



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

March 2, 2010

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.

Hubbard Collinsworth requested that agenda item no. 6 regarding Ordinance No. 8493, a Special Use Permit for the Lawrence Community Shelter; agenda item no. 8b regarding a site plan (SP-12-54-09) for Esquina for sidewalk dining license at 801 Massachusetts; and, agenda item no. 12, a waiver for Louise's Downtown for sidewalk dining and hospitality license, be pulled for separate discussion.

CONSENT AGENDA

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell** to approve minutes from the Planning Commission meetings of January 25 - 27, 2010; Hospital Board meeting of January 20, 2010; Historic Resources Commission meeting of January 21, 2010; Board of Zoning Appeals meeting of January 7, 2010; Parks & Recreation Advisory Board meeting of February 9, 2010; Human Relations commission meeting of November 19, 2009. Motion carried unanimously.

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell** to approve claims to 205 vendors in the amount of \$2,938,022.46 and payroll from February 14, 2010 to February 27, 2010, in the amount of \$1,805,243.41. Motion carried unanimously.

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell** to approve the Drinking Establishment License for the Yacht Club, 530 Wisconsin St.; Esquina,



801 Massachusetts St. and the Retail Liquor License for Myers Liquor North, 1805 West 2nd St. Motion carried unanimously.

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell** to concur with the recommendation of the Mayor and appoint Dan Coke to the Human Relations Commission to a position that expires September 30, 2011.

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell** to approve the purchase of one skid steer loader for the Public Works Department from K.C. Bobcat for the HGAC Cooperative contract price of \$42,414. Motion carried unanimously. (1)

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell** to approve Special Event (SE-1-1-10) for Seasonal Garden Sales at 845 Iowa Street from June 3 July 1, 2010. Motion carried unanimously. (2)

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell** to approve Site Plan (SP-12-54-09) for a new restaurant and sidewalk dining for Esquina, to be located at 801 Massachusetts Street. Motion carried unanimously. (3)

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell** to receive the 2009 Year End Revenue and Expenditure Report for Building Activity. Motion carried unanimously. (4)

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell** to authorize the Mayor to sign a Subordination Agreement for Jonathan Willems, 2517 Cimarron. Motion carried unanimously. (5)

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell** to receive request for changes to the street vendor license ordinance. Motion carried unanimously. (6)

As part of the consent agenda, **it was moved by Dever, seconded by Cromwell**, to receive system development charges report. Motion carried unanimously. (7)

Hubbard Collinsworth pulled Ordinance No. 8493, a Special Use Permit for the Lawrence Community Shelter, for discussion. He said he wanted to make sure that the rules outlined last week would be followed.

Mayor Chestnut said the City Commission agreed to a one year SUP with a contingency of 60 days after the expiration and an approved management plan that would come back to the Commission sometime between then and June 17th.

Collinsworth also pulled items 8b and 12, regarding sidewalk dining. He said he had concerns about the design criteria of sidewalk dining areas. The City Commission approved an outdoor dining area for an oriental restaurant in the ten hundred block of Massachusetts Street which was flimsy and half of the structure was missing. He said he wanted to make sure that the design criteria were checked before sidewalk dining areas were erected.

Scott McCullough, Planning and Development Services, said that if there was an issue in the ten hundred block of Massachusetts Street with sidewalk dining, staff could check on it.

Moved by Amyx, seconded by Cromwell, to adopt on first reading, Ordinance No. 8493, for Special Use Permit (SUP-10-10-09) for Lawrence Community Shelter, located at 944 Kentucky St. Motion carried unanimously. (8)

Moved by Amyx, seconded by Cromwell, to approve a sidewalk dining and hospitality license for Esquina, 801 Massachusetts Street, and adopt on first reading, Ordinance No. 8495, allowing possession and consumption of alcoholic beverages on certain city property pursuant to Esquina's sidewalk dining and hospitality license. Motion carried unanimously. (9)

Moved by Amyx, seconded by Cromwell, to receive request from Louise's Downtown for a waiver to the City Code for sidewalk dining and hospitality license provisions found in Chapter 6, Article 1202.13, and refer it to staff for a report. Motion carried unanimously. (10)

CITY MANAGER'S REPORT:

During the City Manager's Report, David Corliss reported that the Lawrence Community Shelter Management Plans for both the existing and the proposed Community Shelters were available for review; three department director positions were eliminated since 2007 and departments and divisions were consolidated. The Planning Department and Neighborhood Resources Department were merged into a new Planning and Development Services Department, the Human Relations Department was brought into the Legal Department, and the Administrative Services Department was brought into the City Manager's Office. All functions of the former departments were still being performed, but with fewer staff. The efforts of all employees affected by those changes were greatly appreciated; the city was notified by KDOT that authorization of the 2012 KLINK program was deferred due to uncertainty regarding funding availability; and, the 31st Street Extension Project was not selected for TIGER grant funding (Transportation Investment Generating Economic Recovery).

Mayor Chestnut said regarding the KLINK situation, he asked about the status of State of Kansas Transportation Improvement Plan which expired soon.

Corliss said that the status was that the plan expired soon. (12)

REGULAR AGENDA

Consider approving rezoning (Z-7-11-09) of approximately 10.97 acres, located on the southeast corner of Inverness and Clinton Parkway, 4300 W. 24th Place, from RSO (Single-Dwelling Residential Office) to RM15 (Multi-Dwelling Residential) and adopting on first reading, Ordinance No. 8462. Submitted by BG Consultants Inc, for Inverness Park LP, property owner of record. .

Sandra Day, Planner, presented the staff report, she said the applicant met with staff on February 16th to discuss various landscape changes that might be beneficial and help to address some of the neighborhood concerns and some of the discussion that City Commission had providing additional layering along the Inverness Drive. She said the applicant added

irrigation to the project which had not been seen previously. She said, with help from the applicant's representative and City Parks Department staff member, Crystal Miles, the solution resulted in a plan that grouped trees rather than having a rigid alignment along Inverness. She said the applicant had added larger sized trees along Inverness, the project was being sprinkled, and there were a mix of plantings along Inverness to provide layering. She said there were also berms provided along Inverness. She said that those elements together did a good job of screening the project from the abutting residential neighborhood to the east.

Day said that the applicant wanted it to be clear that the irrigation extended for the entirety of the project interior, but did not provide irrigation along Clinton Parkway. She said the trees being provided, located along Clinton Parkway, were an element that was provided after working with the Parks Department to provide additional shading along the recreational path. She said that the natural area along the drainage ditch would remain in its present form.

Mayor Chestnut called for public comment.

David Sturm, 2611 Prairie Elm Drive, said it had been a long process, going back to the initial unanimous rejection of the rezoning, through the rescinding of that vote, back to the Planning Commission. He said he wanted to thank the City Commission for their effort and due diligence on this matter, however, as a community member; he still had some reservations about this project.

Specifically, he asked if they really wanted to put another apartment complex, regardless of what it looked like, in the density of apartment complexes that were already present and already overloaded as it stood. The Grove was only half to two-thirds occupied right now. He said the applicant indicated market research was conducted which showed there was a need for additional apartment complexes, but he had not seen what the research was based on. He said it did not make sense where the financing was coming from, and questioned the viability of the project from the beginning.

In addition, at the December 15th meeting, Vice Mayor Amyx brought up that there was a question regarding the density of the property and that RSO and RM15 were effectively the same in terms of bedrooms and was concerned that this was the only time the City had an opportunity to help shape what things look like because of the rezoning request.

If taking a look at the application, the real issue was that under an RSO the applicant had to build individual units that were individually platted and a City street running through, which meant the applicant had to give up land to the City. He asked if the applicant could build under the existing zoning and would it reduce the number of units therefore reducing the density or would it be another high density situation such as the Grove across the street and was never intended to be a high density area. Although this sort of thing looks pretty, it was not a buffer zone by any stretch of the imagination and would still be a bunch of one bedroom, ground level apartments.

