



City of Lawrence

CITY COMMISSION

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December 15, 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.

RECOGNITION/PROCLAMATION/PRESENTATION: None

CONSENT AGENDA

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to approve City Commission meeting minutes from November 3, 2009. Motion carried unanimously.

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to receive minutes from the Community Commission on Homelessness meeting of November 10, 2009. Motion carried unanimously.

As part of the consent agenda, **it was moved by Amyx, seconded by Dever** to approve all claims to 232 vendors in the amount of \$1,872,035.72. Motion carried unanimously.

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to approve the Drinking Establishment Licenses for The Bottleneck, 737 New Hampshire, Its Brothers Bar & Grill, 1105 Massachusetts, and the retail liquor license for Diane's Liquor, 1806 Massachusetts. Motion carried unanimously.

As part of the consent agenda **it was moved by Amyx, seconded by Dever**, to concur with the Mayors recommendation and appoint Stephen Horton to the Convention & Visitors Bureau to a term which will expire July 1, 2011; appoint Darrin White to the Lawrence



Cultural Arts Commission to a term which will expire January, 31, 2012 and to reappoint Wes Dahlberg to the Community Commission on Homelessness to a term that would expire 12/31/10. Motion carried unanimously.

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to authorize the City Manager to execute Change Order No. 2 for the Fairfield Farms East Addition Sanitary Sewer Lift Station for \$57,978 and execute Westar’s Agreement for Service. This improvement is paid 100% from a special assessment benefit district. Motion carried unanimously. **(1)**

The City Commission reviewed bids for new siding and insulation for the Parks and Recreation Department. The bids were:

BIDDER	AMOUNT
Larry A. Acton Construction	\$ 19,028.75
GSR Construction	19,400.00
BA Green	28,780.00
Weigel Construction	32,000.00
Benchmark Construction	35,000.00

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to award bid for new siding and insulation at the Landscape Division shop for the Parks and Recreation Department to GSR Construction for \$19,400.00. Motion carried unanimously. **(2)**

Ordinance No. 8479, for the annexation of approximately one acre of property addressed as 1764 East 1300 Road, was read a second time. As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to adopt the ordinance. Aye: Amyx, Cromwell, Chestnut, Dever, and Johnson. Nay: None. Motion carried unanimously. **(3)**

Ordinance No. 8480, authorizing the issuance of General Obligation Bonds in the amount of \$2.9 million for the purchase and improvement of the West Lawrence Labs building, was read a second time. As part of the consent agenda, **it was moved by Amyx, seconded**

by Dever, to adopt the ordinance. Aye: Amyx, Cromwell, Chestnut, Dever, and Johnson.
Nay: None. Motion carried unanimously. (4)

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to adopt Resolution No. 6871, authorizing the sale of general obligation improvement bonds. Motion carried unanimously. (5)

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to adopt Resolution No. 6869, declaring the boundaries of the City of Lawrence, Douglas County, Kansas. Motion carried unanimously. (6)

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to adopt Resolution No. 6870, declaring the eligibility of the City of Lawrence to submit applications to the Kansas Department of Transportation for use of transportation enhancement funds for the Santa Fe Station Preservation Project and the KU/Oread/Downtown Lighted Pedestrian Pathway Project. Motion carried unanimously. (7)

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to adopt Resolution No. 6872, authorizing the City to establish an account with JPMorgan Chase to facilitate the administration of the contract with CIGNA Healthcare. Motion carried unanimously. (8)

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to approve request to permit temporary occupancy for an office use while a rezoning application is processed to permit office uses where they are currently prohibited at the Home Improvement Center Planned Commercial Development located at the northeast corner of 31st and Iowa Streets. Motion carried unanimously. (9)

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to authorize the transfer of outdoor sculpture funds to the reserve fund for the Lawrence Cultural Arts Commission. Motion carried unanimously. (10)

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to authorize the Mayor to sign a Release of Mortgage for James and Teresa Thompson, 317 Lawrence Avenue. Motion carried unanimously. (11)

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, authorize the Mayor to sign a Subordination Agreement for Tenants to Homeowners, 2612 Moundview. Motion carried unanimously. (12)

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to approve the renewal of the City of Lawrence's excess workers compensation coverage with MECC for the insurance period of January 1, 2010 to December 31, 2010 for an estimated payment of \$38,900. Motion carried unanimously. (13)

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to approve request from Johnson County Transit for funding for the K-10 Connector Service for \$10,000. Motion carried unanimously. (14)

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to authorize the City Manager to sign an Approval of Property Release from MV Transportation for Bus No. 724 which caught on fire in June, 2009. Motion carried unanimously. (15)

As part of the consent agenda, **it was moved by Amyx, seconded by Dever**, to approve the amended bylaws of the Convention and Visitors Bureau Advisory Board. Motion carried unanimously. (16)

Hubbard Collingsworth, Lawrence, pulled from the consent agenda, for separate discussion, the request to extend terms that were scheduled to expire for current members to the Community Commission on Homelessness. He said he agreed with extending the terms, but was concerned that it might change the ordinance that was currently adopted.

Mayor Chestnut said those extended terms would not change the ordinance, but he wanted to revisit the ordinance for community input.

Moved by Amyx, seconded by Cromwell, to approve the request to extend the terms of Katherine Dinsdale, Loring Henderson, and Shirley Martin-Smith to the Community Commission on Homelessness (CCH) to June 30, 2010. The terms were scheduled to end December 30, 2009, however the CCH has been working to develop the Housing Vision and having these members continue through the end of June would allow the CCH to continue its work and maintain continuity during the next few months. Motion carried unanimously. (17)

CITY MANAGER'S REPORT:

David Corliss, City Manager, reported that through City Commission discussion and public forums, the top three future Parks and Recreation needs in the community were identified and made available on the City's Website; The East Lawrence Turnpike exit would be closed in March for eight months and advertising would be made available in the exit terminal windows directing visitors downtown and to the Visitor's Center; the first draft of the planning process for the Northeast Sector Plan would be released January 2010 and information on the plan could be found at http://www.lawrenceks.org/pds/draft_plans; Parks & Recreation completed street tree pruning in East Lawrence; and, Public Works held a public hearing at 6:00 p.m., December 21, 2009, at the Lawrence Municipal Airport regarding the airport sewer study. (18)

REGULAR AGENDA

Receive request from Inverness Park, LP, to reconsider the denial of the rezoning request (Z-7-11-09) to rezone approximately 10.97 acres, located on the SE corner of Inverness and Clinton Parkway, 4300 W. 24th Street, from RSO (Single-Dwelling Residential Office) to RM15 (Multi-Dwelling Residential). This item was originally heard by the City Commission on 10/06/09.

Scott McCullough, Planning and Development Services Director, said this request included consideration of voting to rescind the October 6th motion which denied the zoning request. Procedurally, any of the City Commissioners could move to rescind the prior motion and the rezoning application could be reopened with a majority vote of the City Commission. If the rezoning request was reopened, staff recommended the City Commission move and vote to

return this item to the Planning Commission for additional consideration of the issues. Staff understood a meeting with the neighbors had occurred and staff had notified neighbors of this evening meeting to provide input on the consideration of rescinding the City Commission's previous motion. The applicant's attorney desired to make comments and share information with the City Commission. Staff recommended the City Commission take public comment before considering moving and voting on this item.

Vice Mayor Amyx said if a decision was made not to have this item reconsidered, that decision would raise the issue of the time it took to file another application for Planning Commission consideration and ultimately, consideration by City Commission.

McCullough said the code required a 12 month wait unless there was a substantial change made to the application, if the former decision stood.

Vice Mayor Amyx said if development could occur under RSO zoning district, on this particular site.

McCullough said correct.

Cecil Kingsley, BG Consultants, said the public meeting was held with the intention of understanding whether or not there was a potential for consensus among the residents in the area and those interested in the development of the property. He said the meeting was over two hours in length and those present were knowledgeable about the site and the action that had been taken, after an hour of conversation, they tried to develop an understanding of what the potential for consensus on this site would be with the existing site plan.

