

Bobbie Walthall

From: David L. Corliss
Sent: Tuesday, April 20, 2010 10:53 AM
To: Bobbie Walthall
Subject: FW: Shelter SUP

For agenda update

From: Todd Thompson [mailto:todd.thompson@trqlaw.com]
Sent: Monday, April 19, 2010 9:11 AM
To: mikeamyx515@hotmail.com; Aron Cromwell; ljohnson@peridiangroup.com; mdever@sunflower.com; robchestnut@sunflower.com
Cc: David L. Corliss; Price Banks
Subject: Shelter SUP

Mayor and Commissioners:

At last Tuesday night's City Commission meeting the Commission deferred consideration of the Shelter SUP and determined that the issue of the Covenants applicable to the Franklin Business Park warranted consideration by the City before the Commission proceeded with a vote on the SUP application. It is correct that PDO asserted the noncompliance of the SUP proposal with the Covenants in a letter directed to the current owner of the property and to LCS. That letter has apparently been shared by LCS with the City. In addition, LCS has shared with the City and the public an attorney-client letter (from Price Banks to the LCS director) addressing the Covenants issue. It was not, and is not, PDO's desire or intent to try the issue of the Covenants in public. However, PDO does feel compelled to respond to statements made in the attorney-client letter made public by LCS.

LCS does not deny that there was no attempt by the LCS administration to contact either the adjoining land owners or the Trustees prior to submitting the SUP application. They contend that such communication was not required because "LCS is not seeking a building permit." While that may be true today, LCS will be seeking a building permit. It proposes to construct over 500 feet of fence on the site and to do extensive construction of interior improvements. Thus, LCS is subject to the requirement that the "Owners shall meet with the Trustees in pre-design and pre-submission conferences."

LCS also claims that "plans for the site currently under consideration were submitted to and approved by P.D.O. Investors, LLC on June 8, 2001." This claim is in response to Article 3.04 of the Covenants which states: "Owner shall submit to the Trustees a description of the proposed use and three (3) full sets of design documents." The 2001 plans were for an industrial facility. If you review the 2001 plans you will not find the proposed use described as a residential shelter for housing 125 or more individuals. Nor do those plans include any of the substantial fenced-in areas shown on the SUP plan. Thus, it is disingenuous at best for the LCS attorney to claim that the SUP plan was approved in June of 2001. But you are being asked to act based on precisely that logic. Are you comfortable with that argument? Do you believe the Trustees are likely to approve the plan showing the proposed dense residential use? Do you believe the Trustees will approve the substantial fencing that would span the proposed outdoor "recreational/smoking areas" (the area for individuals being nearly six times larger than the area for families)?

Furthermore, Section 11.01 mandates that the owner of the property, "use and develop the Site only in accordance with the restrictions herein set forth," and that the owner "refrain from using or developing the Site **in any way inconsistent with or prohibited by** the provisions" of the Covenants. The Covenants also mandate that "all improvements must be compatible with existing improvements." It is the position of PDO and other property owners in Franklin Business Park that a residential shelter would not be compatible with the existing uses. We believe the Trustees have the contractual right and responsibility to make that compatibility determination.

The LCS attorney also contends that the Covenants do not require that the uses in the Franklin Business Park be "business, industrial or governmental" uses. He contends that the phrase is "merely descriptive," but he does not say what is being '*merely described*'. Please ask yourselves what was being described -- what was being planned on -- when the Covenants were adopted. The answer is: "business, industrial or governmental" is descriptive of the types of uses planned for the Business Park; it is descriptive of what should be considered in determining what will be "compatible with existing improvements"; and it is descriptive of a limitation on uses that the current owner knew was in place when it bought the property. It is also descriptive of the Trustees obligations with regard to enforcing the uses allowed in the Business Park. The Trustees intend to fulfill those obligations.

Even were the Covenants not in place, there are many reasons why the proposed SUP should not be approved. A comment was made last Tuesday that the **Management Plan is "changing as we speak"**. If that is true, what is the Commission actually considering? How can interested citizens be properly prepared to address the Application when a vital element -- perhaps the vital element other than location -- is still in flux? It would be capricious and unreasonable for the City to proceed with a vote on Tuesday evening under these circumstances.