He said Commissioner Dever brought up the question about the ownership of the land. He said he was not clear whether Inverness Park LP was the owner. He said as far as he knew and was able to find out, was that the sale of this property was contingent upon the rezoning and was this rezoning application even proper. If the application was proper, he asked if Inverness Park LP was planning on running this complex or planning on selling off instantly to another management firm, and would that firm be bound to any of the agreements that were made.

He said Commissioner Cromwell brought up a site plan question which was tying zoning restrictions to a site plan. He said he was not was not convinced that question was satisfactorily answered. There was still no overlay development plan in place for the area. He asked how a site plan could be tied to zoning in such a way that the site plan could not be changed in the future, for instance, marketing conditions. He said he was not clear as to how that became a legally binding contract.

The community began a concept of alternate use for the space. Obviously, if the rezoning failed, and the sale to Inverness Park LP failed, then there would be another piece of property owned by Dial Real Estate, from Nebraska, which needed to be developed. He said he understood the City Commissions desire to develop land.

The community wanted a public park, because there were no parks in that area, but understood the City did not have money to purchase the land nor develop a park, so they were in the process of getting a petition set up asking if the neighbors would support a special benefit district for this purpose, to purchase the land, develop it into a park and then deed it to the City. He said obviously, that sort of thing would take some time, but was time they did not have because the issue was in front of the City Commission right now.

He said in February 6th of 2007, when Mike Amyx was the Mayor, Resolution No. 6698 created a special benefit district for the Oregon Trail Park, which included a public park and included storm water drainage that had to be there. He said it was his understanding that this site would had to have storm water drainage anyway, and because of that it could certainly be developed under Kansas statute 12-6A01 A & B for the definitions of improvement and 12-6A02 A & F as to what could be done and authorized. He said F specifically stated to improve a public park, playground or recreational facility an improvement included constructing, according to 12-6A01 B and 12-6A02 A allowed for the acquisition of the property in the first place. He said was there any question as to whether this statute allowed this process to move forward and questioned why would that statute not allow that.

Davis Loupe, 4424 West 24th Place, said he gathered feedback on who supported this plan, organized, and kept track of the signatures on the petition. He said he contacted the owner of the Legends and spoke to the chief financial officer who stated they fully supported the creation of the benefit district. He said he received an email from the CEO of the company that owned Windham Place, also fully support the benefit district.

In total, there were 395 living units that they represented. The Grove had also given them verbal approval, but had not received an email confirming that approval.

Loupe said when many of the neighbors came to speak in the fall against developing this corner into more apartment complexes, the City Commission seemed to all agree that no, it was not the long-term vision to have only apartment complexes in the area. He said the City Commission should listen and act in the community's best interest and many on the Commission had asked for better proposals for the use of that corner. He said that they now had a better proposal, for a park which would be willingly paid for by the surrounding property owners.

He said there had been and would be further discussion about procedure and whether or not a suitable method existed for the City to accept this gift, but in his mind the choice was really, could the City find a way to accept the gift of a park from the surrounding property owners, or would the Commission decide to effectively, mortally wound the neighborhood.

He said that since the rezoning was rejected in the fall, things had changed. He said the alternatives given were presented to their neighborhood in this way:

"You, the neighbors were innocent in all of this, but the Commission had decided to let some people, with no interest in your neighborhood, kill your neighborhood. However, the good news was the Commission would do the neighbors a favor by picking the method of death. One method was by firing squad which would be a painless death and the other method was by slow stabbing. Either way, the Commission was killing the neighborhood, but the neighborhood would thank the Commission because the least painful way for the neighborhood to die was chosen".

He said because the neighborhood thought there was no alternative, the neighbors grimly lined up for the firing squad, but now the neighbors had brought forward a new way, new evidence to right a wrong, and to not only let this neighborhood live, but improve it. Once again, they were sorry because the rules did not allow the neighborhood to accept new information or

this new way of doing things, because it did not follow some procedure, so they were willing to let the neighborhood die.

He said he talked to the neighbors in the Sunflower Park neighborhood to hear what the people had to say, including existing apartment owners. He said whether or not the neighborhood liked the apartments, those apartments were present and their opinion counted.

He said based on what he had heard, and on quite a large sample of the neighborhood, he believed that 95% to 98% of the neighbors fully support this great idea. He said the neighbors had spoken loudly, in emails, signatures on petitions, voices, and most importantly, with their wallets. He said the neighborhood was waiting to hear the City Commission's response. He said personally, he decided not to stand still and accept the choice of bad or worse.

He said if the Commission wanted to make a decision that would effectively kill his neighborhood, so be it, but he had decided to accept a noble death, and die fighting. He said that if the City would not accept their gift of this park and life for their neighborhood, then he would gladly accept that his neighborhood died after putting up a fight. He asked the Commission to vote "no" to rezoning this property and find a way to work together and give the neighbors an opportunity to allow us to give this park to the city.

Vice Mayor Amyx asked if the neighborhood approached the owner of the property about purchasing the property.

Jamie Hulse, Lawrence, said she spoke with Bob Welstead who was the president of the company and he gave her the price and information, indicating they were very interested in no longer owning property in Lawrence. She said that they could not make a proposal until talking to the neighbors. She said the neighbor that had the idea, had the idea two weeks ago. It took a week to get Dial to call back because they were not in the office until March 8th. She said that it took some persistent calling on her part to get them to call her back. She said the property owner indicated that they were willing to sell.

John McQuitty, 4101 Teal Drive, said he supported the previous speaker. He said there was more than enough population density in the approximate 40 acres of apartments that were currently located in that area. He urged the City Commission to vote against rezoning and to consider very strongly, the possibility that was presented by the previous speaker.

In addition, he pointed out that the drainage area backed up to his house. In building more and more apartments in that area, and pave more and more of that area, that drainage ditch was becoming less efficient and creating a run-off and caring the run-off away. He said that two and a half years before the last group of apartments went in, that area completely flooded during a four and half inch rain. Granted that was a rare exception, but when looking at a half or two inch rain, granted it was large, but that area floods. He said he had a particular concern because the three main drainage areas all come together in the back of his property. He said the area that drained Teal Drive and the high ground behind it, the area that drained the high ground to the west, and that was a good part of the west, and the area that drains all of the apartments came together in the same spot.

He said that he would also ask the Commission to consider that if they were to increase the population density in that area, the traffic flow going to and from Sunflower School in the morning was already almost impossible to negotiate.

Finally, he was concerned about property value. He said he urged the Commission to consider very strongly, the option that was presented by the previous speaker.

Bill Bump, 4214 Tamarisk, said he heard about the petition on Sunday afternoon and volunteered to speak to the thirteen homeowners on his cul-de-sac. He said there were two people who were out of town, and two people who refused to sign the petition because they thought it was a done deal and the Commissioners would not listen and that was disappointing. Nine out of the thirteen homes signed the petition and were excited about the possibility. In fact, one gentleman was out of town and returned home rather late on Monday night, he called and said he had heard about the petition and wanted to sign it. He said his neighborhood was

excited about the possibility of a park in that location. The neighborhood was willing to be taxed to finance it. He said it was interesting that the citizens in that community were willing to pay out of their own pocket to see that a park took place.

At the last Planning Commission meeting, the neighborhood was told that the proposal could be worse, so the Planning Commission voted to approve it, because it might be better than something else that could possibly come in. He said in his opinion, the neighborhood had something even better that the community supported, was excited, and was willing to finance.

He said he spoke in favor of the proposal to form a taxing district that would put a park in that area. He said he thought that the neighborhood supported it and would be excited about it, and would do anything they could to make it possible.

Marci Leuschen, 4153 Blackjack Oak Drive, said at first she was frustrated that the neighborhood had to go through the process again after the City Commission voted “no” to the rezoning, but now she saw why the neighborhood had to go through the process again. She said this idea of a park was a gift for their neighborhood, their kids, and this community.

She said at the last meeting the City Commission asked the applicant what was unique about the project. With five apartment complexes in their neighborhood, that was not unique, but with no parks in the area, that was a unique idea, and she hoped the City Commission voted “no” to the rezoning and give the park idea a chance.