As a result of that discussion, the laundry and office building would be moved from the corner of Inverness and 24th and a landscape and no build area in that corner would be created. In addition, they agreed a color rendering of that corner would be necessary, in order for people to understand what it would look like. Obviously, that work had not taken place and the process for engineering and architecture would be that if sending it back to the Planning Commission with instructions, then the work would be completed. He said there would be a

procedure where the City Commission would conduct a process for public comment and after the City's process BG Consultants would have another meeting, prior to the submittals. A landscape plan would be included and a list of materials on the elevation so the public could see the construction elements of those buildings. The intention was to have luxury casitas with vaulted ceilings and a number of upgrades to the construction process.

Kingsley said there had also been questions regarding limiting the marketing banners on the corner and limiting the number of occupants per unit, and he believed they could limit the number of adult occupants per unit, but it spoke more to the covenant side rather than engineering. He said they wanted to commit to one story units, with one bedroom and other areas on the site plan.

Mark Anderson, Barber Emerson, representing Inverness Park L.P., said he was out of state on business and could not attend the neighborhood meeting, but wished he could have asked for this matter to be deferred. The matter was voted upon and the zoning application was denied. He said they were asking the City Commission for a motion to rescind the denial of the zoning, so they could work with City Planning Staff and the Planning Commission incorporating the neighbors concerns and conditions to address and ultimately, come back to City Commission with another recommendation from the Planning Staff. This zoning application had an 8-1 recommendation for approval from the Planning Commission.

Anderson said there were six conditions of concern that came out of the meetings which were:

1. The applicant provided a landscape plan for the entire development, prepared by a licensed landscape architect;
2. The office/laundry building shown on the corner of 24th Place & Inverness be relocated across the street to the east;

3. The applicant's engineers provide a rendering or concept drawing illustrating that corner, showing the office/laundry building was removed and how it would be replaced by a landscape area;
4. The applicant would refrain from placing advertising banners at that corner;
5. The building elevations, prepared by BG Consultants, would label all exterior building materials; and,
6. The applicant agreed to limit the number of adult occupants in the development to 2 adults per unit. However, under federal HUD regulations it violated federal law to limit the number of family members under the age of 18.

In addition to the above six conditions, the applicant was proposing four more conditions. Those conditions were that:

1. Each building within the development shall be limited to one story above grade.
2. Each building unit shall be limited to one bedroom maximum.
3. The development shall be limited to 161 units maximum.
4. The City Commission place a condition that would require the applicant to record a declaration of covenants and restrictions on the entire development and that the zoning would not be allowed to become final, until a filed, stamped, and recorded declaration of covenants and restrictions were presented, to the City Commission, that prohibited the construction of any permanent structure on the corner of 24th Place & Inverness, would restrict the use of the property to the maximum 161 one story, single bedroom residential units, and the declaration identified the City of Lawrence as a third party beneficiary, such that from a legal perspective this declaration could not be modified, amended or terminated without the City's approval.

He said these conditions were an assurance to the City Commission and neighborhood that this particular site plan was going to be built, if the rezoning was approved.

Commissioner Johnson said prior to the zoning to file a declaration of covenants and restrictions, if that could reference a site plan.

Anderson said yes, those conditions could be drafted any way the City Commission desired. He said a site plan could also be attached as an exhibit, at the Planning Commission level, and it could be stated that substantial compliance was needed with that exhibit.

Mayor Chestnut said what the current zoning for RSO density was.

McCullough said a maximum of 15 units per acres.

Mayor Chestnut said what the translation was of the rendering of 161 units.

Anderson said it was 14.6 units.

Mayor Chestnut said at 35 feet, with RSO that was probably 2 or 3 stories.

McCullough said it was 35 feet height maximum in RSO and 45 feet height in RM15 and depended on the architecture.

Mayor Chestnut asked if three stories could be achieved with 35 feet.

McCullough said yes, but more common to go higher in a multi-dwelling type structure.

Mayor Chestnut said that he concluded that more density could be packed in that area with the current zoning.

McCullough said he did not know if more density could be packed in that area, because it depended on what was being defined as “density”. He said it was somewhat a variable. The project, as presented, was considered low density in terms of population and was more typical of a multi-residential project which would have multiple net terms.

Commissioner Dever said if McCullough could talk about the number of units that were allowed in RS15 zoning.

McCullough said that was how they arrived at the density cap. He said 15 units per acre would be the same in both districts, it was an exercise of design and the requirements of the RSO that required each unit be on an “individual lot” versus a “design as presented” where the lot stayed as one large lot and then multi dwelling structures on that lot with shared driveways and parking areas, it was a design exercise versus a dwelling unit count.

Commissioner Dever said theoretically, a single building 45 feet high with what ever would be appropriate on that individual parcel or unit, but there would be no direct correlation between the number of people that could live in that space.

McCullough said not in terms of how density was calculated.

Mayor Chestnut called for public comment.

Jamie Hulse, Lawrence, said she wanted to thank City staff for the increased perimeters in notification for reconsideration of this rezoning request which was not required. She thanked Cecil Kingsley and City Commissioner Johnson for reaching out to the neighborhood and offering their assistance to help remedy this situation.

The biggest concern was the legality of tying this site plan to the rezoning because it could be a much larger project. She said a neighbor who was an attorney involved in land development projects in Kansas City questioned if the rezoning was deed restricted and was legal.

Lori Sinclair, resident in the proposed rezoning area, said landscaping was important and when an area was developed, the first thing eliminated was the landscaping. She said there was no landscaping next to the southeast corner of Inverness and Clinton Parkway.

Kevin Wickliffe, resident in the proposed rezoning area, said even if the deed restriction was going to go through, he asked what the mechanism were to enforce and if the project defaulted, he asked if the City would sue the developer. He said everyone needed to understand the extent the City would be committed to being that 3rd party beneficiary.

Mayor Chestnut said the City's legal staff felt comfortable with the structure that was designed for this dedication. He said the City would be a 3rd party beneficiary and the City was within its rights. The City had some compliance issues on landscaping and other issues. He said landscaping, quite often, took time depending on the weather which was always a challenge. He said the City Commission was fairly adamant about following up and driving by project to make sure there was no erosion.

The issue with landscaping was part of the site plan, down to what type of trees; where those trees would be placed; and height. If there were any modifications it would go through an administrative process and consult with the neighbors.

McCullough said yes and the site plan was one of staff's mechanisms for enforcement. There were a series of triggers to force compliance, one being the occupancy permits including landscaping. There were times, due to weather that staff would allow occupancy and then follow up with landscaping when the weather allowed landscaping to be installed. This was an area where a lot of effort had been put forth for the median in the road to the treatment of the property to the south with the apartment complex. It was a good thing to look at the issues and bolster the landscaping along that area for the neighbors and for the benefit for the corridor itself.

Commissioner Johnson said he appreciated the opportunity to go the neighborhood meeting and was impressed with the neighbors coming to the table to discuss issues.

He said the biggest concern and his reason for reconsideration of the rezoning was the uncertainty of rezoning to RM15. He asked what was to keep something else from being built than what was represented. He said the neighborhood demonstrated a good process to receive a win out of this issue.

He said with what the developer was proposing the traffic and number of people would be less than what could ultimately be built in that area. He said it also gave the neighborhood the ability to pick quality materials for quality landscaping.

Vice Mayor Amyx asked if the declaration of covenants ran with the property or the ownership of the property.

David Corliss, City Manager, said the covenants ran with the property.

Vice Mayor Amyx asked if the applicant was the builder and developer of the property.

Corliss said yes.

Vice Mayor Amyx asked if there were any situations in the past where that was a problem because the City Commission was depending on the developer's word.

Corliss said it was important to condition the zoning on the appropriate site restrictions. He said there was an additional level of assurance, particularly because one of the covenants was a no-build requirement with some of that property and that was appropriate for the deed restriction which provided an additional vehicle and had to be enforced through the court in a lawsuit. Staff typically enforced zoning regulations generally through local procedures as far as citation and adjudication in municipal court.

Vice Mayor Amyx said if the Commission were to consider the change in the zoning as requested along with safeguards in place, this was the only time it could be done along with the declaration of covenants and restrictions on this property. He said he was fine with this up to Anderson's last comment regarding the applicant being mindful there was no point in returning this matter to the Planning Commission. He said there was no genuine support for this project by the City Commission and the density that would be placed on this property. He said he understood the density was the same for the two different zonings the question was what it would look like under the RSO zoning and the RM15 zoning.