Regardless of where the City ultimately determines to locate an SUP for a shelter, the Management Plan for the shelter needs to be thoroughly vetted and should include provisions that truly require commitments and progress by the clients. Such a process cannot be accomplished prior to Tuesday evening. It is PDO's position that the current attempt to plunk the shelter in the Franklin Business Park with an uncertain Management Plan is a rushed effort not consistent with good land use planning, and not in compliance with the Covenants by which the subject property is contractually bound. It is also an attempt ultimately destined to fail -- something that would not be good for anyone; LCS, PDO or the City.

Todd N. Thompson
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Bobbie Walthall

From: David L. Corliss
Sent: Tuesday, April 20, 2010 10:49 AM
To: Bobbie Walthall
Subject: FW: Shelter SUP

[For agenda update](#)

From: Price Banks [mailto:price@pricetbanks.com]
Sent: Tuesday, April 20, 2010 9:31 AM
To: mikeamyx515@hotmail.com; Aron Cromwell; ljohnson@peridiangroup.com; mdever@sunflower.com; robchestnut@sunflower.com; David L. Corliss; Todd Thompson
Subject: Shelter SUP

Mayor and Commissioners,

The purpose of this communication is to respond to the allegations set forth in Mr. Todd Thompson's e-mail to you earlier today.

Although I am uncomfortable getting into a crass e-mail duel over our differences of our client groups, it is necessary to respond and correct the record.

If Mr. Thompson did not wish to "try" the Covenant issue in public, he would not have raised the issue in a zoning case when we are all aware the proceedings will not be secret. It is disingenuous to claim otherwise. It is also disingenuous to lift phrases out of meaningful, defining context, from a legal instrument in an attempt to sway a governing body engaged in a quasi judicial process to determine the rights of disadvantaged individuals. In Mr. Thompson's recent communication, he continues to lift phrases out of context to attempt to prove his point. In fact, he has not used one quote in his entire dissertation that includes its context. His communication attempts to obfuscate and confuse the issues and draw the Commission's attention away from the true thrust of a zoning decision; that of land use.

I am compelled to respond to assure that my clients due process rights are preserved during these proceedings.

The Covenants in question were provided to City Staff several weeks ago.

Commissioners, there is no impropriety involved when an applicant provides complete information to the quasi judicial tribunal. Indeed, I believe it is improper and dishonest to do otherwise. There is no impropriety involved in sharing an attorney opinion with the City of Lawrence if the client consents, which is the case here. Moreover, we believed the opinion would be helpful to further staff's understanding of the facts and of our position. In the opinion, I quoted complete meanings from the Covenants without skipping over phrases or words. Nothing is out of context.

The general rule is that legal documents are interpreted based upon the clear language in the document including modifiers. A legal document means exactly what it says, absent vagaries or ambiguities. Mr. Thompson ignores the fact that the Covenants define Trustee approval as stated clearly and concisely in Article 3.02 ***"This approval is for general appearance and aesthetics only and is in no manner a review for compliance with any other regulatory requirements."*** It is safe to suggest that that language is for the purpose of preventing discriminatory use of the covenants to deny an owner if trustees merely do not like the applicant, or if Trustees do not like the type of persons or families visiting, or likely to visit the site. That is exactly what

Mr. Thompson is attempting in his interpretation of the Covenants. Moreover, he is attempting to bully the City Commission into entering the very dangerous territory of enforcing private agreements between parties. The City Commission and the City Staff have no role in enforcing or interpreting private subdivision covenants.

Mr. Thompson renders an opinion on the management plan. This opinion is unsupported and undocumented, and should be dismissed as irrelevant.

The placement of homeless shelters in industrial zoning districts was recently approved by this Governing Body after considerable staff study and public debate. The process began over four years ago, and Mr. Thompson and his clients had numerous opportunities to review and comment on the proposal. They did not. The ordinance was adopted and remains on the books.

The Commission is now faced with a land use decision. Does the placement of the Lawrence Community Shelter near the center of an industrial park, near the Douglas County Jail, an asphalt plant, and the storage of wrecked automobiles, comply with the intent of the amendments to the Code that were adopted in an attempt to accommodate shelters.

We respectfully request that you approve the SUP for the Lawrence Community Shelter.