Larry Northrup, 4109 Blackjack Oak, said at the October City Commission meeting, the consensus from the thirteen neighbors who spoke at the meeting, was that their neighborhood was not against development, but against the sixth apartment complex and the seventh apartment complex that was proposed next to their neighborhood.

He said that Scott McCullough, Development Services Director, said the code required a twelve month wait, unless there was substantial change made from the applicant to bring it back for review. He said there were 395 signatures from the neighborhood, and the neighborhood was doing everything they could, but for some reason this project had gone from October to

December and fast tracked until today, without time for the neighborhood to come together and meet with the City Commission and put a plan together.

The City had letters from several people that were against multi-family development. He said when the issue came back up for discussion about changing the City Commission's vote in December; they were convinced the Commission was retracting their vote in order to allow the neighborhood and developer to work together, but the neighborhood was still not in support of the plan.

He said that Vice Mayor Amyx said there was no general support for the project by the City Commission and Commissioner Dever said it was a chance for the neighbors to shape the future and was a positive reason for agreeing to rescind the zoning. He said Commissioner Cromwell said the option was to send it back to the Planning Commission and continue the discussions that were occurring between the neighbors and the developer in a good faith effort and that should be encouraged. Mayor Chestnut said he was looking forward to seeing if the public process worked.

He said he appreciated Vice Mayor's Amyx's comments regarding the discussion that took place in October where thirteen residents of that neighborhood were against this plan, and Vice Mayor Amyx was the only one not to rescind his vote because ultimately, he was not in favor of this plan when it came back before this body.

He said he was concerned about the property value of his house. He said he received an email from a client regarding a house at 21st and Kasold who did research on Heatherwood Apartments just down the street, and did not like that the rents were very low, at \$600.00 a month and the leases were from one month, three months and six months and above. The transient nature of that development coupled with the very few kids under six in the neighborhood gave his client pause. At that point, his client said the house did not hold its value.

He said the neighborhood would appreciate the City Commission standing up for the original vote given by the Commission in October, to deny the zoning request and recognize the work that the neighborhood had done in support of the protection of their neighborhood.

Scott Myers, 4440 West 24th Place, said he also canvassed the neighborhood, spoke to approximately 75 homeowners, and only one person was against signing the petition. That person was against the development, but was not sure about the increase in taxes. The rest of the neighbors along Blackjack and 26th Terrace, were fully supportive of the increase in the taxes to pay for the development of the park and to give the park over to the city, primarily, that if the City Commission approved this plan, the property values for the entire neighborhood would go down more than \$7000. He said if he were going to lose \$7000, he might as well try to buy a park for the City for the same amount of money and give that property to the City. He urged the City Commission to help the neighborhood buy the park.

Sharla True, Lawrence, said she was speaking as a potential renter and as a single person, and rent over \$500 was considered excessive in her opinion. She lived in a duplex that was under \$500 that she considered to be attractive and was rare for Lawrence. She said she called over 105 rentals and most were out of her range.

She said she had driven a school bus and had picked up children at those apartments in that area and families were very nice and cared a lot about their children. She said her opinion was to live and let live and she was sorry that a new development might affect taxes on property values, but she felt the developer should not be held back based on what the rent might be or whether the people might or might not have children.

America Greywall, 2205 Riviera Drive, said she was a parent of a fourth grader who went to Sunflower Elementary. She said in May 2009, the School District cancelled bus service to Sunflower Elementary. Working together with other parents at Sunflower Elementary, they started a walking school bus program, which was basically a pool of kids walking to school with

parents. She said they stopped their program at Thanksgiving and were getting ready to start up after Spring Break.

Greywall said the children living north of Clinton Parkway had to cross Clinton Parkway at Inverness Drive to get to school. The Health and Safety Committee of Sunflowers PTO had been working closely with David Woosley, City Traffic Engineer, Douglass County Safe Kids, Lawrence Memorial Hospital, the School District, and the University of Kansas. A traffic safety survey was conducted to raise awareness and increase the safety of students who walked in that area and traffic data collection as researched at Sunflower Elementary and Southwest Junior High. USD 497 was considering closing some neighborhood schools, and next year, USD 497 was looking at possibly moving 6th graders out of the elementary schools and into the Junior High Schools. She said that this plan would have a tremendous affect on this community and the affects would be magnified on the neighborhood surrounding this parcel of land.

She said she preferred the City Commission deny this rezoning request, but if the City Commission could not make that vote at this time, she asked that the City Commission delay their vote until after the school board made their decision. She said the City Commission had the potential to negatively impact hundreds of children that went to those schools for years and years to come.

Robert Ruscott said he was the author of the report that Graywall presented to City staff and wanted to make clear the traffic study in questions was not done to either support or oppose the development that was in question. He said it was purely factual data, regarding ingress and egress of the elementary school and in no way shape or form was the report intended to either support or oppose the development that was actually at the table and he hoped it was presented as ancillary information to take at will of the Commission.

Jamie Hulse, 4403 Gretchen Court, said she presented a report to the City Commission regarding numbers and details about the park proposal for their review. The numbers were from Dial Realty and the remaining special assessments were added. One of the neighbors in

that area worked with municipal bonds in Missouri and that person did the calculations so those were real numbers by a real company that existed.

Hulse said this was not a neighborhood that was against development and was evident by their participation over the years, through the process. She said it was not so much about having a park, although that would be a really great thing to have next to us. It was about taking control of our neighborhood to eliminate the possibility of more multi-family. She said she had spoken to probably 200 neighbors since last September about this subject and most of those people preferred commercial anything over more multi-family. A neighbor had this idea of a park two weeks ago, and several people jumped on board and ran with it.

She said she was interested in knowing if the City Commission had received any communication in support of the project, either written, emails or phone calls.

She said the City Commission indicated in December that the ball was in the neighborhood's court and if there was no neighborhood support, the City Commission would still vote no and had not heard of anyone who was in support of it. She said the neighborhood was asking the City Commission to allow the neighborhood the opportunity to explore a way to accomplish developing a park. She said they understood the problems, and the potential issues that come up according to the Kansas Statue, but if given the opportunity they could figure out a way to make it work. If it could not be figured out, the neighborhood would gather a group of people to work with Dial Realty to find something that would be a more mixed use that they could all support. She asked the City Commission to vote "no" because the neighborhood wanted to find a different solution than more multifamily.

Candace Cobb, 2716 Inverness Court, said she wanted to remind the City Commission that at the last City Commission meeting Vice Mayor Amyx indicated that there was only one opportunity to do this right with this piece of ground and that was their request.

Richard Bennesch, 4429 West 25th Place, said he was fairly new to the whole movement that the neighborhood was rallying around. He said he was one of the people who questioned

and did not sign the petition because he was not well informed. He said in the meantime, he educated himself. He said he thought it was a fantastic idea, mainly because it was going to be a benefit to the community. There was going to be a larger benefit by having a park than it would be to those individuals who are just residing at those apartments and the developer who was just standing to profit from the sale.

He said his line of work was real estate analysis for multi-family. He said he did his work nationally and had a lot of experience in this type of issue. He said there was adequate supply for multi-family, but not adequate demand. A lot of properties that people presented were not completely full and when those apartments did fill up, he asked what that did to the market. He said stagnant population growth in the area was seen and would only be shifting from within the city boundaries from other properties. He said blight would be created from over building multi-family.

He said another concern was that the developer who wanted to develop this parcel, but what was the long term effect. The developer could build an acceptable product and then he asked what developer would do with the product. He said if the developer was in it for profit and move on to his next deal. He asked what condition this property was going to be in a couple of years down the road, not to mention the condition of the existing multi-family in the area. The saturation of the product would ultimately lower rents, and the owners of existing properties were not going to have adequate funds to properly maintain their properties. He thought it was the wrong decision to approve the rezoning of the parcel and was in full support for a community park.