Commissioner Dever said when this rezoning was first discussed the Commission had concerns over making this change. He said the applicant did not own the property and the City Commission was going to make those changes without any consideration as to who might end up having this property and what might be constructed in that area. He said with making this change there were things that could occur that would make the area unsightly and a more difficult site for neighbors to co-exist with. He said the City Commission needed to discuss ownership in tying some of those issues to actual ownership. He said that would lead the City Commission to the next step where they could encumber this property with those covenants and have control over what the area would look like. To just rescind a rezoning without identifying who would the owner would ultimately be, he was uncomfortable. The initial discussion indicated they would put something in writing that the rezoning would be contingent on ownership of the property.

Overall, this was a rare opportunity for the neighbors of an undeveloped piece of property to shape the future look and feel of that property. Any time moving into a property near an undeveloped piece of land, a person would run the risk of being something that was not wanted. In this case, the neighbors stepped forward and made some concessions to shape the way the area looked. If that was something to protect the neighborhood, then that would be a positive for agreeing to rescind the rezoning.

Commissioner Cromwell said in October, the City Commission repeatedly discussed how the site plan looked great and could not possibly tie the zoning to the site plan. He said it was asked clearly several times the zoning was tied to the property and not to a particular site plan.

McCullough said the application being considered at that time did not include the protections the development code had the opportunity to use such as the Planned Development Overlay for example which gave staff the vehicle to tie site plans to zoning districts. He said he did not recall the exact discussion, but as presented staff was talking about the fact that the site plan was administrative and was a normal site plan process. This was a straight rezoning request with no planned development overlay, no conditional zoning tied to it. It came to the City Commission with a recommendation from staff and the Planning Commission with that opened zoning, but there were ways to tie site plans to zoning, but there was no healthy discussion at that time, because the application did not include any of those items.

Mayor Chestnut said the City Commission considered situations on industrial zoning where the use table was taken and taken certain things out to make it conditional. In other words, the zoning was approved, but those things were restricted. He said certainly the City Commission was not setting any precedent by the fairly conditional rezoning, but the City had rezonings where conditions were placed on the rezonings under negotiations between the applicant and a number of times the stakeholder and neighbors where concerns were expressed, but he did not know if that process took place before the City Commission heard this matter in October. He said with a fairly

sizable majority on the Planning Commission approving the rezoning with staff recommendation, notice was brought up and the neighbors caught up in October.

Commissioner Cromwell said the other question was reassurance from staff that those restrictions were doable. He said there was a good level of confidence that with restrictions there was some amount of control and the City would be receiving what they were buying.

Corliss said staff articulation was they believed they could condition the zoning with reasonable condition based on a site plan. There was not a lot of history of being either a participants or enforcers of restrictive covenants. To some extent the declarations in the restrictive covenants were belt and suspenders. He said there was the zoning in place with the site plan restrictions and staff would enforce conditions of zoning on the site plan. In addition, the proposal was to have restrictive covenant on the property that ran with the property to limit some of those uses and staff could advise the City Commission on its appropriateness. Staff had a comfort level in conditioning site plans, but conditions were not brought up with every zoning that came before the City Commission, particularly if it was not proposed by the Planning Commission, the applicant, or staff. The legal restriction was the reasonableness of the restrictions. He said Anderson pointed out the issue of familial occupancy and those types of things.

Anderson said the City Commission questioned the ownership in prior discussion, but wanted the Commission to understand that if the City Commission was so inclined, the applicant would be willing to revise the contract of purchase of the property to expressly provide the contract that the requested rezoning could not become final unless or until the applicant removed all contingencies to close under the contract.

Commissioner Dever said that was his reason for bringing this issue up, because no information was given about the owner.

Commissioner Cromwell said the option was to send this issue back to planning and continue the discussions that were occurring between the neighbors and developer. It sounded like a serious good faith effort was occurring between the neighbors and the developer and that

engagement should be encouraged to achieve a consensus. He said the City Commission needed to analyze the merits of the final project and zoning.

Mayor Chestnut said he agreed with Commissioner Johnson in that the challenge was always trying to develop a consensus on what direction to take which took effort and organization. The outcome, as far as referring this rezoning back, was a good step in seeing if the public process worked.

Vice Mayor Amyx said there was an opportunity to have a restricted residential development on this particular corner. He said his concerns were with the discussions that took place in October. Again, this was the only time the City Commission could place restrictions on the appearance of that development because there was zoning on that property.

Moved by Dever, seconded by Johnson, to reconsider the October 6, 2009 denial of rezoning request Z-7-11-09 and refer the request back to the Planning Commission for consideration of conditional zoning, based on restrictions contained in the December 15, 2009, letter from Mark Anderson, Barber Emerson, representing Inverness Park L.P.; and that the contract for purchase of the property be revised to provide that the rezoning not be final unless and until the applicant has removed all contingencies to close under the contract; and, that the site plan, as finalized, be attached to and made a condition of the rezoning. Aye: Chestnut, Cromwell, Dever, and Johnson. Nay: Amyx. Motion carried. (19)

WITHDRAWN AT APPLICANT'S REQUEST: Consider request from Midland Care Connection, Inc., for City financial participation in required fire sprinkler system at 319 Perry Street. (20)

Receive Staff report concerning possible amendments to City laws governing panhandling and solicitation.

Scott Miller, Staff Attorney, said in October, the issue of panhandling and solicitation downtown was considered and the City Commission directed that additional research be done. Ordinance No. 8362 was presented to the City Commission at an earlier date and Ordinance

No. 8477, proposed an adjunct to the City's current aggressive panhandling ordinance by enacting a licensing scheme that applied to all charitable solicitations that were actively made.

In addition, was an item that summarized the current ordinances that were in effect that applied to street behavior, via criminal ordinance, and the other item was fairly substantial comparison of other cities laws, in regulating solicitation and panhandling. He said he did not know exactly what the City Commission wanted addressed out of the information he provided, but he would be glad to provide additional information.

Vice Mayor Amyx said with the current panhandling regulations, he asked if there were any changes through the Supreme Court for changes to that ordinance.

Miller said aggressive panhandling was the number one method that cities, nationwide, used to address panhandling. There were no United States Supreme Court cases that addressed the idea of aggressive panhandling or panhandling by itself, but there were a lot of cases dealing with solicitation and charitable solicitations. Most Federal Courts that had addressed the aggressive panhandling had upheld the restrictions. Although, there had been some cities that had repealed portions of their aggressive panhandling ordinances after being sued or under threat of lawsuit, but there were no substantial changes, nor cases reported since 2005 regarding aggressive panhandling ordinance the City adopted.

Vice Mayor Amyx asked if the City had any information on how the City's current ordinance was working by the Lawrence Police Department.

Miller said no, there was no statistical information. The amount of aggressive panhandling citations the City had in the past, he brought forward to the City Commission in a couple of different reports over the last couple of years. He said he did not know in the last two months, whether there had been any decreases or increases in the amount of aggressive panhandling enforcement, given the relatively low number of panhandling enforcement activities in the past for aggressive panhandling, there would be some question as to whether those

numbers would be statistically significant at this time. Generally, people felt better about panhandling issues as it became colder because there were less people on the street.

Vice Mayor Amyx said the presents of the Lawrence Police Officers, in the downtown area, seemed to be working well, but some of the signs displayed by a panhandler were close to being intimidating and asked if there was something that could be done about those types of signs.

Miller said if it was credible threatening behavior, that particular sign probably ran afoul of criminal threats statutes that already existed in the State of Kansas. He said criminal threat was a felony in Kansas and if there was a belief there was an eminent threat of violence there would probably be aggravated assault charges that could be filed.

Vice Mayor Amyx said the City of Lawrence had just about everything covered and was a question of enforcement. He said if they wrote a new ordinance, he asked how the ordinance would be enforced. He said there was an aggressive panhandling ordinance, but there could be a point where more money was needed for the Police Department to help with this situation downtown.

Another concern was panhandling at night and would the average citizen think they were being held up.

Miller said about 50% of the cities he reviewed regulated night time solicitations with their aggressive panhandling ordinances. He said the only case that he knew involving a night time ban was out of Indianapolis, Indiana, where a Federal Circuit Court upheld an aggressive panhandling ordinance that included a night time ban.

Vice Mayor Amyx said the other side of this issue was if the City disallowed solicitation from 7:00 pm to 7:00 am, that would be telling the downtown merchants that it was okay to solicit during those times.

