Reserve) District with rezonings to the PD[Mercato] (Planned Commercial Development), RM24 (Multi-Dwelling Residential), and RS7 (Single-Dwelling Residential) District pending; undeveloped.

To the north: Additional property within the Mercato Development zoned UR (Urban Reserve) District with rezoning to the RM12D (Multi-Dwelling Residential/Duplex) and RM24 (Multi-Dwelling Residential) Districts pending; undeveloped.

To the west: County A (Agricultural) and a small portion of County B-1 (Neighborhood Business) Districts; K-10 Bypass and interchange located within KDOT right-of-way and agricultural uses.

To the south: UR (Urban Reserve) District across W

6<sup>th</sup> Street; undeveloped land—previously approved for planned commercial development, but approval expired.

### **Project Summary**

*Horizon 2020*, the City/County Comprehensive Plan, recommends the intersection of W 6<sup>th</sup> Street and the K-10 Bypass as a CC400 Commercial Center which may contain up to 400,000 gross square feet of commercial uses. Rezoning requests had been submitted for both the northeast and the southeast corners of this intersection prior to the development of a nodal plan. These requests were tabled pending the completion of the recommendations of the nodal plan which was adopted in 2003. Rezoning to residential, residential-office, and planned commercial development districts were then approved for both corners. The proposed development in the northeast corner is known as the Mercato Development and the proposed development in the southeast corner was known as the Diamondhead and later the Northgate Development.

The Comprehensive Plan recommends that, at a minimum, 95% of the commercial space available (380,000 gross square feet) would be located on 2 corners of the node. A Preliminary Development Plan [PDP-09-08-05] for 195,360 sq ft of commercial uses was approved for the Northgate Development by the Planning Commission on January 25, 2006. Per the provisions in the Comprehensive Plan, 95% or a minimum of 380,000 gross sq ft of commercial space must be provided in two corners of the node, so 184,640 gross sq ft remained available for the Mercato Development and was included on the approved Mercato Preliminary Development Plan [PDP-08-08-06].

The Northgate plat approval expired and the rezoning ordinances were not published; therefore, the zoning remains UR. As a result of this expiration, additional commercial space is now available at this node. This rezoning request proposes to increase the amount of commercial use in the northeast corner by 175,000 sq ft,; from 184,640 gross sq ft to 359,640 gross square feet.

## **REVIEW & DECISION-MAKING CRITERIA**

### **CONFORMANCE WITH THE COMPREHENSIVE PLAN**

Applicant's Response:

*"Horizon 2020 identifies this node as a CC400. The subject tract is bounded by two major arterials streets and a collector street. The request is consistent with Horizon 2020, Chapter 6, goal 3 and with all of the zoning criteria of Policy 3.7 except D. This policy has been superseded by the City Land Development Code Section 20-2119d0(1) that requires a minimum of 95% of the commercial at a CC400 center to be on two (2) OR FEWER corners of the commercial node."*

This area is identified in *Horizon 2020* as a future CC400 Commercial Node and preliminary plans for development as a CC400 have been approved. The Proposed Nodal Land Uses in Figure 8 of the Nodal Plan (Figure 1) shows that commercial (retail) uses are recommended east of K-10 in both north and south corners. The proposal would place most of this retail use into the north corner, with 40,400 gross square feet available for other corners.

The zoning request would increase the amount of commercial-uses permitted in the northeast corner of this node by approximately 175,000 gross sq ft. 40,360 gross sq ft of commercial space would remain available for one or more of the other corners of the

node. [184,600 gross sq ft approved for the Mercato PCD; 175,000 gross sq ft requested with this rezoning request = 359,600 gross sq ft of retail space for the northeastern corner.]

The following information reviews the proposal to increase the amount of commercial (retail) space on the northeastern corner which results in one corner being the predominant commercial corner in the node rather than the two eastern corners as previously approved:

Land use recommendations from *The W 6<sup>th</sup> St/K-10 Nodal Plan*:

Northeast corner:

- "This nodal plan dedicates approximately half of this corner to residential uses with the remaining half dedicated to commercial and office activities."
- "Along the southern half of this corner (along 6<sup>th</sup> Street), this nodal plan has designated a significant portion appropriate for commercial development with the remaining area considered appropriate for office activities." (page 25)
- Southeast Corner
  - "This nodal plan designates the majority of this corner appropriate for residential development and the remaining area appropriate for commercial and office uses.
  - "The commercial and office activities of the southeast corner along West 6<sup>th</sup> Street mirror those of the northeast corner – the majority of such activities are designated appropriate for commercial with the remainder for office uses". (page 25-26)

The nodal plan does not recommend a specific allocation of square footage between the two corners.