Cindy Bracker, 2611 Prairie Elm Dr. said she was born and raised in Lawrence and when she was a teenager she could wait for nothing more than to move out of Lawrence, to a big city with lots of apartment complexes, but got older and realized she did not know everything and that Lawrence was really a great place to live. She said she got married, bought a house and had a couple of kids and last year she started a business. She said she was present to

fully support a park in this area. She said as a child, she remembered Broken Arrow Park where she grew up, and she wanted that for her kids. She said she also had a Girl Scout Troop and would like to have a place for her Girls Scouts to have ceremonies. She said there were also a lot of Boy Scout Troops in the area as well as a number of other children organizations and she thought this would be a great benefit for the kids in that neighborhood.

Mark Anderson said he was present on behalf of the applicant. He said there were two sides to every story. The applicant had met several times with the neighbors and felt they responded to those concerns that were voiced to them. After one of the meetings, two weeks ago, one of the neighbors stated: "it doesn't matter and any amount of landscaping isn't going to change the opinion of the neighborhood", but they had been going through the meetings repeatedly believing that it would matter. He said they were told that what the neighborhood wanted was for the lot to basically remain vacant.

The property was under contract to the applicant and there was absolutely nothing that Dial Realty could do about that. He said that after hearing the neighbors concerns that they basically wanted the property to remain vacant and then hearing, shortly after that, within a day or two that the neighbors were calling the owner of the property to talk about buying it. He said he asked the applicant what he wanted to do. The applicant's response was that it was under contract. He worked hard with the City, neighbors, and had hired a landscape architect who had attended numerous meetings. He said the landscape plans were drawn several times, paid a number of engineering fees to engineer the site, and paid legal fees. Essentially, the applicant had too much money into it to walk away.

If there was an interest tonight among a majority of the Commission to explore further the idea of a park, someone needs to call the applicant. He said all this discussion and comments about circulating petitions, the one person that was not called was the applicant. He said to his knowledge, as of this afternoon, not one person had attempted to call the applicant or his representatives to see if there was some way to buyout the applicant of the investment

made in this property in addition to buying the land from Dial. He said he would remind the Commission that the applicant was cognizant of the need for neighborhood parks. In fact, the applicant donated 46 acres of his own land, to the City just a year ago.

He said they had tried to overcome the legitimate concerns of the neighborhood with respect to the design, development, scope, scale, occupancy, and landscaping. He said the applicant had consistently agreed throughout the process with the request of the neighborhood, but thought they were finally at the juncture where the decision now wasn't about the applicant's plan, the decision the Commission was being asked to make was no plan, no development on this site.

He said foregoing development on this site and turning it into a public park would mean taking it off the public tax roles. Not only would the City forego future ad valorem property tax to the tune of over \$100,000 a year, but create an ongoing liability in perpetuity for the City to maintain the park.

There were also special assessments that were currently levied on this property that had to be dealt with, in addition to the purchase price, in addition to the applicant's investments, in addition to the park improvement. The City had to deal with the special assessments which were very expensive, would be a tremendous investment, and was an ongoing liability to undertake for the tax payers at-large in this community, to create a park where no park was planned.

Anderson said he would defer to staff regarding the traffic study. A traffic study was performed and the streets and intersections were all functional and there were no traffic study issues with the traffic that would be generated by the applicant's development.

Stephen Slade, 4219 Teal Drive, said he lived just behind the development and thought that a park was an excellent idea. He said that he did not sign the petition because he was not home that weekend, but that several of his neighbors signed the petition and supported the park idea.

Steve Hertzog, 4106 Blackjack Oak Drive, said he stood by everything his neighbors stated, but after hearing Anderson, a couple things came to mind. He said he thought it was uncharacteristic to describe the Sunflower Park neighborhood as only wanting a vacant lot on that property. He said that was absolutely not true, they did want to see development, but the right development. He said they were all in agreement that the single story apartments were wrong and there were too many apartment buildings to begin with. The Commission asked the neighborhood to come up with something better and they had come up with a solution that all agree would be better. He said they might need more time to develop the park and implored the City Commission not to vote for rezoning tonight. Obviously, in the last couple of weeks, a lot of work was completed, very positive and progressive work.

He said he questioned Anderson's concern about his client losing money, a mere investment in which developing was a speculative business and there were no guarantees. He said developing was speculative, however, buying a home, raising a family, and creating a good neighborhood, should not be speculative.

Hertzog said one of the City Commissioners said there was only one chance to get this right and if there were doubts, it was suggested not moving forward. He said the Commission could always wait another couple weeks to vote to give the neighborhood more time. He said the neighbors did a lot of good work in presenting a better use of that vacant lot.

True said everyday the developer was delayed, it cost the developer money. She said when the developer chose that spot, he saw that it was already being used for multi-family and the Commission needed to take into consideration that the developer had already donated a number of acres to the City for a park and obviously cared about the city. She said the developer was already involved with the City and probably in tune with the school board and knows what was going on with the students and a lot of those students were going to need a place to live, since the busses were cutting back, and it was probable that some of those

students would be attending the school in this area and needed to have a safe distance to walk to their school.

Kevin Wickliffe, 4424 Gretchen Court, said that the developers had worked very hard in getting neighbor cooperation and input for the project. He said the neighbors cooperated because they were led to believe there was no choice and that if the proposed apartments were not built then something else would be built. He said it was not so much whether the park could be built or if it was feasible, because nobody had time to dig into that idea yet. He said the neighbors were not trying to blindside the builder, but there might be something better.

Ongo Shlevet said he had a concern with adding more apartments. He said from where he resided, he only had two alternatives onto Clinton Parkway, which were Inverness and Crossgate.

The second issue was the safety of children walking to schools with the width of the street and the speed limit of 45 mph. With more people living in that area it would potentially cause a problem with the safety of their children.

The intersection between Iowa and Clinton Parkway was the number one place for vehicle accidents. The intersection between Clinton Parkway and Kasold also became more and more crowded. He said when adding more people in that area, it would cause a bottleneck, not just for the people living in that area, but also for those on the west side of Lawrence.

He said he hoped the Commission thought seriously about this problem and made a right decision. He said he was in full support of a park in the area and people from the community were willing to spend money for a park and for the children nearby.

Commissioner Dever asked if McCullough had the list for acceptable uses for RSO zoning.

McCullough said he could get that information.

Vice Mayor Amyx asked if Loupe visited with the contract purchaser of the property.

Loupe said they were so focused on finding out if there was support for this benefit district that they had not had the opportunity. He said they were trying to gather input from the neighborhood to see whether or not the idea of taxing ourselves to buy the property was even feasible. He said they were trying to line up the financing first and some of the pieces had fallen into place today and yesterday, such as support from the Legends and willing to be assessed along with Windham Place. He said they felt pretty good now that they could get the financing and going forward they would be more than willing to discuss those options.

Vice Mayor Amyx said Hulse talked to Dial and Stultz was the contract purchaser.

Commissioner Dever asked in the RSO zoning what manufactured home-residential design meant.

McCullough said that was a type of manufactured home that had more stick built characteristics and there were seven standards it had to meet, to be permitted in those different zoning districts.

Commissioner Dever asked about a cluster dwelling.

McCullough said it was clustering detached dwellings and preserving open space. He said that the 8-plex staff tried to draw similarities to, could not be found in the use table and was a use standard for attached dwellings that allowed up to a maximum of eight attached dwellings at a time in the RSO, whereas multifamily dwelling structures were not permitted.

Commissioner Dever asked about zero lot line dwelling.

McCullough said the same thing applied.

Commissioner Johnson said he appreciated the neighborhood wanting to protect the neighborhood, however, if the neighborhood wanted that area as a park, the City Commission did not have that under their control to make that area a park. He said there was an entity that owned the property and a developer that had the property under contract, and if the developer performed on that contract, the developer could buy the property and if the proposed project was not built, something could be built different. He said they could debate whether a park was

good for that location or not, but there was an applicant that had a project proposed to build at that location and had gone above and beyond in acting in good faith to try to address the neighborhood's concerns, short of not building it. He said that he realized the neighborhood did not want a fifth apartment complex. The reality was more multi-family could be built on this property, it was just a matter of what multi-family would look like. Again, the developer had gone above and beyond what was normally asked in trying to work with the neighborhood in coming up with a plan that addressed their issues.

