



City of Lawrence

DAVID L. CORLISS
CITY MANAGER

City Offices
PO Box 708 66044-0708
www.lawrenceks.org

6 East 6th St
785-832-3000
FAX 785-832-3405

CITY COMMISSION

MAYOR
ROBERT CHESTNUT

COMMISSIONERS
MIKE AMYX
ARON CROMWELL
LANCE JOHNSON
MICHAEL DEVER

January 5, 2010

The Board of Commissioners of the City of Lawrence met in regular session at 5:30 p.m., in the City Commission Chambers in City Hall with Mayor Chestnut presiding and members Amyx, Cromwell, Dever, and Johnson present.

Moved by Amyx, seconded by Dever, to recess into executive session for approximately 45 minutes for the purpose of discussing possible acquisition and consultation with attorneys for the City deemed privileged under the attorney-client relationship. The justification for the executive session is to keep possible terms and conditions of property acquisition and discussions with attorneys for the City confidential at this time. Motion carried unanimously.

The Commission returned to regular session at 6:15 p.m. at which time the Commission took a short break until 6:35 p.m.

The regular meeting resumed in the City Commission Room at 6:35 p.m.

RECOGNITION/PROCLAMATION/PRESENTATION:

The City Commission recognized Ellie Ott, born and raised in Lawrence, Kansas, for being named one of 32 U.S. winners of the Rhodes Scholarship to the University of Oxford in England where she plans to study migration and evidence-based social intervention, refugee and migration studies, and social research methods.

Hubbard Collinsworth removed from consent agenda, the Health Care Access termination of Lease with the City, for discussion.

CONSENT AGENDA



As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to approve claims to 141 vendors in the amount of \$2,428,306.51 and payroll from December 20, 2009 to January 2, 2010, in the amount of \$1,887,516.63. Motion carried unanimously.

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to approve the Drinking Establishment Licenses for The Bourgeois Pig, 6 East 9th St.; Astro's, 601 Kasold, Ste: C-107; University Inn Econolodge, 2222 West 6th; Louise's West, 1307 West 7th; and the Retail Liquor License for Parkway Wine & Spirits, 3514 Clinton Parkway Ste: B. Motion carried unanimously.

As part of the consent agenda **it was moved by Dever, seconded by Cromwell**, to concur with the Mayors recommendation and appoint Mike Porter to the Building Code Board of Appeals, to an extended term which will expire July 30, 2010; and reappoint Amy Kelly, Susan Craig, Kathy Porsh and Christie Dobson to the Lawrence Cultural Arts Commission, to additional terms which will expire January 31, 2013. Motion carried unanimously.

The City Commission reviewed the bids for hourly rates for tree trimming service for the Parks and Recreation department. The bids were:

VENDOR	TOTAL
Custom Tree Care, night emergency	
Non bucket truck, 2 people	\$120.00/hr.
Bucket truck, 2 people	145.00/hr.
Response time	1.5 hrs
Custom Tree Care, day work	
Non bucket truck, 2 people	120.00/hr.
Bucket truck, 2 people	145.00/hr.
Response time	24 hrs
Highplains Tree Service, Inc, night emergency	
Non bucket truck, 2 people	\$125.00/hr.
Bucket truck, 2 people	175.00/hr.
Response time	1 hrs
Highplains Tree Service, Inc, day work	
Non bucket truck, 2 people	165.00/hr.
Bucket truck, 2 people	185.00/hr.
Response time	2 hrs
Davey, night emergency	
Non bucket truck, 2 people	\$140.00/hr.

Bucket truck, 2 people	140.00/hr.
Response time	2 hrs
Davey Tree Care, day work	
Non bucket truck, 2 people	140.00/hr.
Bucket truck, 2 people	140.00/hr.
Response time	2 hrs
Browns Tree Care, night emergency	
Non bucket truck, 2 people	\$145.00/hr.
Bucket truck, 2 people	160.00/hr.
Response time	1 hrs
Browns Tree Care, day work	
Non bucket truck, 2 people	\$122.00/hr.
Bucket truck, 2 people	145.00/hr.
Response time	24 hrs
Arbor Masters Tree & Landscape, night emergency	
Non bucket truck, 2 people	\$150.00/hr.
Bucket truck, 2 people	180.00/hr.
Response time	12 hrs
Arbor Masters Tree & Landscape, day work	
Non bucket truck, 2 people	\$135.00/hr.
Bucket truck, 2 people	150.00/hr.
Response time	48 hrs
Omni Pinnacle, LLC, night emergency	
Non bucket truck, 2 people	\$200.00/hr.
Bucket truck, 2 people	240.00/hr.
Response time	24 hrs
Omni Pinnacle, LLC, day work	
Non bucket truck, 2 people	\$140.00/hr.
Bucket truck, 2 people	180.00/hr.
Response time	48 hrs
Poor Boy Tree Service, night emergency	
Non bucket truck, 2 people	\$200.00/hr.
Bucket truck, 2 people	300.00/hr.
Response time	3 hrs
Poor Boy Tree Service, day work	
Non bucket truck, 2 people	\$150.00/hr.
Bucket truck, 2 people	200.00/hr.
Response time	3 hrs

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to award the bid to Custom Tree Care in an amount not to exceed \$44,000 and contract would be renewed for two additional years providing prices remained the same. Motion carried unanimously. **(1)**

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to approve expenditures for 2010 software maintenance to Innoprise in the amount of \$89,180.00. Motion carried unanimously. (2)

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to receive status report from the Peak Oil Task Force and grant extension of work to present final report by August 31, 2010. Motion carried unanimously. (3)

Hubbard Collingsworth removed from consent agenda, the Health Care Access termination of Lease with the City, for discussion. He asked if there was a timeline for a public forum.

David Corliss, City Manager, said the City Commission was receiving communication from Health Care Access that they were going to cease leasing a City owned building at 1920 Moodie Road, sometime in March. Staff would work with Health Care Access to ensure smooth transition. He said staff would provide a report back to the City Commission in a couple of weeks. Margene Swarts, Assistant Director of Development Services, was investigating whether or not there were any restrictions on the use because federal funds were used work on the building and acquire the building. He said staff would talk about whether or not there were City uses that would be appropriate for that building and staff would then recommend opening that issue up for a short public solicitation period. He said staff already received one letter from Big Brothers – Big Sisters, and an additional inquiry regarding this property. It would be appropriate in staff's mind, once the restrictions were known, the possible uses for that building. If the City Commission desired to open the building up for any type of public proposals, the City Commission had the ultimate decision. The City Commission could sell the building, City use, think about the use, or allow it for some type of not-for-profit use like that which benefitted Health Care Access.

Mayor Chestnut there were timing issues with Health Care Access, but there would be a public process and there would be more requests than received so far about the use of that building or the options. He said the use of the building would be looked at in the spring more closely.

Moved by Amyx, seconded by Johnson, to receive letter from Health Care Access, Inc. advising the City of termination of lease of City-owned building at 1920 Moodie Road; Motion carried unanimously. (4)

CITY MANAGER'S REPORT:

During the City Manager's Report, David Corliss said that Douglas County had released the 2009 Certified Tax Levy, which showed the assessed valuation and resulting mill levies for all taxing districts in the County; HUD responded to a CDBG complaint filed against the City and considered the matter closed; City ordinances and resolutions were available online and expected to enhance customer service; Traffic Engineer, David Woosley participated in a study of HAWK Beacon effectiveness; A database of frequently asked questions was available on the city web site at <http://lawrenceks.org/faq>; Parks and Recreation winter activities included Teamwork Awards, Master Street Tree Planting Project and the Gymnastics Winter Cup; the City hosted a public meeting to discuss City-KU Land Use Agreement; The City's Comprehensive Annual Financial Report (CAFR) for the 2008 fiscal year was awarded the Certificate of Achievement for Excellence in Financial Reporting by the Government Finance Officers Association (GFOA); To date, the City of Lawrence received \$9,706,945 in stimulus funding from the American Recovery and Reinvestment Act.