*Horizon 2020* Policy 3.8(d) (page 6-36) recommends that at least 95% of the commercial gross square footage be located on two corners of the intersection. The remaining five percent shall be located on one of the remaining two corners; therefore, 95% or 380,000 gross sq ft of commercial space is available for two corners of the node with 20,000 gross sq ft being held for the other corner. This rezoning would permit 359,600 gross sq ft of commercial in the northeastern corner with 40,400 gross sq ft remaining for one or two other corners. The comprehensive plan recommends that the commercial uses be divided up between two corners, but does not specify the proportion for each corner. The regulations in the Development Code are intended to implement the recommendations of the Comprehensive Plan. As pointed out by the applicant, the Development Code [Section 20-211(d)(1)] states that a minimum of 95% of the commercial gross sq ft of a new CC 400 Center shall be located on 2 or fewer corners of the nodal intersection.

The allocation of commercial space being proposed with this rezoning request would place 359,600 gross sq ft of commercial space (89.9% of the total retail space available) in the northeastern corner of the node. The Development Code requires that a minimum of 95% be placed in two or fewer corners and one remaining corner may have 50% or less of the remaining gross sq ft of retail space [Section 20-211(d)(1)]. Therefore, if this rezoning is approved, the northeast corner would have 359,600 gross sq ft. of the possible 400,000 gross sq ft of commercial space available. One of the other corners shall have between 20,400 and 40,400 gross sq ft of commercial space. If this second corner does not utilize the entire 40,400 gross sq ft available, one remaining corner may have up to 50% of the remaining commercial space. For instance, if the 2<sup>nd</sup> corner used 40,400 gross sq ft of

commercial space, there would be no additional space available for the third corner; however, if the 2<sup>nd</sup> corner used 20,400 gross sq ft, an additional 20,000 gross sq ft would be available. A 3<sup>rd</sup> corner could use 50% or 10,100 sq ft of that commercial space. This information should be noted for future rezoning requests in this nodal area.

Location	Commercial possible (gross sq ft)	Commercial proposed (gross sq ft)
NE Corner (Mercato)	Up to 400,000	359,600
Corner 2	Between 20,400 and 40,400	--
Corner 3	50% of remaining available (400,000 less the amount used in Corner 2 divided by 2)	--
Corner 4	No commercial uses	N/A

**Table 1. Breakdown of commercial square footage available per corner**

Page 23 of the *Nodal Plan for the Intersection of W 6<sup>th</sup> Street & Kansas Highway 10 (K-10)* states that, "Any retail commercial development proposed for the intersection area will require an economic impact analysis to demonstrate the need for such a development." The Development Code also requires the submittal of a retail market study.

The applicant has submitted a project specific retail market study as required by Section 20-1107 of the Land Development Code. That market study includes all of the required information, including analysis based on vacancy rates, income trends, population trends, mix of businesses, etc. pursuant to Section 20-1107 (c) of the Land Development Code. The market study includes this analysis for the entire project (361,000 sf), split into two phases. Phase I is for 175,000 sf, identified as a "Home Improvement Center", and Phase II is identified for a 175,000 sf "Discount Department Store", plus 11,000 sf of "Convenience Store" and "Fast Food Restaurant" for a total of 186,000 sf in Phase II.

It should be noted that there is also more general language contained in Chapter 6, Commercial Land Use of *Horizon 2020*, specifically Policy 3.13, regarding requirements for retail market studies. Specifically, Policy 3.13 (b) states that, "The project shall not be approved if the market study indicates the commercial project or any proposed phase cannot be absorbed into the community within three years from the date of its estimated completion, or that it would result in a community-wide retail vacancy rate greater than eight percent."

The Development Code uses a vacancy rate threshold of 8% as one factor in order to determine market health, and the most recent citywide market study completed in Fall of 2007 figured the city-wide vacancy rate at 6.7%. (<http://www.lawrenceplanning.org/documents/2006Retail.pdf>) The market study for this project shows that Phase I, when completed and entirely vacant, will push the city-wide vacancy rate to 8.6%. If Phase I and Phase II are both vacant upon completion, the city-wide vacancy rate will be 10.7%.

While the market study shows that the project, upon completion, will push the city-wide vacancy rate above 8%, this figure alone is not an adequate representation of the impact of this development. This figure is computed by assuming that the project will either be entirely vacant upon completion, or that it will cause the same amount of space to become vacant in other areas of town. Because of the size of the two large users, and the

fact that the two large stores are being built to satisfy specific tenants, the applicant has stated that there is “no possibility” that all of the space will be vacant upon completion.