He said he attended neighborhood meetings early on regarding issues such as landscaping and felt he was micromanaging a little of the process, but also felt the developer had addressed concerns and did more than what was required. He said the proposal seemed attractive and was under contract. He said he was in support of the rezoning.

Vice Mayor Amyx said some of the residents made investments in their homes based on existing zoning, but the zoning had changed by direction of the City Commission. He said opportunities were only given on final parcels of property when development occurred and this was it. He said there was neighborhood commercial that could be developed in that area.

He said he appreciated the work on the idea of a park and if the City Commission delayed the rezoning, going to the property owner would be the first place the neighborhood should visit.

Commissioner Cromwell said the last time this issue came to the City Commission, he voted to send it back in order for the neighbors and the developer to come to an understanding. He said it was clear there was still unanimous dissent from the neighborhood.

In a large degree, the City Commission was being asked to approve something because it could be worse. He said he appreciated the hard work, but disagreed with voting to change the zoning. He said if the City Commission did not quite believe in it and it could be worse, he did not think that was leadership. He said the neighbors indicated they would take their chance and he supported that.

He said he did not believe the project in this location was good for Lawrence or good for this neighborhood. He said the neighborhood already had their share of multi-family and was not in favor of this project in this location.

Commissioner Dever said this issue boiled down to changing zoning in order to facilitate the development of a piece of property. He said when he agreed to readdress this situation it was an effort to bring some sort of common ground between the neighbors and the developer. The developer went through the process of inviting the neighbors to the table, sought changes to the site plan and many of the changes were made. He said he heard comments such as nothing would be good and no development.

He said in reference to Commissioner Cromwell's statement that it was bad leadership to help make decisions, it was part of the Commission's job to try and interpret the rules and understand an acceptable change in the use. Every single entity that had weighed in on this issue from the beginning to the end said this project met all of the standards. He said he felt uncomfortable trying to sway or go against all of the good insight from staff and the Planning Commission as well as everyone involved in the process.

He said he was torn about what he thought was best, picking the worse evil. It boiled down to whether there was a legitimate process that took place between the neighbors and developer to try and come to a common ground and he did not hear that they were any closer to that point then they were in the fall. He said it was disturbing because the developer spent a lot of money trying to assuage any fears and mitigate any impact this development had on the property.

The discussion about the park was too complicated and outside the scope of this discussion to address, but he appreciated the neighborhood's efforts. As he pointed out, if it was a vacant piece of land, people should plan on the worst case scenario occurring because it probably would. In this case, a worst case scenario could be a multi-story apartment complex and was in favor of moving forward with this request because it was a less intrusive design and

project. He said he still torn between what Vice Mayor Amyx pointed out, which was if it was in the City Commission's purview to make changes to zoning to facilitate growth or development, but it was part of the Commission's job. He said the worst case scenario would occur and there would be a more intensive land use at that location and that was why he was in favor of moving forward with some type of mitigation and mediation between the landowners in the area and the developer. He said every single neighbor indicated they did not want the rezoning, but wanted a park. He said a park issue was not before the City Commission, but a change in zoning. He said he was disappointed they could not get further or closer to an agreement on which would be at that location after all the money and time spent by this Commission and residence. He said he was still on the fence on this issue.

Mayor Chestnut said he appreciated all of the efforts. He said there were many comments about people being in this to make money, which he agreed. The accusation that this was nefarious, he was not sure where that was going, but what was important was that the City Commission enforced land use issues. He said this was a rezoning request and believed he would view that dimly because sometimes it was for more intensity and sometime it was for significant change in use. What was interesting was that the neighborhood was asking for significant change in use from what the zoning had been for the last 11 years to go to an open space park. He said he had a lot of comments and emails about Horizon 2020 and also comparison to Oregon Trail. Oregon Trail was a sector plan that was designed for a park for a long time, plus significant stormwater improvements.

He said he was not sure they could make a case for a special assessment on that property to show a significant infrastructure need in that location. He said there were a lot of specials and the infrastructure was made because it was planned to have some type of dense developed. He said it was going to be problematic from the start as far as looking at special assessment benefit districts. Also, the unintended consequences were significant and he was trying to go through a logical path of what might happen. He said first of all they could not be

sure there was a willing property owner and he would not condemn a piece a property from a property owner to change the use that was zoned a long time ago. He said that became capricious in the way the City Commission was using their power.

He said it was important to understand was that they very much appreciated neighbors willing to step up to the additional money, but that meant the City had to front 2.5 million dollars to buy the property and was paid back over 20 years. He said there was a significant investment and it would be floated by General Obligation Bonds which meant the City placed its full faith and credit behind it regardless whether the benefit district went forward or not. There was significant risk the City would be taking.

Whether anyone liked it or not, density was important to the community because there were a lot of people that believed they should have more density because it maximized infrastructure and one of the criticism the City had, in the past, was expanding its footprint significantly and spreading out its infrastructure. He said there were about 3200 acres in public parks within the City limits and that stretched out the City's infrastructure. He said he also had to take into consideration some of the emails asking him to listen to his constituents, but he had to listen to all 88,000 of his constituents and there would be significant cost associated. It did come off the tax roles and there were special assessments that were being paid by the property owner right now that the City would have to forego the recovery of those payments, probably in the magnitude of hundreds of thousands of dollars.

He said he did not know if the legal precedent was present, but the financial wherewithal for the City to take that on could be very significant. He said he appreciated all the effort, but was concerned the steps it took would become extremely problematic and probably very expensive to the City.

He said RSO zoning allowed multi-family development and it had been zoned that way for 11 years. If the City had another project that came before the City Commission that abided by every facet of RSO zoning, this body would have to deny that project and it would be difficult

to figure out the grounds for that denial. He said he agreed with the comment that development was speculative, but it was important to understand that they had as much responsibility to enforce the rights of property owners as well as property owners across the board and was the reason there were zoning laws, development plans, and Horizon 2020. He said with this change in rezoning, he did not see a change in use.

He said he could not say whether or not the City needed more apartments in this community and did not know the target market. If the City Commission started getting into trying to figure those things out, then the City's long-term planning became somewhat unpredictable and zoning was up to negotiation because every time it came before the City Commission, the Commission decided whether or not another retail outlet store was needed or apartment complex and he did not think that was the City Commission's charter and could get very dangerous in trying to engineer what was happening in the retail, residential or commercial market.

Several people brought up commercial zoning and he did not think that was a bad idea. He said it was turned down by the City Commission. He said residential was not going to happen because the surrounding area was up against Clinton Parkway and would not be what zoning or planning recommended. The area had been zoned office for 11 years, but he did not see that happening and all that was left was multi-family. He said he thought the Commission would be faced with another decision if this rezoning was denied and they would have another project that was in complete compliance with the existing zoning and being asked to deny that which was not a fair position for the Commission or the property owner.

He said this was a complicated issue and everyone made their best efforts to try to come to an understanding, and regardless of the decision, progress had been made by a project that would mitigate landscaping and put a lot into what would not otherwise be there. He said he did not consider it to be the lesser of evils, but a land use that had been zoned for that land use for 11 years and they were going to be looking at this one or another one with RSO zoning that was

in compliance and being asked to deny it when the zonings had been there. It came down to making the best decision given the circumstances.

Moved by Johnson, seconded by Chestnut to approve rezoning (Z-7-11-09) and adopt of first reading, Ordinance No. 8462, rezoning (Z-7-11-09) for 10.97 acres, located on the southeast corner of Inverness and Clinton Parkway, 4300 West 24th Place, from RSO (Single-Dwelling Residential Office) to RM15 (Multi-Dwelling Residential). Aye: Chestnut and Johnson. Nay: Amyx, Dever and Cromewell. Motion failed. (13)

The Commission recessed at 8:20 p.m.