Mayor Chestnut said on the levy sheet, the City's assess valuation decreased a little less than 1% and asked where that was in comparison to what was planned for the 2010 budget.

Corliss said staff would provide information to the City Commission. He said the assessed valuation went down just a little more than what was planned, but it was not significant.

Mayor Chestnut asked if the total mill levy was combined, which was a slight increase, but it did not come from the City.

Corliss said the School District Mill Levy went up and their capital outlay mill levy went up from previous years. The County and City mill levies were stable, but the School District went up. (5)

REGULAR AGENDA

Consider executing a lease between City of Lawrence and Douglas County with the Lawrence Douglas-County Bioscience Authority for West Lawrence Labs, located at 4950 Research Parkway.

Diane Stoddard, Assistant City Manager, said the City had undertaken a variety of steps in order to work toward the acquisition of the West Lawrence Lab Building, located at 4950 Research Parkway. Prior to this consideration, the City Commission approved a City/County cooperation agreement with Douglas County and the purchase of that building and also executed a real estate contract for that facility and the closing was anticipated to occur on January 26th.

The next step in the process was a lease with the Douglas County Bioscience Authority and the request to purchase the building came from this entity and their wish was to utilize the building as a graduation incubator facility for economic development activities that complemented the incubator that currently was being constructed on campus.

There was a draft of a lease that was included in the City Commission packet and staff had gone through a number of iteration of the lease and there had not been any substantial changes to the lease, but there had been a few changes the final version would be reflecting.

As a reminder, under the lease, the Lawrence-Douglas County Bioscience Authority was serving as the manager of the facility and would be responsible for all of the maintenance, the day to day interaction and management of the building with the tenants.

The major points of the lease were that the lease term called for the lease going through the closing date to the end of 2034, with the lease being allowed to terminate either in the event of the default by the Lawrence-Douglas County Bioscience Authority or within in 5 year notice by the City and County to the LDCBA.

Under the lease, the LDCBA was required to provide regular reports to the City and County that indicated both its budget, in terms of projected revenues and expenses on the building and actual receipts and expenditures on the building in order to track those revenues. The City would also track the payments that came forward from the LDCBA as rent on the facility and provide those reports back to the County.

Included in the lease was an option to purchase the facility, if the LDCBA wished to execute the purchase, it called for the City and County being made whole in the transaction.

There was a management committee that would be established that consisted of an authorized represented from the City which would be the City Manager and an authorized representative from the County which would be the County Administrator. The Management Committee had certain functions in the lease, including approval of the Annual Operating Budget and approval of all subleases which included the tenants on the building.

She said in the bond issuance which involved the purchase of the building, there was also an additional sum of approximately \$600,000 for lease hold improvements to the building which were discussed as primarily the HVAC systems that needed upgrading and the lease spoke to those improvements.

The LDCBA was required as rent to pledge all of the revenue from the subleases toward the payment of the City and County of the principle and interest for the facility which was the

rent expenses. In addition, the Bioscience Authority would be required to pay any of the expenses of the building.

She said regarding maintenance taxes and utilities, LDCBA was responsible for all of those items and additionally regarding insurance, the City would provide property insurance for the building and in order to ensure that it was adequately insured, the LDCBA would remit that premium cost back to the City.

The LDCBA would be required to carry liability insurance and require its subtenants to carry insurance too. The subleases had to be approved by the management committee once authorized by the LDCBA and in doing it would ensure all the subtenants abide by a variety of laws and practices including those related to hazardous materials.

Next week, on the City Commission's agenda, was the sale of the bonds related to this project and would be the final formal action of the City Commission regarding this transaction and the anticipated closing was on January 26th after which the building would become the property of the City and County and the LDCBA would be in the position of managing that facility.

Vice Mayor Amyx asked if Stoddard to go over the option to purchase the lease and how the lease worked.

Stoddard said in the lease there was a requirement that if the LDCBA wished to exercise the options the purchase, they would pay the entire outstanding amount of the purchase price of the building, 2.3 million dollars, plus any outstanding amount due in terms of interest on the bonds. She said LDCBA would retire all of the debt, pay any interest that needed to be paid as part of retiring that debt, and if there was any expenses that were accrued on a ledger that the City would be keeping that tracked the revenue and expenses regarding the building, it required LDCBA to pay that amount.

Vice Mayor Amyx said he was reading Section 3.6 and trying to make sure that the 2.3 million of the taxpayer's money, to buy this building, was actually covered until 2034 and to make sure the City was recovering that money if LDCBA exercised that option to purchase.

Stoddard said there were some revisions to the lease that was posted on the website. On the lease that was finalized, it indicated that LDCBA would pay 2.375 million which was the purchase price of the building and in addition, the City's initial financing cost related to the transaction which was 2.3 million, plus 75 thousand in initial fees and financing cost, plus they would pay the \$600,000 which would be the additional sum for the HVAC improvements. Also, the LDCBA would pay any amount that showing as an outstanding expense on a ledger the City tracked in terms of revenue and expenses and pay any outstanding interest on the bonds. Essentially, LDCBA would be paying the full amount for the City and County to retire the debt, plus any major expenses that were occurred.

The only thing related to interest, depending on the interest cost the City received on the bonds, if the interest costs were in excess of 4%, there would be some interest subsidy the City and County would be paying toward this building and those would be exceptions, but otherwise the City and County would be made completely whole.

Vice Mayor Amyx said where the lease indicated, "upon payment in full of all Bonds then outstanding or provision for their payment having been made pursuant to the Ordinance and Resolution of the City authorizing the issuance of such Bonds, that LDCBA, 20 years from now, if the balance was a million dollars on the bonds, they could buy that building at that price.

She said this version require LDCBA to pay 2.375 million which was the initial purchase price, the \$600,000 and any expenses, plus the interest remaining. Those funds would enable the City to fully retire the debt, plus be made whole with the transaction.

Mayor Chestnut called for public comment.

After receiving no public comment, Vice Mayor Amyx said in looking at the staff report and the terms of the lease, it seemed everything was laid out the same way when the

Commission had discussions about the purchase. Also, the City Manager indicated the sublease was being worked out with CritiTech.

Commissioner Dever asked if the Commission was comfortable with the option to purchase concept.

Vice Mayor Amyx said with the way Stoddard explained it and the 3 million dollars, obviously, the value of this facility was going to go up because of the amount of effort that would be put into marketing this facility. He said because it would be transferred in the event the LDCBA exercised this option, it was going to a governmental agency and did not have a problem with the price of the building.

Commissioner Dever asked who initiated that clause.

Stoddard said the Bioscience Authority indicated a desire to have something like that in the lease, in the event they wished to exercise that during the term and prepay everything and make sure any outstanding debt was taken care of.

Commissioner Dever asked what the likelihood of that occurring, seeing that the City and County were funding this exclusively.

Stoddard said yes and thought LDCBA just wanted that clause in the agreement, in the event they had that opportunity at some point.

Vice Mayor Amyx asked why LDCBA would want to own that facility.