Commissioner Cromwell asked how many discussions were held with the Police Department regarding law enforcement difficulties, successes, failures in this area and what could be done differently.

Miller said he talked to police officers everyday and there was always a problem with enforcement of some ordinances like this because the citizens who were being affected were not summoning the police. Anecdotally, staff received several reports of aggressive panhandling on a monthly basis, but the statistics in term of people who were calling the police and enforcement actions being taken, at least over the history of the ordinance which was 5 years, it just did not happen. People did not want to get involved, call the police and stand around to be witness. He said without witnesses to the behavior, the police could not do very much because unless the officer saw the behavior and identify witness there was no case to take to trial for aggressive panhandling because the 6th amendment gave anyone the right to confront the witnesses against them. He said it was a complicated issue when it came to enforcement of this type of ordinance. A lot of people, instead of wanting to stay, summon help, and conduct some type of enforcement activity, those people wanted to get away from the problem. He said that was where the frustration from the police came in, regarding aggressive panhandling. He said even before the downtown foot patrol took place, there was a patrol district that encompasses downtown. There was usually a police officer driving downtown or close to the area of downtown such as if a citizen wanted to summon a police officer, the police officer would be available. A lot of other cities addressed this issue by public education or a public relations campaign where the public was informed about the issues that were involved with panhandling and instruct the public how to contact the police if a problem arose. Some cities had merchant associations that had volunteers that ran around the downtown area and would summon police if something was going on. He said there was not one approach that would solve the problems associated with aggressive behavior on the street.

Commissioner Cromwell said on the enforcement end, he asked if there were suggestions made in dealing this problem and what change could be made to an ordinance or procedures.

Miller said there were no specific suggestions. As far as the proposed licensing ordinance, a couple of officers liked that idea because it allowed identification of violators more quickly because people who were licensed were on file. Other than that, there had not been a tremendous amount of comment.

Mayor Chestnut said the police tended not to comment on policy and enforced the law the City enacted because that was dangerous when the police start recommending their ideas.

He said regarding the memorandum addressing other cities, he asked if Miller was incorporating some of the elements of other cities. The majority of the problems were night time. He said both of those ordinances under consideration would ban any form of passive solicitation.

Miller said correct

Mayor Chestnut called for public comment.

Jim Davidson said there was a danger in licensing. A number of cities that had licensed freedom of expression and those who had access to that list had targeted people on views they did not like. He said that was an extreme danger the City should not be engaged in.

If the City Commission was concerned about the homeless panhandling on the streets, the City might want to rethink whether wanting to spend 2.9 million on a real estate speculation for another technology firm and consider whether or not to return that money to the tax payers, provide basic services, or donate it to a homeless shelter.

Bill Rainey, President, ACLU, and first amendment attorney in Kansas City and was involved in two of the United States Supreme Court Cases involving charitable solicitations in the last 20 years.

He said Miller's memorandums were very thorough, but there was room for disagreement and he wanted to point out a couple of fundamental flaws with both of those ordinances that could give Lawrence risk of litigation and violate the Constitution.

He said regarding, Ordinance No. 8362, which was the amendment to the aggressive panhandling ban on night time and ban on panhandling in the downtown area. He said he thought it was a content based restriction on speech. The memorandum from Miller stated it was a time, place, and manner restriction. He said content base restrictions were presumptively invalid. Even if it was a time, place and manner restriction it still had to be narrowly tailored for legitimate government purposes and would give two examples how it was not narrowly tailored.

First of all, it was under inclusive because one of the goals of the legislation was aesthetics and he assumed that was how downtown looked and there were plenty of other people out there that contributed to downtown aesthetics that this ban did not affect therefore, it was under conclusive, which was a constitutional problem.

It was also overbroad because Miller sited prevention of intimidation as one of the reasons. He said Vice Mayor Amyx raised an excellent point that the aggressive panhandling ordinance on the books already prevented intimidation and made the ordinance overbroad. He said the City already had a statute that regulated intimidation without a prophylactic ban that punished the activity once it happened. In the free speech area, prophylactic bans were frowned upon. He said when it came to a prior restraint of speech with the licensing of speech, government had two choices: 1) either issue the license; or, 2) go to court; to prove the speech was unprotected and Ordinance No. 8477 did not do that. It had an appeal procedure, but did not say the burden was on the City to go to court to prove the speech was unprotected. It put the burden on the homeless person, most likely, who was to get notice of the denial of license and a judge would find it would be a big problem with delivery of that notice such that Ordinance No. 8477 amounted to a de facto ban on speech and would be an unconstitutional prior restraint. Again, these were very dangerous statutes that were being considered and Miller did

great research, but he disagreed with Miller about the constitutionality. He said Vice Mayor Amyx and Miller raised a good point that there were relatively low instances of this aggressive panhandling ordinance being enforced. If there were relatively low instances, it could be that the problem was not as great as might be thought of.

Bonnie Cherry said a few weeks ago a group of people came together to discuss this issue. One thing they all agreed on was not to just speak on opposition of the ban, but for affirmation of their rights, especially their rights to the public space which essentially what Massachusetts Street was which was a public square where they engaged each other in debate and petition, ring bells for the salvation army, or sell girl scout cookies, where they went to ask for help and compassion from their neighbors.

She said for those who could not afford campaign ads, Massachusetts Street was their soap box. They all had a right to be on Massachusetts Street whether they were homeless, whether it was a life style choice, or if they were sitting on the sidewalk drinking an \$80 bottle of wine. When the City tells them they needed a license to open up their mouths, it almost felt as if the Commission was asking them to pay an admission to share the public space with those people who were paying to sit outside, drinking \$80 bottle of wine. She said not only did she want to express their right to the public space, but address their responsibility, to address this issue of poverty, rather than make it illegal to be poor in public.

She said as a group, they came up with some proposed alternatives to banning panhandling or requiring people to be licensed to ask for help. She said a lot of people discussed enforcing the current ban and one idea was to form a citizen foot patrol, where this group would disseminate information among the community and talk to the people that were asking for help and let them know what resources Lawrence had available, the current ordinances, and keep an eye out on a situation to make sure everyone was being nice to each other.

Also, in light of the current economic situation and the budget cuts, especially to Bert Nash, it was important to provide resources and educate the law enforcement on how to deal with people with mental health issues.

Jay Sildgen said he lived in Lawrence for 13 years and dealt with a lot of homeless people, among those homeless were panhandlers. In all his time in Lawrence, he had one experience with an individual that the concerns that were outlined in the proposed ordinance, a lot of those concerns were already covered by existing legal statutes whether someone physically had contact with a person was assault and if someone tried to prevent another person from leaving an area was kidnapping.

He said disseminating information for free seemed to be a common tactic in order to create an environment which city councils liked an environment that was totally free of any thing that might cause a small degree of dissatisfaction with customers. He said this idea of an ordinance being necessary to stop aggressive panhandling was already addressed in the City Code.

Dan Hughes, business owner in downtown Lawrence, said he did not want to infringe on first amendment rights to speech, but was trying to find a balance between those rights and the rights of property owners and merchants to conduct business in an unfettered manner downtown.

He said since the current aggressive panhandling ordinance was adopted the problem had gotten worse, not better, downtown. The statement that there were not many instances of aggressive panhandling, were merely a reflection of once someone was put into that situation that person was not calling the police, voting with their feet, and were not coming back to the downtown area.

The City, property owners, and merchants had invested a lot in this community's main square or town hall and if enforcement did not come up or some other mechanism was not at least entertained, the he saw it being overrun downtown. The recent cold whether and the

patrols downtown had done a great job of lessening the number of people, but come summer again, it would become a free for all and people were not going to call the police.

He said if banning panhandling from 7:00 pm to 7:00 am, it would be telling people that it was okay to panhandle. Those hours were the hours that he was open for business and his customers had to deal with panhandlers and pay for parking whereas restaurants would get free parking and no panhandling. He said he made a distinction between panhandling and homelessness. There were a lot of concerned and caring individuals that owned business in the downtown area, but if their customer were ran off, the business owners would not have the means to donate to United Way, Bert Nash, or anything else.