Consider adopting on first reading, Ordinance No. 8467, redefining the term “structure” to explicitly exclude driveways and other parking areas and amending other provisions of the City’s Environmental Code.

After returning from recess, Brian Jimenez, Code Enforcement Manager, presented the staff report:

Community Development Advisory Committee

Last year, Planning and Development Services implemented a new Citizens Participation Plan through the passage of Ordinance 8335. Part of that plan renamed and reconstituted the former Neighborhood Resources Advisory Committee, which became the Community Development Advisory Committee.

The Neighborhood Resources Advisory Committee served an important role in the operation of the Environmental Code, acting as an appeal board for notices of violation, a step that occurs prior to abatement or the filing of charges in Municipal Court. Therefore, it is necessary to update the Environmental Code references to Neighborhood Resources Advisory Committee to reflect the title of its successor, the Community Development Advisory Committee.

Clarification of Definitions

As a result of the review, two definitions were clarified in the amended ordinance. First, the definition of “structure” was changed to explicitly state that driveways are not structures under the Environmental Code. This change addresses the effect of previous Municipal Court rulings that included driveways within the definition of structure. The effect of those rulings was to exempt abandoned vehicles parked on driveways from the reach of the ordinance, a result I do not believe was the legislative intent. This is the case because it is illegal to park an abandoned motor vehicle in a yard, which is defined as the area of a property with no structure. It is not, however, illegal to house an abandoned vehicle in a structure such as a garage. The revised ordinance directly states that driveways and other roofless areas used to park cars are not structures.

Second, the definition of “refuse” was amended to make it more inclusive. The current definition mirrors the one found in Section 9-402(B), the refuse collection section of the City Code. Their purposes, however, are substantially different. The Article 4 definition of refuse is meant to exclude a variety of items from regular pick up by the City’s solid waste personnel. Section 9-410(B) prohibits putting out for collection materials not defined as refuse. There is no reason to exclude these things, like bricks, tires and household hazardous waste, from the definition of refuse in the Environmental Code. These items can pose the same or more substantial problems than the things not exempted from the term refuse.

Even though it is generally good policy to attempt to keep definitions fairly consistent across different articles or chapters of the City Code, in this instance in order to be true to the substantial policy justifications for the Environmental Code, these previously exempted items should be included within the definition of refuse.

Enforcement Standards

There are two primary types of violations under the Environmental Code that deal with the exteriors of property – Exterior Conditions (yards/porches) violations and Exterior Conditions (structure) violations. Also, failure to have conspicuous house numbers on a house and certain acts surrounding the collection of trash are illegalized by the Environmental Code. Under the current ordinance, a violation of any of these prohibitions may only be successfully prosecuted if “conditions exist of a quality and appearance not commensurate with the immediately surrounding properties.

I believe the purpose of this provision is to allow individual parts of the City to retain their individual character. Unfortunately, this provision creates an enforcement nightmare in certain circumstances as people who receive notices of violation drive around their neighborhoods looking for similar instances to document as a means of excusing their own potential violations.

It creates an argument similar to one sometimes made in speeding ticket prosecutions -- that because everyone on a given road is speeding and the police cannot stop them all that it is unfair to stop anyone. That argument does not carry the day in a speeding ticket trial but it may well under the Environmental Code.

While this may be an acceptable result for exterior condition (structure) violations because the calculus takes into account the age and character of a neighborhood, and perhaps the economic resources of the average neighborhood resident, I do not believe it makes equal sense for exterior condition (yards/porches) violations. Under the current ordinance if everyone in a neighborhood decides to allow trash to accumulate on their front yards or everyone decides to keep wrecked cars out in the open on their property then there is no way to address the problem under the Environmental Code. For instance, if an entire block of people in the Oread neighborhood decided to have parties in their yards and nobody cleaned the mess up, the Environmental Code might not be enforceable on that block for trash violations on anyone’s property because there was trash on everyone’s property. While this may be an unintended consequence of the current language, it is a real one.

The proposed ordinance tries to reconcile these competing interests. It substantially preserves the current rule for Exterior Condition (structure) violations, requiring that a violation be for a condition not commensurate with the condition of surrounding properties, while making that rule ineffective for all other types of violations such as trash violations. The idea is that the age, economic and social character of various neighborhoods might influence what is considered a dilapidated or deteriorated structure in a given neighborhood but that anyone should have the

same obligation to clean up trash from their yards or avoid parking abandoned vehicles there regardless of where they live. Also, the revised ordinance sets the lower limit for acceptable levels of deterioration or dilapidation. Deterioration or dilapidation becomes a violation regardless of the condition of surrounding properties when the conditions threaten the health, safety or welfare of any person.

These changes result in a more enforceable ordinance. Another option favored by many members of the Planning and Development Services enforcement staff would be to eliminate the current rule and impose one set of minimum standards for the entire City. If the Governing Body wishes to take this approach, the ordinance could easily be changed in time for second reading.

Service of Notices of Violation by Certified Mail

Last year, Ordinance 8280 was passed by the City Commission. The purpose of the ordinance was to accelerate the abatement of trash nuisances under the Environmental Code. The ordinance changed the way notices of violation are served under the Environmental Code. Instead of having all such notices served by certified mail, it required that the property be posted and follow-up notice be sent by first class mail.

Members of the Planning and Developmental Services Zoning Enforcement staff have informed me that some Environmental Code notices of violation that do not pertain to trash abatement are more conveniently and efficiently served by certified mail. They requested that Section 9-607 of the City Code be amended to include certified mail as an alternative means of serving notices of violation, allowing them to choose the method of service that best fits the individual situation at hand. For example, trash abatement would continue to be done with property posting and first class mail follow-up while structure violations might instead be served by certified mail.

The proposed ordinance amends Section 9-607 to incorporate this change.

Language Improvements

The language of the Environmental Code was reviewed and, where necessary, it was amended to clarify its meaning, improve interoperability with other provisions that had been amended subsequent to its initial passage, and to eliminate ambiguity. These changes are not aimed at amending the substance of the existing law.

Vice Mayor Amyx asked about the number of trash receptacle violations.

Jimenez said it was usually a violation that was tagged on with other violations. He said he did not have a number, but there were a significant amount of people that left their receptacle halfway up their driveway or next to their vehicle. He said it was a matter of curb appeal and needed to be placed close to the house.

Vice Mayor Amyx asked if this ordinance would help with trash during ball game events.

Jimenez said the tax abatement process was changed and limited from 15 to 7 days. He said there were a lot of complaints in neighborhoods regarding trash in alleys. He said having more specific regulations was a benefit.

Mayor Chestnut said they were not changing policy, but the structure issue was that a municipal court judge saw some ambiguity and interpreted in a way that seemed different which was being clarified in the new ordinance.

Mayor Chestnut called for public comment.

Sharla True, Lawrence, asked about the wording about a driveway being a structure or not a structure.

Mayor Chestnut said the City had a situation in Municipal Court where a municipal judge said that the driveway was considered part of the structure on the property and that became very problematic in enforcement. He said they had the right by ordinance to clarify that the driveway was not part of the building and therefore, it helped the City with enforcement issues. The way the wording was before, it was not clear that driveways were not considered part of the structure.

True said a driveway was defined as where a person would park their car.

She said she saw in the Journal World that the Commission was considering approving a new ordinance where Code Enforcement could come on someone's property and tow a vehicle not being driven and label the vehicle as abandoned. She asked if the City Commission was leading up to confiscating people's cars that were not drivable.

Scott Miller, City Staff Attorney, said the environmental code was always applied to abandoned vehicle and that was defined in that specific ordinance. The enforcement mechanism was not towing vehicles off someone's property; if they had an abandoned vehicle on their property the enforcement mechanism was the same as any other enforcement under the environmental code. A person would receive a notice of violation telling that person they had to cure the problem, and if it was not cured, a notice to appear to answer in court for the

allegations against that person. The City Commission could do nothing to abrogate the City's duties under the 4th amendment because the City was government and could not go on to someone's property as a government act without complying with the 4th amendment. If that was the concern and someone believed their civil rights were being taken away by the City Commission that was not something the Commission could do.