Corliss said when staff started this discussion with CritiTech and eventually LDCBA, one of the hopes was the Bioscience authority itself could acquire the building and make it cash flow from the extent of acquisition, retrofit, and rentals. As staff looked at this, it looked like it needed the public participation to finance the acquisition. He said there was a hope that as they grew the bioscience industry in this community, the Bioscience Authority would be on its own and not look for public support for its operating expenses and by virtue of being a landlord or perhaps making some investments in Bioscience firms, it would not need much of a public subsidy and might be in a position where it owned property. He said this was totally not in the cards now

and might not be in the cards in the next few years, but if Lawrence grew that industry, that was the hope and would be able to own this facility. He said Stoddard had indicated that she and others had worked to make sure the City's and County's interest were protected so if LDCBA bought the facility, the City and County taxpayers were made whole.

Vice Mayor Amyx said he appreciated Stoddard and others wanting to protect the taxpayer's participation in any facility. He said the way it was explained that LDCBA wanted to possibly own the property someday this gave them the opportunity, but not to take it away on day one.

Commissioner Dever said if LDCBA was going to become a cash flowing generating entity, this would allow them to generate cash and do away with those subsidies which was a perfect scenario.

Corliss said for example, the incubator facility, the Bioscience Authority owned the building, but not the land because the land would forever be owned by KU Endowment. The local Bioscience Authority owned the actual building with City, County and KBA funds.

Commissioner Cromwell said if they were 10 years into the bonds and the bonds had been paid off lower, the potential buyout was then lower than the value of the building. He said from a business point of view, the City was taking a risk up front and the risk continued to decrease as time went by and then all of a sudden, the property only had \$10,000 worth of bonds. He asked if LDCBA would takeover the building at that point

Mayor Chestnut said they would buy it for the total amount.

Corliss said staff missed putting the most recent version that came out today that changed the version on the website. The purchase price payable by the LDCBA in the event of the exercise of this option shall be the sum of \$2.375 – acquisition plus issuance cost, estimated at \$75,000. LDCB needed to pay \$2.375, plus \$600,000 or actual cost if different which was the lease hold improvements and then an amount equal to the additional expenses the City or

County incurred on the property overtime that set the floor for acquiring that facility. He said the amortization of that debt would go down and had to still pay that amount of money.

Vice Mayor Amyx said the option section stated that LDCBA could buy that facility for whatever was left on that Bond Sale.

Mayor Chestnut said that section had been changed. He said if it became beneficial for them to purchase the building, the City and County were made whole for everything the City and County put into it. If it turned out that building was an asset of great value, the community had benefitted significantly. He said he hoped the Bioscience Authority get to a point where they were asset owning, creating jobs and opportunities in the community.

Commissioner Cromwell said it was the ultimate goal, but he did not like the way 3.6 read for some reason.

Moved by Amyx, seconded by Dever, to authorize the Mayor to execute the most current version of the lease between Lawrence-Douglas County Bioscience Authority and Douglas County for the West Lawrence Labs building. Motion carried unanimously.

Consider sending a letter to the County acknowledging that the City is willing to issue any Recovery Zone bonds that the County allocates to Lawrence for the purpose of financing construction of a new distribution center for Berry Plastics.

Roger Zalneraitis, Economic Development Coordinator/Planner, said Berry Plastic came back and asked for a letter of support to the State for facility bonds to be allocated from the State to Lawrence for their new distribution center. Berry Plastic had now started the process of asking the County to allocate their bonds to Lawrence. Their vision was that there would be a mix of local and State facility bonds Berry Plastics could use to finance their project, ideally, at 100% tax exempt rate. One of the requirements in the County Policy for the facility bonds was if a sub jurisdiction was to issue the bonds that they acknowledge they were willing to issue those bonds if allocated to them.

Vice Mayor Amyx said Berry Plastic was now asking the County allocate, substantially all of their facility bonds for the City of Lawrence for the purpose financing the distribution

center. He asked if were all other projects were out and needed to be financed from a different year.

Zalneraitis said all the projects would be out in terms of receiving bonds. He said if those bonds were allocated to the City and then Berry Plastics moved forward by mid April, to have those bonds issues, then “yes”, but it was only if the County allocated all of their bonds for this project then Berry would have those bonds issued by mid-April and all the facility bonds from the County would be gone and any additional facility bonds that could be used locally had to come from the second round of State allocations in July.

Commissioner Dever asked if there was anything currently on the books that might be interested in using these bonds.

Zalneraitis said other projects had not met the requirements and those projects were either too small and the issuance fees would be too high. Some non-profits came forward and had another type of bond they could apply for. He said some people saw this as a gap financing method, but it was not. Nothing else had come forward at this point that would meet the criteria in terms of a local application.

Commissioner Amyx said did the County Commission need to go through a process in seeing if they had projects to be considered.

Zalneraitis said no, the policy was conceived as first come, first serve basis. If there were multiple requests then the County Commission could evaluate those requests based on jobs, wages or other things to determine how to allocate the bonds.

Commissioner Johnson asked if there was a window of opportunity and did those requests expire.

Zalneraitis said there were two windows, one would be for Berry if the County allocated the bonds to the City on January 13th and there would be a 60 to 90 day window where the bonds had to be issues. If the State allocated bonds as well, there would probably be a very similar window because they allocated at the end of January and it would be April to May when

the bonds should be issues. The other window was for the County and on July 1st, the State was going to collect any bond that had not been used. He said the City had a 6 month timeframe to get those bonds out and when considering the 90 day gap, it was narrower than it appeared.

Mayor Chestnut called for public comment.

After receiving no public comment, Mayor Chestnut said these projects were fairly unique and had to be of size because there were upfront cost to go through for the bond application and the other important thing to remember was that the full faith in credit of the City was not behind this project and it was a project in and of itself.

Vice Mayor Amyx asked what all had to be completed in that 90 day timeframe.

Corliss said there were some decisions that needed to be made quickly if trying to hit those deadlines. One important aspect to understand was the financing margin was significant for a project for a 20 or 30 million dollar project the interest savings was pretty substantial

Zalneratis said it could be 1 or 2 million dollars depending on the interest rate.

Vice Mayor Amyx said they had to have a project in place, a project approved, and IRB's issued in that time frame.

Corliss said yes. He said this was Industrial Revenue Bond financing, the revenue from the industry was what retired the bond. On every page, cities Bond Council made sure it was clear that cities had no obligation on this debt.

Mayor Amyx said he agreed about the time window, but from Berry Plastics standpoint, if they had things together by that time and Berry wanted to make sure this funding was available if that project was able to move at that pace. If not, then other alternatives needed to be looked at for funding their project.

Vice Mayor Amyx said if the bonds had to be issued in that time frame, a number of things needed to be met in a short time.

Commissioner Dever said it was great that Berry Plastics wanted to invest in this community. He said he hoped Berry Plastics could find a suitable location to spend the money and start quickly.

Moved by Amyx, seconded by Johnson, to authorize the Mayor to sign a letter to the County acknowledging that the City is willing to issue any bonds it is allocated for the purpose of financing a new distribution center for Berry Plastics, provided that Berry Plastics meets all requirements for the City issuance of these bonds. (7)

Consider approving rezoning Z-10-17-09 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 6th 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(PC Item 1A; approved 8-0 on 12/14/09); and

Consider accepting dedication of easements and rights of way for Preliminary Plat PP-10-5-09, a four lot commercial and residential-office on approximately 29 acres for the Mercato project located at the NE corner of K-10 & West 6th 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.(PC Item 1B; approved 6-2 on 12/14/09)

Mary Miller, Planner, said this item contained both a rezoning request for approximately 24 acres and a preliminary plat proposing revisions to a portion of a previously approved preliminary plat for the Mercato Development, approximately 29 acres.

The subject property was located at the northeast corner of the K-10, West 6th Street Intersection, and was a portion of the larger Mercato Development proposal and the revised preliminary plat was slightly larger.