Peter Zacharias, property and business owner in the downtown area said they had been dealing with this issue for a long time. The reality was that as downtown merchants, they had to compete with other shopping areas that did not have the begging problem. He said what they had downtown was not necessarily homeless, but a semi-permanent cadre of professional beggars and most drive to the downtown area. He said they business owners dealt with this issue on a day to day basis and lost customers constantly to other shopping areas because they did not have that problem and something needed to be done to maintain the downtown business owners rights. They provided jobs, employment and services for the community and this was impaired continuously, the passive as well as the aggressive panhandler.

He said the City had good regulations on the books and other towns had done a good job too. He said they looked at Statesville, North Carolina that bans all begging for private benefit which would basically allow girl scouts or civic organization to solicit downtown, but some soliciting privately with a sign or aggressively would not be permitted.

The problem with calling the police, the people that were begging were in the downtown area year after year and it was not the disenfranchised unemployed people that were coming to the downtown area, but people that were milking the downtown. The people that work and live downtown were familiar with those people. If singling out those people out with the police for

aggressive panhandling, that person became a target for that person later on. There had been several instances of heckling and revenge and people did not want to come forward to complain.

If maintaining the existing ordinance, then plain clothed policemen were needed right away and it was the only way to properly maintain the ordinances that had been adopted. The people panhandling with inappropriate signs and behavior, those panhandlers did not attempt panhandling when a police officer was present. He asked the City Commission to give the downtown business owners some relief.

Sharla True said she was not present to preach, but was referring to the scriptures because she shared the same opinion and a supreme example of generosity was god sending Jesus, his son, and hopefully she would be getting the same respect and time element as the first speaker and the attorney. She read from the scriptures.

She said if the Commission disallowed the asking of money day and night, she feared an increase in robberies and mugging after dark. She said why not spend the money held for more enforcement of laws to keep the Salvation Army open 24-7. Also, rather than banning sitting on the sidewalk, she asked to put in more benches.

Amy Curtis, Lawrence resident, said with the new Ordinance No. 8477, Section 6-1603, The Requirement of License, she said she believed the Mayor asked the attorney to clarify that neither ordinance would limit or prohibit the passive panhandling including signs and other things that did not involve an active solicitation. The way the law read, it appeared that was not the case. That section read:

“It shall be unlawful for any person to solicit a donation without possessing a currently effective license or temporary license issued to such person pursuant to this Article provided either the solicitor or the person being solicited is in a public place.”

She said she interpreted that as, if in a public place asking for solicitation, regardless of how it was being done, a license was needed, based on that statute.

Miller said in looking at the definition of solicitation, it was a specific technical term, it excluded passive panhandling.

Mayor Chestnut said that Curtis was correct about that language, but the ordinance defined what it was and specifically excluded passive panhandling.

Curtis said she wanted to address the comment by the previous business owner, Peter Zacharias. She said she was not a business owner, but a property owner and wanted to address his issue of the recurrent panhandlers who were consistently coming back to solicit people downtown. She said she did not deny this was happening, but before Zacharias chose to balance or restrict her rights as a citizen, in the public space, she asked that he have some sort of evidence that business was being lost because of this specific behavior. Certainly, being solicited at times was a nuisance, but it was not criminal. She did not engage in panhandling, but she felt she had the right to engage in panhandling, if she was ever in that person's situation and had to resort to panhandling, embarrassing as it might be, but not only did she have the right to ask for help, she had the right to refuse help from someone else. She said she did not need protection from this behavior and could refuse solicitation whenever she decided chose to.

Michael Tanner said he was the spokesman for Coalition of Street Musicians. He said it was a free Country and gave a hypothetical situation. He said a lot of problems in the downtown area were coming from non-local people and asked the City Commission to keep that in mind.

On behalf of the street musicians, he said they could only be successful as the town they lived in.

He said there were a few people that had an agenda against homeless people, things were getting violent on Massachusetts, and Lawrence should not tolerate any type of disorderly conduct.

Larry Kelly, Lawrence resident, said these were harsh economic times and wanted to caution everyone not to blame a certain class of people for this problem.

Jane Pennington, Director of Downtown Lawrence, said they had noticed the increased foot patrols and made a big difference. She said they also appreciated City staff for looking a licensure as a possible solution, but without a cap on the number of licenses for a full year, she did not know if it would affect anyone, but the City Clerk's Office.

If the Supreme Court had upheld some restrictions of time and place, she did not understand why Lawrence could not talk about some very specific areas downtown where all solicitation, both active and passive, was prohibited while leaving other very specific areas of downtown where they could have their free speech.

There were ordinances on the books, but if thinking creatively about those ordinances, some of the issues could be addressed, for instance, criminal damage to property and harming plants. She said it could be added that in order to protect public plants some prohibition against sitting on planters. She said during the basketball celebrations, with the open containers, they could ease the enforcement of that during parades and special events.

There were ordinance against interference with public property and asked if there were ways to use that ordinance to help keep the overrun area of downtown, clear.

In their research, they found possible solutions as plain clothes policemen and defining very specifically that panhandling included "solicitation for private benefit," could help eliminate the problems with the girl scouts and Salvation Army. She said she hoped the City Commission would continue to work with downtown to try to find some solution that did not trample first amendment rights, but balances the rights of business owner's downtown.

Michael Tanner said he wanted to remind everyone that the downtown area could not be zoned and the sidewalks were public property.

Hank Booth, Lawrence, said he would like to know that he could leave his 13 and 14 year old grand daughters at one end of Massachusetts Street and know they could walk to the other end of Massachusetts Street and not be accosted.

Hilda Enoch, Lawrence, said she remembered when this community was a lot more tolerant of people who were homeless and had nothing. She agreed with Booth one hundred percent because nobody wanted their kids accosted and Lawrence had a law in the books which was the aggressive panhandling ordinance. To put barriers in the way of very poor people that did not know the ropes and expecting those poor people to jump through a number of hoops, in order to curve or limit their opportunities just to live in this community, was criminalizing poor people.

Hubbard Collinworth said he would rather see monies spent on licensing through the City Clerk's Office, be spent on social services.

Commissioner Cromwell asked if the City's current panhandling ordinance address fraudulent panhandling.

Miller said no. He said currently, fraudulent solicitations were not addressed in the aggressive panhandling ban, but was included in the licensure. Some cities would include fraudulent solicitation as a separate law.

Enoch asked how someone would fraudulently panhandle.

Miller said an example would be someone holding up a sign saying they were homeless and needed medicine, when they were not homeless and did not need medicine.

Mayor Chestnut said it was unfair to characterize people who had diversity of opinions in this matter as being uncaring. He said he consistently received that feedback from emails. There were a number of stakeholders involved in this discussion and many of those stakeholders he knew on both sides of this issue who had a deep care for this community and wanted the best for not only business, but for the citizens and that had been proven on both sides of the issue by being in Lawrence for decades and it was very unfortunate for people to be accused otherwise.

He said it seemed ironic, because the City licensed for peddling, sidewalk dining, and anything in the public right-of-way except for this situation. He said the City controlled every

other aspect of the public right-of-way except for anything that was considered to be aggressive panhandling.

He said regarding the comment about public space and an \$80 bottle of wine, he said a person could not legally drink an \$80 bottle of wine in the public right-of-way because it was not allowed and was a violation.

He said people under 18 and over 65 and 70 were typically targeted. He said he was ambulatory, 48 years of age, walked fast in the public right-of-way, and was not a profile which bothered him and was his personal experience.

He said there was no way to qualify what type of impact on the businesses in the community or the downtown merchants. There was a comment about people from out of town coming to Lawrence to cause trouble. The fact was they could not discriminate between people that come from out of town or people in town that was in the public right-of-way and that right should never be restricted.

He said downtown was one of the best jewels in this community and he personally believed they were at a point of compromising that significantly over time. Once that energy was gone, it could never be recaptured. Those considerations needed to be important and he took them seriously because what was at risk. He said he would like other Commissioner comments about distance restrictions and those types of restrictions had been removed because of constitutional challenges. He said staff was trying to construct something that they felt comfortable, legal, and would withstand constitutional challenges, but tried to provide more ability to try to mitigate issues. He said they had a responsibility to the less fortunate in this community, but they had a responsibility to all the people in this community. There were property rights at risk and safety issues and those all had to come into play.

He said he felt comfortable with what had been presented and again, they were trying to make downtown continue to flourish and he was concerned if they did not do anything more, downtown would be compromised.