The applicant has also provided information on the mix of business types and the potential impact on the downtown area. While each of the four proposed uses exist elsewhere in Lawrence, they are expected to have a limited impact on downtown. In addition, the “Home Improvement Use” that the applicant is proposing will not compete with other retail located in that area of the city or downtown because of its nature to locate on a major thoroughfare. The only similar use downtown is a small scale hardware store that is not a direct comparison to the large home improvement store being proposed. The bulk of the square footage, 350,000 sf, will be split between two large stores.

Other demand factors, such as income, employment and population need to be taken into account as well, when looking at the overall impact of this project on the market as a whole. The market study does show that since 2000 population has grown 13%, while retail sales has only increased 1.8%, and income has only increased .3%. On the supply side of the market, retail stock has increased 22.6% since 2000. Therefore, while supply has increased approximately 23%, demand has not kept pace as shown by the limited income, population and retail sales growth.

The market study also provides an analysis of “pull factors” or a measure of local commerce based on a comparison of local spending to the state as a whole. A pull factor above 1.00 indicates that a community attracts retail sales, while a factor below 1.00 indicates that the community is losing retail sales to outside areas. The Kansas Department of Revenue issues pull factor reports for all of Kansas. The most recent, issued in November 2009, states that Lawrence’s pull factor was .99 in 2008. Lawrence’s pull factor was 1.02 in 2007, which as noted in the market study, is a 14.3% decline over the last decade from a height of 1.19 in 1998. In addition, Douglas County’s pull factor has been below 1.00 for the last decade and recently has fallen to .85 in 2008. The declining Lawrence and Douglas County pull factors indicate that the City is losing more and more retail sales to other areas outside of Douglas County. There is potential to recapture this leakage by increasing the demand factors mentioned above, as well as increasing the types of appropriately located retail stock.

The market study also provides a demand analysis based on the amount of square feet of retail space per capita. Currently, in Lawrence there are approximately 85 sf of retail space per capita. Using an average growth rate from 2000-2008 of 1300 people per year, Lawrence could add as much as 110,000 square feet of retail each year in order to keep the ratio of retail square feet to people at 85. In Section 20-1107 (c)(3)(iv) of the Land Development Code, a maximum threshold of 100 square feet per resident is established to help maintain market health. For both phases, assuming completion at the end of 2013 with a conservative average annual growth rate of 500 people, this project would result in approximately 86 square feet of retail space per resident (8,010,460 sf / 93,020 people).

The applicant has previously gained approval for 184,600 sf of retail space on this site, the northeast corner, through a zoning map amendment (Z-3-5-06) in 2006. As a requirement of that approval, the applicant presented a retail market study as a part of the application.

The Development Code, under Section 20-1107 (e), states, “the market impact analysis should be used in conjunction with the appropriate review and decision making criteria in the evaluation of zoning map amendment applications.” The market study satisfies the

submission requirements of this section of the code. In staff's opinion, proposals to add retail space should be carefully scrutinized with respect to the indicators associated with demand not keeping pace with supply and because vacancy rates are arguably reaching unhealthy levels. In light of previous approvals granted to this site and the adjacent site, the fact that this proposal anticipates uses that would not likely create vacancies in the downtown area, and that the applicant has stated that the bulk of the retail space will not be constructed until tenants are secured, this proposal is supported as presently proposed.

**Staff Finding** -- The proposed rezoning request conforms with *Horizon 2020* policies related to Community Commercial Districts (CC400) and land use recommendations in the *Nodal Plan for the Intersection of West 6<sup>th</sup> Street & Kansas Highway 10 (K-10)*.

### **ZONING AND LAND USES OF NEARBY PROPERTY, INCLUDING ANY OVERLAY ZONING**

The subject property is surrounded to the north and east by other portions of the Mercato Development which is zoned UR with rezonings to the RM12D, RS7 and RM24 Residential Districts and to a planned commercial district (PD-Mercato) approved pending the recording of the final plat.

The property to the west lies outside the city limits and is zoned County A (Agricultural) with a small portion of County B-1 (Neighborhood Business). This area contains the K-10 Bypass and the predominate land use is agriculture. W 6<sup>th</sup> St/Hwy 40 is located south of the property and land beyond that is zoned UR, as the approval for a planned commercial development has expired. Residential zoning and plats have been approved for properties further south and east, but the property has yet to be developed.