In 2002, the rezoning requests were submitted for the properties in the southeast and northeast corners of the intersection of West 6th and K10. Those rezoning requests were tabled, pending the creation of a nodal plan for this area. Horizon 2020 recommended this area as a CC400 (Community Commercial Center) and a Nodal Plan was developed and adopted for

the Intersection of West 6th and Kansas Highway 10 (K10), late 2003. The rezonings for the Northgate and Mercato developments were approved pending conditions of each rezoning having residential components; residential offices; and, planned commercial districts.

While the Mercato commercial district had greater area, the Northgate had approval of more commercial square footage. (Northgate 195,360---Mercato 184,600)

The Northgate commercial zoning approval expired in 2008 and rezoning to a commercial district would be necessary prior to any commercial development occurring on the Northgate property.

She said in commercial uses, staff used the Horizon 2020 definition of Commercial in this section as, "Retail businesses that sell goods and services on-site for which sales tax is collected" and office uses were not included. The square footage limitation in the CC400 district applied only to business which met this definition. A CC400 development was limited to 400,000 square feet of commercial, retail uses.

The nodal plan explained how this was to be divided between the corners and was further explained in Section 20-211 of the Development Code. A minimum of 95% or 380,000 square foot of commercial uses must be located on two or fewer corners. If any remaining space, one of the remaining corners may have 50% or less of what remained. She said with the expiration of the commercial zoning for Northgate Development, there were 184,600 gross square feet of commercial uses permitted in this node, through the pending Mercato commercial zoning and 215,400 gross square feet of commercial-retail space remained available. The rezoning request was for 175,000 gross square feet of commercial uses to be permitted in the northeast corner of the node which resulted in 40,400 gross square feet remaining and available for the other corner or corners.

Based on the findings in the staff report, the PC voted 8 to 0 at their December 14 meeting to forward the rezoning request to the City Commission with a recommendation of approval.

A revised preliminary plat was submitted with this rezoning request to reconfigure a portion of a previously approved preliminary plat for the Mercato Development. The changes included the following:

1. 4 lots adjacent to K10 Bypass and the north/south right-of-way for Mercato Drive were being combined into 1 lot;
2. Detention pond removal;
3. One lot adjacent to West 6th Street not included in the rezoning was being divided into 2 lots
4. One lot would retain its PCD zoning (not included in the rezoning) and reduced in width providing the right-of-way necessary for a street (Mercato Lane) which was shown accessing West 6th Street.
5. Mercato Drive no longer curved to the north in the interior of the site, but continued to the west where it converted to Renaissance Drive and this street continued to the north in the frontage road alignment.

Issues with the Preliminary Plat were:

1. A variance was necessary for the block length along Renaissance Drive:
2. A transfer or Right-of-Way was necessary for Renaissance Drive to exceed the standards in the Development Code—based primarily on its proximity to the K-10 Bypass.
3. Access restrictions on W 6th St

Renaissance Drive was proposed to be built off-site and was currently located in the KDOT right-of-way. The applicant was working with KDOT on the transfer of right-of-way. This transfer of right-of-way was a condition of approval. Prior to the recording of the final plat, the applicant should supply the Planning Office with documentation that right-of-way for Renaissance Drive was available.

A right-in/right-out access was proposed onto West 6th Street, but there were several factors that came into play regarding the question of access onto West 6th Street:

1. City Code Section 16-1201 might need to be amended to permit an access on to West 6th Street. This code section was the product of corridor management policies created as this section of 6th Street began developing; and
2. KDOT approval of the access through an 'access permit' was required. In Staff's opinion, allowing the right in/ right-out as proposed, provided additional access to a large commercial development while maintaining proper access management for 6th Street.

The Planning Commission voted 6 to 2 to approve the Preliminary Plat, with the removal of Condition No 7 associated with the variance and forward the plat to the City Commission for consideration of dedications and rights-of-way. As the minutes reflected, the policy question of the access on West 6th Street's compliance with City Code was forwarded to the Commission.

Jane Eldredge, representing the Mercato development, said the principals in this development were the Fritzel and Schwada families. The applicants were requesting rezoning and plat change in order to bring about the kind of development that was envisioned on a CC400. In the comprehensive plan, there were two types of community commercial centers which were CC200's and CC400's. This location at 6th and the South Lawrence Trafficway were one of three potential CC400's. The other two CC400's were located to the east on K-10 at about approximately the SLT would join K-10 when that was completed and south on Highway 59. This would be the largest envisioned commercial center on the west side of town or center of town.

It was anticipated the CC400 would have large stores. The first zoning included a one store planned at 175,000 square feet. In the interim discussion with potential tenants, they were now convinced that in order to attract one of those large tenants, there needed to be space for two tenants and had the opportunity to make this a much more attractive zoning which was the reason for the zoning request. The zoning request did not change any of the potential commercial uses that had been discussed on the southwest corner. It did change the amount of commercial that had been discussed on the southeast corner. She said they supported staff's findings and requested that with the rezoning, to adopt the rezoning, subject to the findings in the staff report.

The system enhancement program came along and was for the enhancement of existing corridors to relieve any congestion and for economic development and the City was successful in getting that grant and in that grant KDOT paid 80% of the project.

At the City's request, all though the Wakarusa to SLT project had started, it went to Folks Road and included water and sewer line and had all of the infrastructure to support this project. There was an Access Management Plan that initially started out from Wakarusa to the SLT, that plan was close to what was adopted in the City ordinance, but not exactly the same.

In the final agreement between the City and KDOT, called the System Enhancement Development Contract, the agreement was to use the Access Management Plan that Boucher, Willis and Ratliff Inc., completed in 1998 as the guide for everything between SLT and Folks Road. She said regarding the questions about the right-in and right-out, she believed it was just a removal of one access point.

The Access Management Plan that was adopted by the City in 1998, called out for certain locations of access onto 6th Street as part of the 6th Street widening project. Those locations were the frontage road east of K-10, George Williams Way, Stoneridge, Queens and Congressional, and Wakarusa. The ordinance that was adopted in 2002, at the time of the System Enhancement Project included the right-in/right-out that was located at the Hereford House or McDonalds and included Champion Lane as a quarter mile access. Since then, there had been some projects in the Bauer Farm area that had included a right-in only and a right-in/right out. Staff had worked with KDOT and helped KDOT understand the importance of the access points, not only to the projects for economic development, but also they did not interfere with the corridor and improved the corridor.

The traffic study that had been prepared as part of this project was in the staff report that the right-in/right-out would be operationally a good thing for this development and because of the acceleration and deceleration lanes, it would not only not interfere with the traffic on 6th Street, but helped improve the traffic.

This would be the only project that did not have a north/south street from either side to provide access points and as the staff report pointed out, the newly adopted International Fire Code required two access points into the commercial area from an arterial street.

She said they were requesting the City Commission approve the plat, including the right-in/right-out in order to meet with KDOT to work out the details.

As of today, City staff provided proposed amendments to the existing ordinance and those amendments were perfectly reasonable and hoped those amendments could move on as quickly as reasonable.

Phil Struble, Landplan Engineering, said there were a number of comments about Southern Star and the easements. He said that was a process that was defined by Southern Star and they would be involved in the street design of Renaissance Drive because it dealt with the deepness of the gas line.

A second comment dealt with Renaissance Drive being moved to the frontage road and its location which was on the KDOT right-of-way. He said that was a process and he had been trying to setup a meeting with KDOT official whose job was to evaluate that process.

The fire access was part of the new International Fire Code and that code stated they must provide two access points for the fire trucks that were in excess of half the diagonal distance of the project.