Commissioner Johnson said he agree with the Mayor and tended to support what was being proposed. He said in listening to the comments, it accomplished what a lot of people needed from a panhandling standpoint. It allowed someone to passively panhandle.

He said the City Commission could adopt any ordinance, but unless they had the enforcement, he did not think it would mean much. Whatever was done, the increased foot patrol had helped, but it was something that needed to be further addressed.

Commissioner Cromwell said he worried about the two ordinances presented because those ordinances would not help solve the problem. It was important to acknowledge differences in this community.

He said there were currently laws being violated and the City Commission needed to find a solution and the ordinances did not necessarily address a solution. He said continuing public dialogue was needed. He said it really came down to foot patrols, plain clothes police officers, citizen patrols, education and there was room for consensus. He said staff needed to engage enforcement for advice.

Repeatedly, panhandling was equated with poverty and homelessness. He said it was not one particular group that was panhandling

He said there were a lot of good organizations in Lawrence to help people. These groups do a lot of work with very little money. He said they could be spending money on some type of licensing structure that should be spent on those good organizations in Lawrence. He encouraged people to put there money where it was most effective and need to look toward those who were less fortunate.

He said they could work together to not violate first amendment rights or hurt people that needed help. He said more discussion was needed, increased funding and public education.

Commissioner Dever said there was no doubt there was an increase in the amount of panhandling downtown and was probably related to the economic conditions, the City had not effectively enforced or had a police presence downtown to discourage the more active

panhandling. He said educational practices were needed before putting into place additional regulation.

The presents of the Police reduced the amount of aggressive panhandling downtown and the fact that it coincided with the change in temperatures, gave them further reason to put off any concept of additional regulation because it had not been ran through a cycle. He said they had not tried the plain clothes police officer concept which was a good idea. There was no doubt there was a problem and the City Commission needed to address the problem. Downtown was a critical balance of street musicians, lively activities, good merchants, and great restaurants. He said he was more in favor of trying to use the current rules and try to limit the aggressive nature of the panhandling. He said it was a personal choice whether a person wanted to be engaged.

He said he thought a time ban made sense and/or at risk population and Miller did a great job of reading other cities regulations. He said there were cities that had regulations on their book, but it was not being enforced because there was a good chance that would not be enforceable, should it be challenged. He said he did not want to spend the time, energy and money to craft regulations that were not defensible or unconstitutional. He said it boiled down to what the City should spend resources on; how to educate people on what was acceptable and what was not; how should they fix the problem that existed; and how should they educate the people that might be breaking the law and the citizens that were helping encourage the activity. In general, he did not see anything in the two ordinances that he would support, but they needed the additional enforcement cycle through a 12 month period with a focus on enforcement of the current laws. He said he liked the loitering and vagrancy rules that were in place that went out the door because it seemed to be unconstitutional and targeted a certain group.

Vice Mayor Amyx said this issue had been going on for a number of years and they needed time to look at the impact of the additional foot patrol; establishing a downtown task

force; continuing to work with Downtown Lawrence Inc.; continuing to look at current ordinances; educating the public; and any help from downtown merchants, City staff, and the public. He said with the warmer weather, if the City Commission saw increased activities, decisions needed to be made.

Mayor Chestnut said there was definitely a possible cost of action by the ACLU and other parties, but there was a cost of an action. This issue had been before the City Commission, twice, in the last 12 or 15 months and the situation were not getting any better. He said the City Commission collectively needed to decide how to address those issues. Again, there was a cost to action and risks, but less tangible, there was a cost to inaction and he believed the community was suffering that right now. He said he hoped to bring together the folks that might have some input. He said he agreed with the foot patrols and heard positive comments about plain clothed police officer, but who would pay for it. He said there might be other people, especially those folks who were advocating for not having any more restrictions, accept for the aggressive panhandling to come up with some ideas that were spoken about and talk about how to address the issues.

Commissioner Dever said inaction was an overly restrictive use because they had been acting by talking about this issue, by public dialogue and police presents downtown. He said that was a step and it was important because it could be very costly in many ways. He said time and people were a good idea, but Vice Mayor Amyx said if banning panhandling at night then they would be opening the door in the evening.

Mayor Chestnut said they had to talk more about forming a taskforce. He said he did not mean the Commission had not taken any action, but this was an on-going discussion.

He said the City Commission had to come up some type of cohesive direction for staff on how the Commission wanted those issues to work. He said he did not want to pursue more diligence on several ordinances that would not get support, on the other hand, if there were alternatives, he would like to try bring those to the forefront as soon as possible and move this

issue forward. He said if more and more people started to make personal choices that became a problem. He said he felt a sense of immediacy about those ordinances and asked how to cohesively bring this issue to a front and try to get a consensus on an action plan. He said he would like to become more deliberate. He said the foot patrol was one thing, but did they want to pursue more of directing law enforcement and when getting into budget discussions, more funds toward that issue.

Commissioner Dever said Miller had done a great job of condensing what the City Commission asked of Miller. He said they could take that information and put a task force together and have the task force go through those points and come up with a ready sheet should the City Commission agree the enforcement was not solving the problem and pick the top two or three ideas that were possible solutions to the problem. He said those reviews could take place during the “wait and see” period. He said everything would be ready to go and action could be taken.

Vice Mayor Amyx asked if one of the City Commission should come up with an action plan based on the comments received.

Mayor Chestnut said no. He said he just did not want to let this item just sit. He said they talked about a downtown task force.

David Corliss, City Manager, said the City Commission directed staff to take a look at establishing a downtown task force and understood it was the top priority. He said the Mayor would be making recommendations on appointments and seeing the general outlines of the structure in January for that item. He said the Commission could direct the City Manager and the Police Chief to work on a staffing plan for foot patrols.

He said Miller pointed out to him there were some communities that utilized public education campaigns such as some of the concerns about panhandling, donations, and those types of things as well as education the citizens about the laws. Downtown Lawrence had been educating their membership about the laws that pertained to conduct in the downtown area so

those merchants would be available. There were some things the task force could work on as well.

He said staff did not put the ordinance on for first reading because staff was not sure of the direction the City Commission wanted to proceed.

Mayor Chestnut said they might be prepared to have a discussion about that task force in January and consider that task force first because it was important and include merchants, citizens at large and bring that topic to that task force as their first action item to come back to the City Commission with recommendations. While there might be some disagreement on the constitutional items, at least they provided a very good background of what other communities were doing and possible suggestions. He said the Commission would have broader input from the community at-large. The other part was to work with the Police Chief or more ideas. He said the Vice Mayor volunteered to be on that task force.

The Commission received staff report and directed staff to work toward establishment of a downtown task force and refer the item to the taskforce; work on staffing plan for foot patrols; work on a public education campaign relating to panhandling laws. (21)

The Commission recessed at 9:10 pm for 10 minutes.

The Commission reconvened at 9:20 p.m.

Consider authorizing the Mayor to execute a contract with the LYNX contract 09-C05 for three (3) hybrid buses for an estimated cost of \$1,800,000. the funding for the purchase of the vehicles will come from the 2009 ARRA Formula allocations and there is no local match required for ARRA funds.

Robert Nugent, Public Transit Administrator, said the City had a 12 vehicle fixed route fleet. The life expectancy of those buses was 10 years or 350,000 miles. The buses were all over 350,000 and staff was seeing problems with maintenance of major components. He said staff put together a replacement for all of the vehicles. He said staff was requesting the purchase of three hybrid buses.

Commissioner Dever said the hybrid buses were more expensive than a traditional diesel, but the return on the investment might be greater down the road. Although the City Commission might want to consider they were spending more for those buses up front, but were hopeful to receive a lower overall operating costs through the use of less fuel. He said the group that came up with the recommendation, thought through all the options and this was moving forward with those ideas and considerations of the task force.

Vice Mayor Amyx asked about the additional expertise if purchasing those hybrid buses.

Nugent said a little more expertise was needed, but included with the purchase of the buses were the tools and training for the maintenance personnel and staff should be up to speed on day one once receiving the buses. He said staff had also talked with Johnson County and apparently they had training on the books that staff might want to take advantage of.

Vice Mayor Amyx said discussion took place about needing the same type of vehicles because of parts and asked if that would hurt the City.

Nugent said one advantage was all their vehicles would be housed in the same place with K.U. and they were operating the same type of fleet. He said staff's plan was looking at using smaller vehicles for the rest of the City's fleet.