**Staff Finding** -- The area is zoned primarily County-A (Agricultural) and UR (Urban Reserve). While agriculture is the predominant land use in the area; development is anticipated as development plans have preliminary approval and rezonings are pending. State and federal highways bound the subject property on the west and south.

### **CHARACTER OF THE NEIGHBORHOOD**

Two major thoroughfares, W 6<sup>th</sup> St/Hwy 40 and the K-10 Bypass, intersect in this area. Agricultural uses and undeveloped vacant land are currently the predominate land uses. This area is identified as a suitable site for a Community Commercial Center and rezonings have been approved for a mix of residential, office and commercial uses.

**Staff Finding** -- The area is adjacent to the city limits and is in close proximity to a transportation network consisting of arterials and a state highway.

### **PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY**

*A Nodal Plan for the Intersection of W 6<sup>th</sup> Street and Kansas Highway 10 (K-10)* was prepared following the submittal of rezoning requests for this intersection. The plan indicates that this intersection is anticipated to evolve into one of the prominent entryways into the community. It recommends that development proposals for this intersection be carefully scrutinized to ensure the entryway is protected and enhanced. The plan recommended that no building permits be issued until the W 6<sup>th</sup> Street Improvement Project is substantially complete. This project was completed in 2005. The plan recommends the majority of the commercial uses to be located on the eastern

corners as they are currently within the city limits where infrastructure to accommodate the development is more readily available. Figure 1 illustrates the land use recommendations in the nodal plan.

### **SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS**

Applicant's Response:

*"The development of major arterial roads, surrounding this site and the extension of city water and sewer of this area make the rural/vacant uses no longer suitable."*

The property is currently zoned UR (Urban Reserve) District, which is a placeholder district for recently annexed lands pending submittal and approval of development applications. Permitted uses in the UR District are limited to only those agricultural uses which were in place prior to annexation. As this property is recommended for commercial development in *Horizon 2020*, development plans have been submitted, and city services are available –or can be extended--to serve the proposed development, the UR Zoning District and the agricultural uses it is limited to are no longer suitable for the subject property.

**Staff Finding** -- City services are available to serve the development and development applications have been submitted; therefore, this property is no longer suited to the uses it has been restricted to under the UR (Urban Reserve) Zoning.

### **LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED**

Applicant's Response:

*"It has been vacant since zoning was first adopted by the City."*

**Staff Finding** – The property has never been developed.

### **EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES**

Applicant's response:

*"It is not anticipated that it will have any detrimental affect on the nearby properties."*

The rezoning is in compliance with recommendations in *Horizon 2020* and the *Nodal Plan for the Intersection of W 6<sup>th</sup> Street & Kansas Highway 10 (K-10)*. The removal of restrictions will permit additional commercial space to be provided in the northeast corner of the intersection. The subject property is bounded to the east, south and north by other property within the Mercato Development and by the K-10 Bypass to the west. Development on the site will require site planning and compliance with the Development Code and the Commercial Design Standards.

**Staff Finding** – No negative impacts are anticipated with this development. The property is internal to the Mercato Development and is in a location which has been recommended for a CC400 Commercial Center.

### **THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP**



## **IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION**

### **Applicant's Response:**

*"The public would gain the opportunity to develop commercial property that meets the specific needs of potential employers who would bring jobs to the City of Lawrence and a stronger tax base to the City and County."*

Evaluation of these criteria includes weighing the benefits to the public versus the benefits of the owner of the subject property. Benefits are measured based on the anticipated impacts of the rezoning request on the public health, safety and welfare.

Approval of the rezoning request would permit most of the 400,000 gross sq ft of commercial uses to be located on the northeastern corner of the intersection. As the development being proposed is compliant with the Comprehensive Plan and should have no negative impact on surrounding properties; there would be no benefit to the public by denying the rezoning request.

**Staff Finding** – Denial of the rezoning request would have no positive impact on the public health, safety and welfare while it would restrict the developer's ability to develop commercially.

### **PROFESSIONAL STAFF RECOMMENDATION**

Staff recommends the approval of the rezoning request to the CC400 District. This rezoning request is compliant with the recommendations of *Horizon 2020*.

\* A distinction is being made in this report between retail and non-retail uses. The Development Code states in Section 20-211(1) that the CC District is intended to implement the Comprehensive Plans Community Commercial Center policy. The Comprehensive Plan defines 'Commercial' as retail businesses that sell goods and services on-site for which sales tax is collected. This definition does not include offices or similar uses. (Page 6-4) For this reason developments proposed for this area differentiate between the retail uses which are limited by the area restrictions in the CC 400 District and the non-retail uses which are not limited.