He said no one had disputed the right-in/right-out on 6th Street did improve traffic flow on 6th Street. He asked the City Commission to approve the preliminary plat.

Vice Mayor Amyx said with the right-in/right-out on 6th Street, he asked if it would have made a change in design of George Williams Way.

Struble said he did not believe so because George Williams Way to the first entrance into their project was a huge pavement section.

Vice Mayor Amyx said that was a major roadway going to the north and asked if it was necessary to build that huge pavement section.

Struble said the impact of the right-in/right-out might be further down at an eventual traffic light. The traffic could now come in, if not destined for Mercato, they could bypass a lot of

that traffic. The pure intersection of George Williams Way and 6th Street would end up being the same regardless.

Vice Mayor Amyx said if someone was to shop in that area, he asked why they would turn right on George Williams Way.

Struble said it would give the driver two choices, if the right turn lane was full, a person could go straight on through and turn right into that area.

Mayor Chestnut said some of that design was the idea that north of 6th Street over time, there was an anticipation of a lot more density in that area and would want the integrity of the street grid for the support of the neighbors behind that development and to some extent, off-load some of that traffic.

Vice Mayor Amyx said there would be development to the east that was already figured into this roadway, but it seemed it was a big roadway now if looking at the impact a right-in/right-out could have on this project.

Struble said they had not built any intersection too small lately which was a good start.

Vice Mayor Amyx said the Commission would have discussion about the Nodal Plan and he assumed the affect of the expiration to the commercial property to the south allowed for the additional square footage of commercial on the north. He said if he was in the neighborhood to the south, and the major roadway into George Williams Way with the right-in/right-out, would be a safety issue and by having that roadway just east of George Williams Way would take some of the pressure off of traffic traveling south on George Williams Way.

Commissioner Dever said on the first plat, the frontage road was not scheduled to be put out of service. The new plat showed the frontage road being taken out of service and would not be utilized any longer.

Stuble said the connection to 6th Street would be removed once putting in Renaissance Drive would replace that frontage road.

David Corliss, City Manager, said that frontage road was to go away with the completion of Overland Drive as part as the Mercato Development.

Commissioner Dever said it was not shown on the plat.

Struble said Corliss was referring to a previously approved plat had that frontage road going away.

Corliss said that frontage road was going to be removed when the Mercato Development was completed. The key was providing that access to the property to the north.

Commissioner Dever said from the original plan that was approved, to the current plan that frontage road was always planned to be taken out of service.

Struble said as was always done on frontage roads. He said between that originally approved preliminary plat, the planning of this area and the traffic network was further defined in that it was a bigger area.

Mayor Chestnut called for public comment.

Vernon Jarboe, attorney on behalf of Northgate, said there had been discussion about the North Gate zoning expiring which expired as a result of a non filing of a plat and that happened when time was coming up to do the plat and there was some concern about infrastructure issues. The applicant applied for an extension to file the plat, which was denied by staff. He said his client also believed that the Mercato Development similarly had the same problem, so they applied for an extension of the plat and were granted that extension which resulted in their zoning going away and Mercato keeping their zoning.

He said one thing he found fascinating about this report from a policy standpoint was if they wanted the great bulk of the 400,000 feet of retail that the Horizon 2020 Plan and Nodal Plan suggested and would be at that intersection all in one corner. Obviously, historically that was not the way it was and asked if they wanted all the traffic coming from the 400,000 feet, coming off of one corner or was there wisdom in having half on the north side and half on the south side from the beginning.

If they had a big box that needed a number of square feet, then they had enough square feet to develop that box, but what they were really asking was for speculative zoning for another possible big box. When looking around for those large boxes, those boxes seemed to be located standalone. Some large boxes were in an area where there was another big box. He said he was interested in that comment and if that was what the tenant wanted. He said he worked on zoning cases, in many markets and put big boxes all by themselves in areas where there was not anything else.

He said when he looked at the Planning Commission report there was discussion about the comprehensive plan and it indicated they needed 95% of the commercial space located on two corners. He said when he read various reports, the reports indicated on one or two corners. Staff spent a page and a half, in this report, explaining why it could be one or two corners, but the comprehensive plan stated two corners which was how the original zoning was approved with roughly half of the zoning on the north and half on the south side so the 400,000 feet were on two corners which was what the comprehensive plan and old plan both contemplate that it would have been on two corners not all of it on one corner. He said 10% was left over to be on some other corner or corners.

He said they were basically concerned that at one point in time it was thought wise to split this zoning into two pieces and the property that his client owned was then entitled to half of this commercial space and obviously, if this plan was approved, and assuming the Commission did not make any other deviations from the plans and not in turn, at some later date, support some commercial zoning on his client's property because there would not be anything left over. In effect, the Commission was making a decision that seemed speculative on the upfront and the applicant was not going to tell the Commission they had two boxes ready to build. In fact, part of the staff report indicated the developer had specifically indicated, they would not build the boxes unless there were tenants. He said this was speculatively taking the zoning

opportunity away from his client's property and giving it to someone else which in effect, devalued the opportunities that were available on the south side of 6th Street.

He said their objection was contrary to the historical plan which was to split the commercial onto two corners which was what the Comprehensive and Nodal Plan talked about. Also, it took away the opportunity for one landowner and gave it to another landowner. He said for those reasons, he said they respectfully requested the City Commission reject this application.

Alan Black, representing the League of Women Voters and Chair of the Land Use Committee, said they sent a letter to the Planning Commission about this case expressing some concern and making some suggestions, but the Planning Commission did not accept any of their suggestions.

In the letter, it stated that the zoning of CC400 would allow 400,000 feet of commercial use which was wide open. There was no restriction on permitted uses, time limit, or expiration date. Therefore, they suggested the Commission require a planned development overlay district with this zoning in order to have a specific plan with specific uses to consider before approval. If this approach was not acceptable to the applicant, then they suggested giving a conditional zoning to this conventional district which had been done in other cases.

He said they were concerned about the effect of this development on existing commercial uses in Lawrence, including the downtown area which did not have a big box store, but department store (Weaver's).

He said they felt that traffic signals were needed immediately at the intersection of K-10 and Highway 40 rather than waiting until such time as this project was carried out.

Commissioner Dever asked why the League wanted a PD zoning designation and what were the benefits.

Black said the Commission would have some idea of the specific types of commercial use that would be built in this area because right now it was all speculative. He said from

reading the news paper, he gathered the developer did not have tenants, at this time, and it was their belief the City should have an opportunity for specific tenants in line to decide whether to approve those uses or not. He said there should be some consideration given as to the affect of this area on other commercial uses in Lawrence.

Commissioner Dever said the benefit was specifically for exclusion and/or control over the land use on the site.

Black said correct.

Gwen Klingenberg, Lawrence, said the community watched out and took care of the property owners, especially with commercial zoning. She asked if they talked to the people at Northgate because there was a sign that indicated commercial zoning for sale.

She said one corner had asked for extension and was turned down, but another corner was asked for an extension and conveniently received an extension and asked what the determining factors were.

Scott McCullough, Development Services Director, said there were different set of circumstances for each extension request. There were several conditions of plat approval that were not met for the Northgate development and staff went through an extensive review of those conditions of the plat and different factors about whether an extension was appropriate in that particular instance and it was determined it was not appropriate in that instance. There were Agreements Not-to-Protest the formation of benefit districts that were not signed at that time, provision of executed encroachment agreement with Southern Star, submission and approval of public improvement plans. He said all of those instances were major types of stepping stones to getting plats recorded and commitments that were not made at that time and staff made a determination not to extend that plat.