Mayor Chestnut said if there was an abandoned vehicle in the public right-of-way that was a different issue.

Miller said it was a different ordinance which had been in effect for a significant period of time and the City's ordinance regarding towing vehicles on the public right-of-way was standard in the State of Kansas and the language came directly out of Kansas Supreme Court precedent and you would probably find that ordinance almost everywhere in the State of Kansas.

Mayor Chestnut asked if True's question was answered.

True said her question was answered, but the Journal World seemed to strongly indicate something differently. She said she saw changes in the wording and did not know if that wording would be effect. If this ordinance had been enforced for so long, she was not seeing a lot of cars being moved. She suggested looking at not limiting the parking to 48 hours to call a vehicle abandoned.

Miller said the 48 hour limit was one of the reasons the Police Department could tow a car. After a car was tow, the car could be redeemed by the owner, but the owner had to pay the tow and storage charge. He said he thought True was referring to was that sometime owners did not pay for tow and storage charges and Kansas statutes gave the tow companies authority in that situation to sell the vehicle to pay for their fees and then return any balance that was left over to the owner of the vehicle, but none of that had to do with the ordinance before the City Commission at this time.

Mayor Chestnut said if there were more interest, True could inquire to staff and if there were any comments or suggestions on changing the other pertinent ordinance, he encouraged True to do that.

KT Walsh, Lawrence, asked if public comment was being heard on junk cars.

Jimenez said staff was not making any changes to the abandoned vehicles section of the code, but to the structure, to exclude driveways. The City's typically procedure, under the ordinance, was enforced for two reasons which were the vehicle were not tagged or inoperable. He said staff never seized a vehicle on private property, but sent a notice and work with property owners to do either the registration or get the vehicle running again. A property owner could keep their vehicle parked on their driveway as long as they wanted, as long as it was operable and currently tagged.

True said she had been in a car wreck and took 3 to 6 month to settle things with insurance. She said her vehicle was in a back alley surrounded by a garage on both sides and her house.

Mayor Chestnut said in fairness to staff, they were not prepared to have this discussion. If she wanted discussion on the possible consideration of modifications to the abandoned car ordinance, he would ask staff to look into that issue, but that was not part of the current discussion.

True said she did not have a problem with leaving trash at the curb where it was normally picked up, but how long could a person leave their trash can at the curb.

Mayor Chestnut said it was complaint driven.

Jimenez said the code currently stated 24 hours prior to trash collection and removed 24 hours after pickup.

True said she knew the trash collectors had a very hard job and was labor intensive and respected staff, but sometimes the wind or the hurriedness of the trash collector made those

trash receptacles tip over and that should not be held against the property owners or result in any fines.

Hubbard Collinsworth, Lawrence, said it stated that trash receptacles had to be water proofed and asked if the receptacle had to be covered.

Jimenez said with multi-family, trash receptacles with lids were required and single-family areas, receptacles could be set out uncovered and anything that was allowable by Public Works collection crews. He said he was not sure about the water proof part of the question.

Michael Tanner, Lawrence, asked about the City's trash policy.

Jimenez said trash in the yard, porch, or side yard was prohibited. Once again, they wanted to make sure it was on solid ground regarding driveways and 24 hours was the time limit to have those receptacles on the curb.

Tanner asked if this policy was enforceable against the entire community.

Mayor Chestnut said yes, property owners.

Tanner said he would see the City in court.

True said barrels were sometimes used as attractive planters and wood could be used decoratively as well as crockery which could include a planter and wondered about that. Also, she asked if staff was talking about the backyard as well and what that did to people having yard sales that set up their yard sale on Wednesday for four days and asked if it would circumvent this ordinance.

Mayor Chestnut said the solid waste division was very well liked in this community and did a very good job of understanding what happened in a neighborhood. Since serving on this Commission, he had never received a complaint about somebody picking something up in a yard that they did not want taken away. The definition was to try and clarify what people were putting on the curb, one of the challenges, was trying to control what was put on the curb because it could not be hazardous waste, oil, tires and other things and should be disposed of

in a certain way. He said this was an attempt to define what trash was that was put out on the curb to be taken away.

True said she was more concerned about those who had private property and things that were used for planting on their porch.

Mayor Chestnut said again, it was complaint driven. If there was a neighbor where there was obviously a situation, the City would contact the property owner and ask about the situation and if the property owner did not respond, the City would try to take that owner to court. He said the City would try to find a resolution and were not just walking on the property and taking things away.

True said she had a friend who was quite a junker and stored tons of stuff on their porch because there was no storage and lived in a studio apartment. She said she did not have a problem with that, but it was on the front porch facing a very busy neighborhood.

Mayor Chestnut said he understood there was a certain amount of judgment relative to what was considered clutter and what was not. Again, staff worked on a complaint driven system. If there were neighbors that were complaining that there was a property in disorder and there was a lot of trash, staff would get in touch with the property owner and try to resolve the issue.

Moved by Amyx, seconded by Cromwell to adopt on first read Ordinance No. 8467, redefining the term “structure” to explicitly exclude driveways and other parking areas and amending other provisions of the City’s Environmental Code. Motion carried unanimously. **(14)**

Receive staff report regarding the Google Fiber for Communities program; consider authorizing staff to complete and submit the required questionnaire on behalf of the City Commission to nominate Lawrence as a potential location for the Google Fiber for Communities project, and consider authorizing staff to solicit public support for the project.

David Corliss, City Manager, said the City Commission asked staff to take a look at this proposal and had received a few emails and contacts from citizens.

Eric Gruber, eGov Coordinator, said in February, Google announced this experiment to roll out, build, and test ultra high speed networks across the United States in selected locations and the ultra high speed internet was defined as one gigabit which meant it was 20 times faster than what could be purchased locally.

The first step to participate in this experiment was to submit the request for information that Google provided and staff was looking for direction on how to proceed or if the City should proceed.

James Wisdom, Information Systems Director, said Google had a very vague proposal. He said he had been looking at what the technology, communication and broadband industry sites were stating and it appeared Google did not want to be the last mile provider and wanted to be the middle person providing the backbone to the networks. There was speculation that Google wanted to do it for \$1500 per home or less and population and density might come into play. The most important thing was to get the application completed and submitted and define who that should come from either the City Manager, Mayor or City Commissioners and who would be the person to communicate with Google, if this City was chosen.

Mayor Chestnut called for public comment.

Nick Davis, Lawrence, said in discussing this opportunity, it was not a matter of the Commission signing up to take someone home from the dance, but just wanted the ticket to get in. He said he strongly urged the City Commission to proceed to the next step. He said what Google had done so far was to issue an RFI (Request for Information) to solicit interest. He said one City to the west of Lawrence had made an absolute fool of itself, in his view.

He said the application should bare the force of the Mayor and appoint a man or women for Google to contact for further information. At the present time, Google did not know the scope of what it wanted to do and what it would cost. He said it was exploratory on Google's part as it was in cities and other entities that were considering responding. The only expense he could identify for the City currently, was staff time to prepare the proper response and the

response did not need to be lengthy however, it needed to be deemed authoritative and a unique selling proposition for the City of Lawrence.

Travis Wisegood said as a local business owner, he was excited about the possibility of Google fiber coming to town. He said it was said that this experiment was 20 times faster than what the City had available, but for most cities it was a hundred times faster so this City already had a state of the art infrastructure, but to enhance the City even further into something that was not available to residents was exciting to see what possibilities could happen if exposing to developers.

Jake Lowan, a small business owner, asked that the City Commission take the next step for this process. This would be a very innovative, groundbreaking step forward for whichever community was selected. He said there was further decision that could be made down the road. He said this would allow Lawrence to build on its existing reputation as a silicon valley of the Midwest. He said he did not know until he met the right people that there were a lot of significant internet technologies that were developed in Lawrence and continued to have a basis of support around Lawrence. There had always been a part of Lawrence that Google had identified to some degree such as Google Earth and its default location was Meadowbrook Apartments in Lawrence Kansas. The main reason for asking the Commission to move forward was a matter of civic pride and he was friends of many of the people in Topeka who were organizing their public outreach drive where 10,000 people joined a Facebook group and had taken steps to change their City's name for a month to "Google, Kansas." He said Topeka might think they were getting somewhere by changing their City's name and identity to attract Google, but Lawrence would get somewhere by holding on to what was unique about this City and what was attractive. He urged the City to move forward by throwing Lawrence's name into the ring to see what happened.