Mayor Chestnut said in their replacement plan, they had those buses scheduled to be replaced and at that point, the recommendation was for the more conventional type of bus and the City was just substituting. He said overtime, staff might want to consider an overall conversion to hybrids.

Nugent said the only problem they would have with converting an entire fleet with some type of alternate system, was that a lot of the smaller vehicles did not have that type of hybrid.

Mayor Chestnut said there was a diminishing return on the hybrid when moving down the continuum of the size of the bus and the capacity.

Nugent said exactly, plus there were not a lot of manufactures of those types of vehicles with alternative systems. He said there was now one manufacturer that was manufacturing a bus under 30 feet, but it was not very well tested yet.

Nugent said regarding the transit facility that KU had been pursuing, staff came to the City Commission in August 2009 and asked for general direction on where to go with transit facility with the concept of KU distributing an RFP for a joint facility. KU distributed the RFP in August and the RFP was returned in October. KU officials had been involved in reviewing all of those proposals as well as City staff to a certain extent, but did not have a vote in the process. He said KU had determined that the proposal from ADVANCO and the property was a turn key property located in Timberridge Industrial Park which was off of North Iowa. KU had placed an item on the Board of Regents which was going to be on the Board of Rents on December 17th and it would be regarding a contingent purchase of the property and a contract with ADVANCO.

He said what staff expected to happen was at the beginning of the year staff would come back to the City Commission with a possible lease between KU and the City to share in the property and go forward.

David Corliss, City Manager, said it was important to remember the City's relationship on this item. The City owned the buses that the City operated, the City contracted with MV Transportation to do two things, which was to drive the buses and maintain the buses. As part of their maintaining of the buses, MV had to have a maintenance facility, but the City did not have a contract with their existing landlord for the maintenance facility, but MV had a contract which expired at the end of 2010. KU's contract with that same property owner expired at the end of 2010. He said the City wanted to make sure City buses were well maintained and safe. He said staff also wanted some ability to work with the site regarding alternative fueling which had been an interest and concern in trying to move in that direction. If the City was involved in a new site, it would be because there was advantage to the City in reducing the operating cost the City had to pay MV Transportation for maintaining the City's buses. As part of that contract

there were line items that were devoted for the City's facility. If the facility cost less because someone owned it, then the City expected to see a reduction on operating costs.

The City was in discussions with KU about how the City could buy into a new facility. One of the suggestions staff came up with, but was not approved, was to have additional funds beyond the need to replace the City's existing fleet and might be able to use some of the federal funds to buy buses that would be on either combined routes or on a KU route. He said the City would still own the buses for Federal Transit Administration purposes, but KU would probably paint the KU buses Jayhawk Blue and operate the buses as part of the KU Transit System, but because the City would be essentially reducing some their operating cost, KU would give the City an operating break on the ability to have the maintenance facility. Staff had not seen KU's Purchasing Department's recommendation as far as their analysis.

If the City Commission decided to participate with KU at this facility, the City Commission would want to see the analysis as to why a certain site had been selected. Staff had only seen earlier proposals. Staff had conversation earlier with KU officials and staff was briefed where KU was in terms of the process, but that was where the bus issue was to date.

Commissioner Diver said that was one of the questions he had regarding the return on the investment in the reduction of the overall cost with MV Transportation. He said he would like to make sure it was crystal clear as possible as to how the City's relationship would pan out with this facility and what restrictions would be on that equipment. He said staff had done a tremendous job in the past of keeping a clear divide between using our buses for the proper purposes, but that was something they would get into a grey area and he wanted to make sure the City was as transparent as possible.

Mayor Chestnut said he had significant disappointment in the way this item was flowing because the consent agenda for the Board of Regents read:

"The University of Kansas and the City of Lawrence, both provide transit services, but are steadily working toward coordinating more of their operations to increase efficiency and

provide better service. In order to provide this coordinator effort, a joint maintenance and storage facility is needed.”

The way it was being presented to the Board of Regents was the City had a consensus about moving forward on this joint facility and the city had not been presented with any of the options and data and this was a consent agenda item with the Board of Regents, 117 pages, with three pages and no analysis. He said he was disappointed in the way the process worked because he felt it was being presented in a way to say KU and the City had an agreement but the City had not been presented with any of the information. He said the City was not in control of this process, he was just providing that feedback which could be provided to the University.

Corliss said he shared that same view to the KU Officials they spoke to earlier. He said the KU Officials understood the City was not on board at this point and KU needed to show the City why they needed to cooperate with the University, for this facility.

Commissioner Dever asked how to cooperate. He said staff knew it was proceeding before KU and needed Board of Regents approval, but staff was not involved in crafting their agenda item. There was a lot of work to be done and first and foremost was to present to the City Commission, the merits of the proposal and why it was there and how it was going to benefit KU transit, but more importantly the City's transit system.

Vice Mayor Amyx said it seem that it took forever to get the RFP out and gather all this other information and all of a sudden, it was on the Board of Regents agenda.

Corliss said he agreed with the comment, but now the City needed to stay on task in order to have this facility up and running by the end of 2010 which was the deadline. He said while the process was challenging, staff could show why it was meritorious in the long run because the City would be able to reduce their operating cost at no cost to the City.

Mayor Chestnut said he thought it was meritorious and was the right thing to do, but they liked to do things in process and this seemed to be somewhat inverted.

Corliss said he did not disagree. One of the key points was a decision was made that both KU and the City did not want any federal money into this facility because that goofed up some of the requirements for charter. He said the City was talking about buying buses that would be used in that regard. He said trying to marry up with the KU Procurement Process with how the City did things had not been successful, but staff would make it successful because it was in eventual long-term interest of the City. KU's purchasing division handled their procurement and KU's transit people were not necessarily involved in that final negotiation process which was different than how the City would handle the situation.

Diane Stoddard, Assistant City Manager, said there was a lot of information the City Commission needed in order to consider that item and that was what staff was working with the University in gathering.

Corliss said KU Officials had indicated they would like to go ahead and proceed with the Board of Regents action so they could stay on task and they understood before the City would approve it, the City Commission needed to see why that site was selected, why it was in the best interest of the community, and why any financial arrangement with KU was in the best interest of the City and in the transit system.

Commissioner Dever said he received an email from Scott Zaremba to the Board of Regents.

Corliss said KU was commenting on that email and indicated some of Zaremba's statements were not accurate.

Commissioner Cromwell asked if, at some point, KU was bringing the City into those discussions.

Corliss said yes. Staff had been in discussions but was not in the deciding process at KU. KU needed to come to the City for the Cooperative Agreement for the facility. He said staff's preference would have been that KU would have come to the City Commission first as

opposed to the Board of Regents, but KU made the decision for timing purposes that this was necessary.

Commissioner Cromwell said if the City was kicking in half the money and KU deciding on everything and telling the City there was consensus, was not a trend to engender in the future.

Corliss said in addition in contingencies with the City, there was also the finalization of the contracts with MV Transportation because the City had to get its operating cost down with MV Transportation because they did not need to pay for a facility anymore.

Mayor Chestnut called for public comment.

Jim Davidson said he wanted to express a concern about the length of the buses. He said he had been at intersection several times where a long bus was waiting for the on-coming traffic to clear because it could not make the corner because it was too long and this was a difficulty for people who were in traffic and liked to encourage not getting used buses that were long because there were a lot of other costs that were not being considered.

Hubbard Collinsworth said he agreed with the length of buses turning on some of the residential streets and wondered if the turn radius had been looked at for the routes. He asked if the buses were used.

Corliss said new buses.

Nugent said for the most part those buses would not be operating in residential areas, but in some high volume corridors where they anticipated using at least one of the buses on day one in an open corridor. There was a 50 foot external turning radius and a 28 foot internal turning radius which most of the major intersection could handle that turn. KU was operating 40 foot buses in just about everyplace in town and there were some tight locations in some of the routes, but for the most part 40 foot buses operated well in those corridors.

Commissioner Cromwell said this was a great opportunity to experiment with federal money instead of City money as far as new hybrid buses and went to the City's commitment to both transportation and environmental issues in the City of Lawrence.

Moved by Dever, seconded by Cromwell, to authorize the Mayor to execute a contract with LYNX contract 09-C05 for three (3) hybrid buses for an estimated cost of \$1,800,000.