He said there were a completely different set of circumstances for the Mercato Development and went through the Planning Commission and received their extension just

recently. He said there were two different sets of circumstances that staff made their decision, based on those factors.

Corliss said staff had not done anything to keep Northgate from seeking to proceed or consummate rezoning on their property, Northgate had not followed through.

Mayor Chestnut said this body heard the discussion on the benefit district and there had been tradition that the benefit district assessment was on street frontage and there was as discussion of those two properties. Northgate representation, at that time, wanted to look at acreage versus frontage and was quite a departure from what was traditionally done, which lead to the declination of the property owner from the benefit assessment.

McCullough said that was one factor which was conveyed to the owners.

Corliss since that time, the property owner had done anything in two years and had not moved forward to reapply for the rezoning or other things that would indicate they were trying to make use of the property. Whereas the property on the north side was participating in a benefit district for the improvement of George Williams Way, dedicated right-of-way and that facility had been installed.

Commissioner Dever asked if the current owners on the south side, lack of activity, was inhibited to any type of the improvement to the roadway.

Corliss said at one point, the City had a special assessment benefit district to put in a traffic circle and do work south of George Williams Way. There was as challenge to that benefit district and the City essentially dismissed that benefit district. He said it was not needed now and not needed until there was actually some building permit activity where that intersection needed signalization.

Klingenberg said the property owner had no way of readdressing or coming before the City Commission. She said she wanted to make sure they were not stepping on any property owner's rights.

Corliss said staff made it clear, to the property owner, and went the extra step to provide a letter stating their zoning had not been consummated because the property owner did not meet their zoning ordinance requirements. He said staff had not heard from the property owner until this time. He said the property owner could ask that their property be zoned and could work with the Planning Staff to follow that process through the Planning Commission and ultimately to the City Commission, but right now it was designated as UR (Urban Reserve) which meant its existing uses could continue, but no other uses could continue until it was rezoned.

McCullough said it was a bit of a fluid situation and this circumstance between the intersections because there had been pending zoning, pending the completion of the platting and development plan. Some of those approvals had expired and therefore, the zoning then expired. At that point, the owner needed to request new zoning or same zoning to reestablish those approvals. He said the owners of the Mercato Project went through the process and back requesting a rezoning of some of their approvals. He said staff had good communication with the owners and what their position had been on those projects.

Kingenberg asked if the neighborhood had any worries of accidentally giving Mercato this extra acreage of commercial and then somehow along the way, the south side was able to build and ended up with more commercial at this corner than allowed.

Mayor Chestnut said the governing body would have the ability, but he did not think there was any desire to allow more commercial. He said it was not impossible, but it was highly improbable. He if that happened, there would be a lot of public process involved and imagined representatives from the League of Women Voters would be present in force to seriously discourage the City Commission.

Vice Mayor Amyx said the Comprehensive Plan discussed 95% located on two corners, but it was clear that space was used up, less a small percentage because of no action from Northgate.

Beth Johnson, Lawrence Chamber of Commerce, said the Commission received a letter earlier from the Chamber President, Tom Kern, stating the Chamber was fully supportive of the Mercato rezoning application and platting. Based on the findings from staff and the experience at the Chamber, working with commercial and retail property owners and managers on the size and space for projects, and how they would like to be associated with nearby commercial entities such as the box stores on South Iowa in range of each other and could be seen that on George Williams in centrally located some of those bigger stores.

She said the Chamber knew of a couple of big box stores that had looked at the Lawrence area, especially after the new Wal-Mart was completed on 6th Street. She said those tax dollars were important to the Lawrence community.

Hubbard Collinsworth, Lawrence, said he did not want the City to get into a legal battle such as with the Walmart at 6th and Wakarusa.

Commissioner Cromwell said on the report it discussed the City's ability to incorporate more retail space, adjusting for inflation for 2000 to 2008, which was 1.8% retail growth and retail square footage at that same time went up by 22% and this community's population went up around 10% to 11%. The conclusion was they were able to absorb more retail. He said he would like that reconciled so he was aware that those 3 numbers did not reach the opposite conclusion.

Rich Caplan, Chamber of Commerce, said the entire national retail market had exploded in the last 10 or 20 years because of financing availability and choices that happened in the market. The most important indicator for Lawrence to look at was what happened in retail sales, in comparison to its historic trends and in comparison with other communities. In fact, Douglas County's retail pull factor had gone down quite a bit. He said what that was saying was that even though there had been growth in the amount of square footage, the consumer did not believe the selection was available in Lawrence. He said having a selection was one of the pieces of the puzzle.

The other factor was that in the Kansas City market, Johnson County, in particular, had somewhat of an over building and could see the vacancy rates in Johnson County had gone up quite a bit. He said Shawnee County had four empty grocery stores and a lot of strip centers in Overland Park and Olathe were empty. When looking at the retail vacancy in Lawrence, was below the national average. The fact of that growth, people were not shopping and spending their dollars in Lawrence. He said that was why the retail sales had been relatively flat in the last couple of years. He said given the fact Lawrence had 20,000 plus students, it was exceptional that it was that low and should be a lot higher.

Commissioner Dever said Professor McClure submitted some questions about the accuracy and asked if Caplan had received a copy of that information that was refuting the retail market study.

Caplan said he read it in the City's staff report.

Amy Miller, Planner, said Professor McClure submitted correspondence, but there were a couple of inaccuracies. McClure talked about the growth demand for retail space and what was noted in the Mercato Retail Market Study was not correct and that retail sales were growing 1.8% per year since 2000 which was not correct. The market study stated it was growing 1.8% since 2000 total.

The second issue that was brought up at the Planning Commission level was McClure had some different numbers on vacancy rate and the current condition of the stock, but staff did not have that information and she could not speak to what that entailed.

Commissioner Dever said Miller did not have any way of reconciling McClure's vacancy numbers which was about 13%.

Miller said staff did not have the data and could not speak to how he arrived at those numbers.

Caplan said although the City did not utilize the Windbury Group, they did a good job at tracking office, retail and industrial and their annual data showed the retail vacancy rate was

stable in the last two to three years in Lawrence. Caplan said the Windbury Group's data indicated around 7%. He said Horizon 2020 indicated that 8% was an important threshold in Lawrence. Most communities, anything under 10% was acceptable and any over 10% was a concern.

Vice Mayor Amyx asked Struble to help him understand the importance of the right-in/right-out access with the development of this property, versus the fire code with dual entrances. He asked if it would help in having this as an additional fire lane or did it help access and market the property.

Struble said they elected to pursue the right-in/right-out before they were aware of the fire code issue. The fire code issue simply caused them to move the right-in/right-out to meet that half the distance threshold of the diagonal of the project requirement, but they had elected and decided the right-in/right-out for this project for the development of the project, for the shoppers and users was more important, even before the fire code issue showed up.

Commissioner Dever said did this need arise from the additional retail space that was proposing because originally this was office.

Struble said the need arrived for the new leg of this area as a traffic network all the way between this area and the Farmers Turnpike. That entire area now had a plan, transportation wise, because it did not exist when they did their first plan. He said they were looking at pass through traffic, both on the existing frontage road and on an extension of George Williams Way. He said without the right-in/right-out, anything on the extension to frontage road, had to go down George Williams Way, until it could cut over on Overland.

He said with the additional commercial to the western portion of the site, the people who were headed to that way, could get to that destination directly, making the intersection of George Williams Way and Overland Drive function significantly better.

Commissioner Dever asked if this level of commercial development would justify a substantial traffic improvement elsewhere in the community and was the tiny left right-in/right-out, be substantial to handle the traffic that would come from additional retail square footage.