Rod Kutemeier, General Manager of Sunflower Broadband, said the interesting thing about this Google project was immediately, people started asking him if he was against this

experiment. He said quite honestly it was an absurd amount of bandwidth that would be taken to each home, but certainly Sunflower planned to be there someday when the demand called for it, but for now, there was not a demand and that was why Google wanted to build an experimental network. He said they were 100% for this project and would like to help to bring this project to Lawrence. He said one of the factors in the RFI was Google “was looking to work with a community where they could bring a significant benefit to residents,” and “also take into account broadband availability and speeds that were already offered to users within a community. Fortunately, or unfortunately, he feared the speed and prices that Sunflower was offering today for their internet could be a detriment to the City’s application to Google as Google was looking for places to go where they could provide a higher speed with a lower price. As an example in Mountain View California, the home of Google, as well as the entire San Jose Valley, San Francisco Bay area, had 50 meg internet that they were paying \$99.95 whereas in Lawrence Sunflower offered that same service for \$59.95. There was also a \$44.95 product in Lawrence that went up to 21 meg whereas in Mountain View, they had a 22 meg product for \$62.00. The point was that it would be a hard case for Lawrence to prove to Google executives that the City was in need of faster internet at better prices. Sunflower had been in this community and invested in this community for many years. He said there was a case to be made and he would be interested in working with the City and community organizers to look at a way to present themselves to Google as an option to build out the existing fiber in the neighborhoods. He said he was asking the City Commissioners to consider, in the application, to give an advantage to bringing this project to Lawrence, if Sunflower could be a part of it and hopefully, give Google an opportunity to build out of an existing network versus overbuilding a network that already existed that was providing fast speeds at a low price.

Joshua Montgomery, Lawrence Freenet, said he agreed with Sunflower Broadband and would love to help if they could.

Cindy Brockestern, owner of I Café, Lawrence's local wireless internet café, and agreed with everything that had been stated. She said she would be happy to provide her store as a place for public to come in a voice their support should the City Commission move forward.

Mayor Chestnut said it was a good idea and the City did have a very technically savvy community and that might have some great appeal, but it was hard to know what was in the mind of Google at this point. He said the City represented itself as a well developed broadband capability community, but had a lot of resources and savvy people.

Commissioner Dever said he would defer to Kutemeier's comment about the cost in Mountain View California and other locations and there was about a 40% increase in the cost of living and their rates were probably commensurate with the cost of living and would not necessarily rule this Google project out. He said the City had great last mile providers and conceptual concepts and Lawrence had a lot to offer and would be a good candidate.

Commissioner Cromwell said this would be a potential for job creation and would help this City out that much more in painting Lawrence as high tech because Lawrence was looking into Biosciences and the University had a long history of high tech working. The World Company had been at the forefront as well. He said Lawrence should move forward and get whatever public/private partnership that made sense.

Vice Mayor Amyx said answering the request for information for Google was a step the City needed to take and there were a lot of people that would help with this endeavor and spoke volumes for this community. He said Lawrence was the obvious candidate for this Google project.

Commissioner Johnson concurred.

Moved by Cromwell, seconded by Amyx to authorize staff to complete and submit the required questionnaire on behalf of the City Commission to nominate Lawrence as a potential location for the Google Fiber for Communities project. Motion carried unanimously. **(15)**

PUBLIC COMMENT:

FUTURE AGENDA ITEMS:

- | | |
|----------|---|
| 03/09/10 | <ul style="list-style-type: none">● Consider approving Comprehensive Plan Amendment CPA-2-1-09 to Chapter 14 – Specific Plans to approve and incorporate by reference the Oread Neighborhood Plan. (PC Item 10; approved 7-0 on 1/27/10) <p style="margin-left: 40px;">ACTION: Approve Comprehensive Plan Amendment (CPA-2-1-09) to Chapter 14, if appropriate.</p> <ul style="list-style-type: none">● Consider an appeal of Historic Resources Commission's Denial of Certificate of Appropriateness for 423 E 19th Street (DR-8-98-09) and 1926 Learnard Avenue (DR-8-99-09). (HRC Item No. 4 & 5; denied 5-1 on 1/21/10) <p style="margin-left: 40px;">ACTION: Direct staff as appropriate.</p> <ul style="list-style-type: none">● Receive request for short-term meters on Massachusetts Street. |
| 03/23/10 | <ul style="list-style-type: none">● Approve extension request for Site Plan (SP-06-51-06) for Joyce Construction, located at 912 N. Iowa Street. |
| 04/13/10 | <ul style="list-style-type: none">● State of the City Address and Mayoral Elections.● Anticipated date to receive Planning Commission recommendation on Lawrence Community Shelter SUP to relocate the shelter to 3701 Franklin Park Circle. |
| May/June | <ul style="list-style-type: none">● Upon conclusion of 2010 Kansas Legislature, review and consider possible changes to City primary election law. |
| November | <ul style="list-style-type: none">● Receive status report on LCS relocation efforts. |
| TBD | <ul style="list-style-type: none">● Receive staff memo regarding possible annexation of Westar Energy Center and adjacent properties. Additionally, staff is working on a memorandum discussing possible annexation of the Miller/Wells acres area.● Consider approving a request from the Public Health Board to amend Resolution No. 4957 and increase the Board membership from five to seven people. DRAFT New Resolution <p style="margin-left: 40px;">ACTION: Approve request from the Public Health Board to amend Resolution No. 4957 and increase the Board membership from five to seven people, if appropriate.</p> <ul style="list-style-type: none">● Receive Lawrence Human Relations Commission gender identity report. |

COMMISSION ITEMS:

Vice Mayor Amyx said he received emails concerning drainage issues behind the new Lawrence High School football stadium and asked if staff could provide a report to make sure they were in compliance of that area.

Scott McCullough, Planning and Development Services Director, said staff was trying to establish a meeting this week between staff and the high school to walk the site to figure out those issues.

Moved by Dever, seconded by Johnson to adjourn at 9:31 p.m. Motion carried unanimously.

APPROVED:

Robert Chestnut, Mayor

ATTEST:

Jonathan M. Douglass, City Clerk

CITY COMMISSION MEETING OF March 2, 2010

1. Purchase skid steer loader – for Public Works from K.C. Bobcat for the HGAC Cooperative contract price of \$42,414
2. Ordinance 8493 – 1st Read, (SUP-10-10-09) Lawrence Community Shelter, 944 Kentucky.
3. Special Event - (SE-1-1-10) Seasonal Garden Sales, 845 Iowa Street, June 3 – July 1
4. Site Plan – (SP-12-54-09), Esquina, 801 Mass.
5. Sidewalk Dining & Hospitality License, Esquina, 801 Mass.
6. Ordinance 8495 – 1st Read, possess & consumption alcohol for Esquina's Sidewalk Dining and Hospitality area.
7. 2009 Year End Revenue & Expenditure Report for Bldg Activity.
8. Subordination Agreement - Jonathan Willems, 2517 Cimarron
9. Request to change street vendor license ordinance.
10. Louise's Downtown - waiver to sidewalk dining & hospitality license provisions.
11. Receive system development charges report.
12. City Manager's Report
13. Ordinance 8462 – 1st Read, Rezone (Z-7-11-09) 10.97 acres, SE corner of Inverness & Clinton Pkwy, 4300 W. 24th Pl, RSO to RM15
14. Ordinance 8467 – 1st Read, redefine term "structure" to exclude driveways & other parking areas, amend City's Environmental Code.
15. Questionnaire to nominate Lawrence - location for the Google Fiber.