Motion carried unanimously.

(22)

Consider authorizing the City Manager and the City's attorney to submit a revised offer and appropriate related legal documents to purchase the former Farmland Nitrogen Facility. Any proposed acquisition will be placed on a future City Commission agenda for public comment and final Commission consideration

David Corliss, City Manager, said staff had been in negotiations for the acquisition of the former Farmland Nitrogen Facility for several months with the key issue being the amount of remediation funds that would be available to the City if the City was successful in the acquisition. Staff would like City Commission authority to submit a revised offer, but did not want to publicly disclose that amount or its contingencies and terms. He said if the City did move toward acquisition, this item would be placed on a future regular agenda where staff would not only disclose the amount, but the plans for the property and how staff was tending to the remediation responsibilities that both KDHE and EPA were placing on the property and there would be ample time for the City Commission and public to have the proposed funds in place for the cleanup along with the plans. Staff thought it was appropriate to give the City Manager the authority to submit another offer.

Vice Mayor Amyx said in the City Commission's action, regarding the appropriate related legal document, to use the word "acquire" rather than "purchase."

Corliss said it was an acquisition and no plan there would be any City cash contribution in the acquisition. The other document staff was continuing to work on in revising the offer, staff was revising the Asset Purchase Agreement that set out in excruciating detail all of the things that had to be transferred if this "acquisition" would come to pass.

Mayor Chestnut called for public comment.

Hubbard Collinsworth said he was glad to see action finally being taken on this issue.

Moved by Amyx, seconded by Cromwell to authorize the City Manager and the City's attorney to submit a revised offer and appropriate related legal documents to acquire the former Farmland Nitrogen Facility. Motion carried unanimously. (23)

Consider authorizing submission of applications to the State of Kansas for Facility Recovery Bonds on behalf of Bowersock Mill & Power Company and Berry Plastics

Roger Zalneraitis, Economic Development Coordinator/Planner, said several months ago Lawrence and Douglas County were declared recovery zones which were the facility bonds issued to Douglas County. About the same time, the State was collecting facility bonds from Counties and Cities that might not be able to use those bonds. In October the State sent out notification they collected facility bonds as well as some economic development bonds for about 31 million dollars. The State indicated that if there were projects that were eligible for those bonds around the State, they would be taking bids for those bonds which were due on December 15th and there were two local companies that were interested in bidding for the bonds from the State, one being Berry Plastics and the other was Bowersock Mills.

The reason this item was before the City Commission was because, like an IRB, they had to be issued by the cities. The State wanted to know the city approved and was willing to issue the bonds. He said like an IRB, it did not involve the City paying for any of the principle or interest and the companies were responsible for those payments. It would not affect the City's bond issuance and the City would just be a conduit to get those bond issued.

Commissioner Dever asked about the downside.

Zalneraitis said he was not sure and guessed if those were IRB's, the loss of the sales tax on the construction material. He said all it did was to reduce the interest rate for a private borrower to a tax exemption. Berry Plastic would save between 2.5 to 3 million dollars in interest cost.

Mayor Chestnut said in contrast to General Obligation Bonds that were the full faith and credit of the City and affected the City's bond rating and this had nothing to do with the City's bond rating.

Vice Mayor Amyx asked if the City ever have an IRB and not follow through and how was the City affected.

Corliss said the City had some distressed IRB issuances were acquired which was the Holidome. He said he did not think it had an adverse impact on the City. He said someone might argue if it went into default, it would jeopardize the name of the City. She said for all of the City's obligation, the City made payments.

Mayor Chestnut called for public comment.

Beth Johnson, Lawrence Chamber of Commerce, said that both of the applications had their full support and supported the City Commission approval on moving forward.

Vice Mayor Amyx said those applications would create 11 new jobs and 350 constructions jobs.

Johnson said yes.

Moved by Amyx, seconded by Cromwell to authorize the City Manager to sign and submit applications to the State of Kansas for Facility Recovery Bonds on behalf of Bowersock Mill & Power Company and Berry Plastics. Motion carried unanimously. **(24)**

FUTURE AGENDA ITEMS:

- 12/29/09 · City Commission Meeting at 9:00 a.m.; bill paying and consent agenda items.
- 02/09/10 · Anticipated date to receive Planning Commission recommendation on Lawrence Community Shelter SUP to relocate the shelter to 23rd Street.
- 02/16/10 · Anticipated date to receive Planning Commission recommendation on Lawrence Community Shelter SUP extension at 944 Kentucky.
- TBD · Receive 200 Lawrence Municipal Airport Sanitary Sewer Study Draft Report.
- Receive staff memo regarding possible annexation of Westar Energy

Center and adjacent properties.

- ICS Training. DGCO Emergency Management Memo
- Recycling report with comments from SAB
- 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.
- Follow-up to 10/27/09 Commission discussion of Downtown issues, including regulations for panhandling, downtown planning and redevelopment, marketing and incentives for retail establishments and related issues.
- Conduct public hearing and consider approving Site Plan SP-6-26-09, and the sidewalk dining and hospitality license, for the Granada, located 1020 Massachusetts Street. Submitted by Paul Werner Architects for Granada LLC., property owner of record.

ACTIONS: Hold a public hearing. Find that the proposed sidewalk dining and hospitality use is in the public's interest, if appropriate.

- Approve Site Plan SP-6-26-09, for a sidewalk dining and hospitality area for Mike Logan, Granada LLC, d/b/a The Granada, 1020 Massachusetts Street (submitted by Paul Werner for Granada LLC, property owner of record), if appropriate.
- Approve sidewalk dining and hospitality license for The Granada, 1020 Massachusetts Street, and authorize the City Manager to enter into a right-of-way agreement with the applicant, if appropriate.
- Adopt on first reading, Ordinance No. 8459, allowing possession and consumption of alcoholic beverages on certain city property pursuant to The Granada Sidewalk Dining and Hospitality License, if appropriate.

COMMISSION ITEMS:

Moved by Dever, seconded by Cromwell, to adjourn at 10:08 p.m. Motion carried unanimously.

APPROVED:

Robert Chestnut, Mayor

ATTEST:

Jonathan Douglass, City Clerk

CITY COMMISSION MEETING OF DECEMBER 8, 2009

1. Change Order No. 2 - Fairfield Farms E Add SS Lift Station for \$57,978 & Westar's Agreement.
2. Bid - Parks & Rec. Siding & Insulation-GSR Const. for \$19,400
3. Ordinance 8479 – 2nd Read, Annex, 1 acre, 1764 E. 1300 Rd.
4. Ordinance 8480 – 2nd Read - GOB-\$2.9 million, W Lawrence Labs Bldg.
5. Resolution 6871, sale of GOB for W Lawrence Labs Bldg.
6. Resolution 6869 – Boundaries, City of Lawrence.
7. Resolution 6870 – KDOT, Santa Fe Station & KU/Oread/Downtown Lighted Pedestrian Pathway Projects.
8. Resolution 6872 - JP Morgan Chase – contract with GIGNA Healthcare
9. Temporary occupancy for office use – NE corner, 31st & Iowa
10. Outdoor Sculpture funds - LCA Commission
11. Mortgage Release - Thompson, 317 Lawrence Ave.
12. Subordination Agreement - Tenants to Homeowners, 2612 Moundview
13. Excess workers compensation-MECC Ins. 01/01/10 to 12/31/10-\$38,900
14. Johnson County Transit - funding for the K-10 Connector Svc -\$10,000
15. Property Release - MV Transportation, Bus No. 724.
16. Bylaws - CVB Advisory Board.
17. Extend terms of Dinsdale, Henderson, Martin-Smith on the Community Commission on Homelessness to June 30, 2010
18. City Managers Report
19. Rezone request (Z-7-11-09) denial, 10.97 acres, SE corner of Inverness & Clinton Pkwy, 4300 W. 24th, RSO to RM15.
20. Midland Care Connection - City financial participation in fire sprinkler system at 319 Perry.
21. Amendments - Panhandling & solicitation discussion.
22. Contract – LYNX, Contract 09-C05, 3 hybrid buses, \$1,800,000, 2009 ARRA Formula allocations.
23. Revised offer to purchase – Farmland Nitrogen Facility.
24. Recovery Facility Bonds- Bowersock Mill & Power & Berry Plastics.