Struble said the original traffic study which was the basis of the design of all the lanes that were on existing George Williams at 6th Street, was based on 400,000 square feet of commercial. He said even though their request and approved amount at that time was 185,000 square feet. One of the biggest things they were concerned about was tearing out newly constructed intersections to add additional turn lanes. This was a big piece of pavement and was design all by itself for this development and the right-in/right-out would just make the flow on West 6th Street better, thinking that would be the benefit they were giving KDOT to allow them to get their access permit which was a condition of this request.

Vice Mayor Amyx said he wanted to make sure the right-in/right-out could handle the anticipated traffic at that location.

Struble said the first traffic study called for a right-in/right-out and it was not pursued and how they ended up with the design of George Williams Way.

Merdahd Gavechi, traffic engineer for the project, said because this was a right-in/right-out and people coming from the site going east or south, had to use George Williams Way and there was no way they could use the right-in/right-out. He said the people coming from west going to this site also needed to use George Williams Way. The reason for that amount of pavement at George Williams Way intersection was because of the lane balancing. The reason for the right-in/right-out was to have a southbound right turn lane off of George Williams and it would reduce the traffic from that lane by providing that right-in/right-out.

He said when first looking at the entire project with 400,000 square foot of commercial on that corner, they had the right-in/right-out and had the design for the two intersections to work properly, but it was not pursued because KDOT was against the right-in/right-out and they focused on the intersection of George Williams Way and 6th Street and ended up with a design

that worked. Of course another part was to time the traffic signal and the proper phasing for that traffic to go through that signal. Now with having this right-in/right-out they could have reserved capacity at the intersection of 6th and George Williams Way for future expansion. He said to answer Vice Mayor Amyx's question about the access being too small, the only other option was to have full access at that point which might not be feasible because of the 2030 traffic on 6th Street and having another fully functional intersection between the two intersections.

Struble said the restriction on the right-in/right-out was not on 6th Street, it was when getting up to Renaissance Drive which was 450 feet away. He said their plan and design for that intersection was similar to going south bound on Neider Road. He said it would be completely flow through traffic all the way to Overland Drive.

Vice Mayor Amyx said the original traffic study with the way the design came about on George Williams Way was that they anticipated 400,000 square feet of commercial space on this particular intersection and that was how the design of George Williams Way came about.

Struble said correct.

Vice Mayor Amyx said when KDOT came down to final approval of this right-in/right-out, even if it was not to happen, it did not have an affect other than this additional access point or any affect on George Williams Way and 6th Street was going to work.

Struble said correct

Vice Mayor Amyx said it did not have anything to do with the additional square footage anticipated to be put on that corner.

Struble said purely an improvement.

Commissioner Cromwell said if the Commission approved something, he asked if the City would lose funding on 6th Street.

Corliss said KDOT had indicated that at this time they had not approved the right-in/right-out on 6th Street and anticipated if the City Commission proceeded with the necessary

approvals, discussion would be continued with KDOT. He said KDOT in the past indicated that if there were changes to access on this street, they would allow those changes if the City would take back the street and not have it on the State Highway, but he did not recommend it. The funding the City received, because it was a state highway, was very important to the City's ability to maintain this facility. The additional funding, whether it was KLINK money or a particular intersection improvement, was very important for the City. He said if this was approved, staff would try to convince KDOT to approve it on the merits.

Commissioner Cromwell asked if it was possible to conditionally approve this based on KDOT's approval.

Corliss said yes and that was the Planning Commission's recommendation.

Commissioner Dever asked if the additional square footage would be taken away if they did not get the right-in/right-out.

Commissioner Cromwell said he was worried that if the City Commission approved something now that locked them into losing the City's KDOT funding because the City could not convince the State to change their minds which would be a problem.

Corliss said what the City Commission would be approving was the plat. The physical access could not occur without a KDOT permit. He said the City was not in danger by losing the funding by approving the plat because the plat would not have the access point physically occurring until KDOT approved it.

Commissioner Cromwell said he wanted to make sure that KDOT's approval did not come with a KDOT approval to let the City fund the bills from now on.

Corliss said it was kind of the flip side of the same coin. What KDOT would do was not to let it be on the State Highway Program, but staff could show the state why that was important.

Commissioner Johnson said as a civil engineer, he agreed with Struble and Gavechi on the functionality of that intersection and George Williams Way. He said the right-in/right-out could only help that intersection. He agreed it helped the tenants, development, and general

public. He said he felt comfortable moving forward from a design and professional standpoint and as someone looking out for the City's interest, he thought it helped the situation. He said by approving this request, it could strengthen the City's position.

Vice Mayor Amyx said the applicant had met all of the requirements and appreciated the questions that came forward and was important the neighborhood to the south understood the Commission believed the Comprehensive Plan was written in such a way that it met the Nodal Plan. He said the Commission might want to look at the potential money this site might generate compared to what the City was receiving from State funds. He supported the Planning Commission's recommendation.

Commissioner Dever said from studying the plats, this was an improvement to the previous submission. It was a little confusing because it was only a portion of the overall site. He said a mixed use development was a good idea, but at that time, the area to the south had commercial land and felt like it was only fair to balance the amount of retail at that location. With the changes that occurred in the last couple of years and the lack of activity on the south side of the street and additional development that occurred on along the south edge of that property, he was in favor of allowing the additional square footage at that location. The parcel with 107 acres, they could be a little more creative with the quality of the landscaping and layout of the property than a smaller tract of land.

He said he did have questions on whether they needed to do a PD Overlay. He said the point of the City's new land use regulation was to diminish the need for such things.

McCullough said it was a matter of context. The PD Overlay purpose had a place in Lawrence Development. It and vehicles like conditional zoning were typically used when wanting to address some known concerns which were laid out in the purpose statement for the PD Overlay District. There were other circumstances where they wanted the ability to be more flexible to attract more tenants and businesses. This was one of those instances where PD

Overlay did not necessarily have any concerns to address or any external factors working on it and that was how he would frame that discussion.

Commissioner Dever said the regulations and requirements the City had in place should allow a better use of the site and attract more potential tenants.

He said he questioned some of the numbers in the market study, but some of the information received helped digest those numbers. He said he was encouraged by the movement of the retail from one side of the street to the other. If someone was going to put the commercial land use to use, then they should be allowed to. He said he was in favor.

Commissioner Cromwell said he had some issues with retail study and was a little concerned as they continued to do those things, that the Commission was not creating a problem in the City. He said he would have liked a study on the overall City. He said in a lot of ways it was almost like an infill project. He said they needed to encourage the amount of retail and would like to see a variety that particular site was not going to offer. He said there was plenty of room for retail development in addition to this project that would add to the City's diversity. He said he was in support of it overall.

Mayor Chestnut said he supported moving forward, but from a Planning Commission standpoint, there were two Commissioners that did not support the second part of this and focused on the City Code regarding the access plan. He said there was some interpretation as far as whether or not this was in conformance with the access plan and any revisions to Section 16-1201 should be considered separately. He said he was not sure this was modifying that section or not. One of the things in particular was if the fire code situation runs askew, then they were cross purposes.

This planned development was conditional anyway and they could all count on two hands the tenants that would probably be in two buildings that took up 389,000 square feet. If it were a different type of development, he thought PD zoning would be appropriate. In a lot of

ways it was conditional zoning because there were conditions and if things did not move forward, it would expire and come back as something else.

It was important to realize the City had invested a lot of money in this intersection, much like the investment in the corridor between Folks Road and the SLT. There had been a lot of investment and roadway and was confident the traffic was provided for.

He said regarding the market study, Lenexa was at 1.58 and Topeka was 1.47 and was tired of seeing Douglas County plates in their parking lot. He said vacancy rates could move around and there could be some interpretation, but the City was losing ground relative to the people and the services provided in Douglas County and that data came from the Department of Revenue. He said the City had lost 14% of the pull factor over the last 10 years and that was significant. He could not predict consumer trends, but in totality the City was taking a step back to look at this strongly and those DG plates he referred to were probably some of the tenants that might be considered for this project.

He said he agreed Horizon 2020 needed to be looked at. As far as one corner versus two, it was really a CC400 on those two corners and he could not envision how much planning there was on those corners.

Now resurrecting the conversation they had a couple of years ago, he had grave concern about developing retail on the south side of 6th Street when the property owner was opposing the benefit district and one of the benefit district suggestions was a flow of control of traffic going south bound on George Williams Way toward Langston Hughes Elementary. At that point, they were looking at retail development on that corner without that traffic circle and control of that flow going southbound toward Langston Hughes and there were a lot of neighbors that were concerned. To some extent he would almost prefer to shift the concentration to of where the traffic was going to flow in and out, north of 6th Street because that was a natural barrier and keep traffic out of that residential neighborhood with that school. If they had commercial development of substance on that corner, there was going to be a lot of

traffic coming southbound through the school zone on George Williams, down Harvard at that traffic circle where there was a lot of school activity.

He said some concerns were legitimate, but in totality it was a good proposal and he was in support. He said he agreed with Commissioner Cromwell that a final plat before it was recorded the City had to have their act together with KDOT.

Moved by Amyx, seconded by Johnson, to approve rezoning request (Z-10-17-09) of 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 6th Street (Hwy 40). Motion carried unanimously. (8)

Moved by Dever, seconded by Johnson, to accept dedication of easements and rights of way for Preliminary Plat (PP-10-5-09) for a four lot commercial and residential-office on approximately 29 acres for the Mercato project located at the NE corner of K-10 & West 6th Street (Hwy 40), subject to the following conditions:

- a. The dimension of the western width of right-of-way for Overland Drive shall be noted on the plat.
 - b. The plat shall be revised to clearly identify the Southern Star easement which is being proposed for vacation.
 - c. The plat shall show the relocation of the Southern Star gas line to the south rather than extending through the easement which is to be vacated.
 - d. The extension of the Southern Star gas line off-site to tie into the existing gas line to the southeast must be approved by Southern Star.
- 2) Prior to recording the final plat, the applicant shall provide the Planning Office with documentation that right-of-way for Renaissance Drive is available prior to final approval of the plat.
 - 3) Prior to recording the final plat, the applicant shall provide the Planning Office with documentation that Southern Star approves the relocation of the gas line and easement between Lots 1 and 2 of Block Two and the relocation of the off-site gas line to tie into the existing line.
 - 4) Prior to recording the final plat, the applicant shall provide the Planning Office with documentation that Southern Star approves the design of Renaissance Drive in relation to the gas line location.
 - 5) Prior to recording the final plat for the remainder of the Mercato Development (PF-03-04-07), the applicant shall revise the previously approved preliminary plat (PP-01-02-06) and final plat (PF-03-04-07) to reflect the changes approved with this preliminary plat.
 - 6) Prior to recording the final plat, the applicant shall gain approval of an access permit from the Kansas Department of Transportation to access W. 6th Street (Hwy 40).

- 7) Prior to recording the final plat, the rezoning request [Z-10-17-09] from UR (RMO pending) to CC400 District shall be adopted and published.

Motion carried unanimously.

(9)

PUBLIC COMMENT:

Mr. Feverly, owner of several properties in Lawrence, said he had a water leak at one of his properties and his tenants could not turn the water off. He had trouble getting someone to turn the water back on when he needed it. He said they did not want to be a hardship for anyone, but they owned 160 rental properties and wanted the City Commission to look at other options.

Secondly, he was concerned about the shoveling of snow. He said it was a good idea to have all sidewalks cleaned during bad weather. However, they had not received clear answers on how it was to be done, especially owning several properties.

Mrs. Feverly said it was very cold and Lawrence was expecting another blizzard and they were concerned about the new regulations because they did not know the expectation of the City.

David Corliss, City Manager, said there was no problem with the City waterline and staff turned the City water off at the meter at Mr. Feverly's request because Mr. Feverly could not tell where the problem was. The tenants did not know how to turn-off the internal shut-off valve.

He said Mr. Feverly made a request mid-afternoon to get the water turned on and he talked to Mr. Feverly at 5:10 pm and could not find staff in that department, but would make it a priority to make that contact. There was a good reason to be present when the water was turned on.

He said regarding the snow removal ordinance, he would be happy to direct the Mr. Feverly's where to get those regulations. He said snow removal was only required on public sidewalks.

FUTURE AGENDA ITEMS:

- 01/12/10 · Bond sale and authorizations related to acquisition of West Labs Building
 - 01/26/10 · Public Hearing – Vacation of easements in Briarwood Addition.
 - Receive recommendation on award of bids on the renovation of the Carnegie building (bid date is 1/12/2010).
 - 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 2010 Lawrence Municipal Airport Sanitary Sewer Study Draft Report
 - Receive staff memo regarding possible annexation of Westar Energy Center and adjacent properties.
 - Receive city auditor's comparison of accumulated infrastructure depreciation ratio for Lawrence and similar communities.
 - ICS Training. DGCO Emergency Management Memo
 - Recycling report with comments from SAB
 - Downtown Task Force consideration
 - Adopt on first reading, Ordinance No. 8481, for rezoning Z-10-17-09 to 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 & W 6th Street (Hwy 40). (PC Item 1A; approved 8-0 on 12/14/09)
 - Approve Text Amendment TA-10-21-09, to various articles to correct inconsistencies regarding the uses identified as 'Communications' and 'Communications Service Establishments.' Adopt on first reading, Ordinance No. 8483, for text amendment TA-10-21-09 to various articles to correct inconsistencies regarding the uses identified as 'Communications' and 'Communications Service Establishments.' (PC Item 5; approved 8-0 on 12/16/09)
 - Consider approving Text Amendment TA-6-17-09 to various sections of the City of Lawrence Land Development Code to review standards related to "Boarding House." Adopt on first reading, Ordinance No. 8482, for text amendment TA-6-17-09 various sections of the City of Lawrence Land Development Code to review standards related to "Boarding House." (PC Item 4; approved 6-2 on 12/16/09)
- ACTION: Approve Text Amendment (TA-6-17-09) to various sections of the City of Lawrence Land Development Code to review standards related to "Boarding House" and adopt on first reading, Ordinance No. 8482, if appropriate.

COMMISSION ITEMS:

Moved by Amyx, seconded by Johnson, to adjourn at 9:16 p.m. Motion carried unanimously.

APPROVED:

Robert Chestnut, Mayor

ATTEST:

Jonathan M. Douglass, City Clerk

CITY COMMISSION MEETING OF JANUARY 5, 2010

1. Bid - Tree Trimming to Custom Tree Care - Not to exceed, \$44,000
2. Software Maintenance Expenditures to Innoprise - \$89,180.
3. Peak Oil Task Force – Extension to August 31, 2010
4. Health Care Access - Termination of lease, City-owned building at 1920 Moodie Road
5. City Managers Report
6. Lease Agreement - Lawrence-DG County Bioscience Authority & DG County W Lawrence Labs Bldg.
7. County-City Bonds - Berry Plastics
8. Rezone (Z-10-17-09), 24 acres, UR to CC-400, Mercato project at NE corner of K-10 & W 6th
9. Prelim Plat (PP-10-5-09) 29 acres, Mercato project at NE corner of K-10 & W 6th