Bobbie Walthall

From: David L. Corliss
Sent: Tuesday, April 20, 2010 2:52 PM
To: Bobbie Walthall
Subject: FW:

From: Todd Thompson [mailto:todd.thompson@trqlaw.com]
Sent: Tuesday, April 20, 2010 2:50 PM
To: Price Banks
Cc: mikeamx515@hotmail.com; mdever@sunflower.com; Aron Cromwell; robchestnut@sunflower.com; ljohnson@peridiangroup.com; David L. Corliss; Steve Glass; rjohnson@rdje.com; 'Bill Newsome'
Subject:

Price:

I received a copy of your letter to the Commissioners, and I believe it is important to clarify that it was you who shared my letter regarding the Covenants with the City. I did not send a copy of that letter to anyone other than Keller and Huggins (and Steve Glass). As for the Covenants having been "provided to City Staff several weeks ago" – who provided them? It had to be you or someone else at LCS, because it wasn't anyone from this camp. Last Monday Steve did give a copy to the Mayor at the Mayor's request, but that was the first copy this side ever provided to anyone at the City.

As for the "obfuscate and confuse" allegation, 'me thinks you doth protest too much.' The Franklin Business Park Covenants unambiguously require approval of the Trustees for construction of improvements, and they put certain restrictions on the uses allowed in the park. Your client is proposing to construct improvements and to make a significant change in use -- to intense residential. The Trustees have a contractual right to review those proposed changes and determine the propriety thereof.

Further, the language about the Trustees' approval being "in no manner a review for compliance with any other regulatory requirements" is there to make it clear that the plans are not being reviewed by the Trustees for such things as municipal building code and site plan requirements. Those are examples of the "other" regulatory requirements being referred to. Your suggested interpretation is odd; clearly the Trustees have the right to determine the aesthetics of 500 plus feet of wood fence cutting across the middle of the concrete drive that leads to the building's loading docks.

With regard to PDO not commenting on last year's code revision to allow a shelter SUP in industrial zoned areas, PDO did not have a dog in the fight because PDO's Business Park had covenants in place. Steve was, however, very active with the development of the Southeast Area Plan over the past several years, so your suggestion of lack of participation in the civic process is entirely unfair.

The City Commission is rightly considering whether the proposed site is the right site for a shelter SUP – probably the only such SUP that will be granted by the City. The Code does not say that an SUP must be granted at any industrial location for which it is requested – only that an SUP may be granted in an industrial zone. Thus, the Covenants are but one factor in the Commissioner's decision-making process. That the City does not want LCS to plow headlong into an ill-fated venture seems quite appropriate. I would expect you to have a similar concern, and invite you, again, to accept the offers of PDO and others to assist LCS in obtaining one of the other, better, locations.

Todd N. Thompson
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Lawrence, KS 66044-2083
VOICE: (785) 841-4554
FAX: (785) 841-4499
EMAIL: todd.thompson@trqlaw.com

Bobbie Walthall

To: David L. Corliss
Subject: RE: PDOCityComm.Ltr4-19-10.doc

From: Steve Glass [mailto:sglass@lrindust.com]
Sent: Monday, April 19, 2010 11:02 AM
To: Mike Amyx; Aron Cromwell; Rob Chestnut; Michael Dever; Lance Johnson
Cc: David L. Corliss
Subject: PDOCityComm.Ltr4-19-10.doc

April 19, 2009

Mayor and Commissioners:

As you are aware our attorney, Todd Thompson, has written you concerning the application by the Lawrence Community Shelter for a Special Use Permit at 3701 Franklin Park Circle. In his letter he addresses many of our concerns with the SUP application and discusses in considerable detail the Protective Covenants that have applied to all properties in Franklin Business Park since 1996 and the fact that LCS has to date not complied with the requirements of the Covenants. We trust that you will thoroughly review his letter and consider the covenant issues in your consideration of the SUP request.

In this letter we want to discuss alternative LCS sites that we have identified and present our thoughts as to why those sites should be considered prior to the vote on the pending SUP request. We have presented these sites both verbally and in writing to LCS Board members, however to the best of our knowledge there has been no effort by them to conduct an in-depth review of the sites. In fact we have been told that the LCS Board is operating under the impression that they have been directed by the City to pursue the Franklin Business Park site to the exclusion of all other sites. We hope that is not the case.

ALTERNATIVE SITES

FARMLAND OFFICE BUILDING

If LCS and the City believe an industrial park to be an appropriate location at which to provide residential services for the homeless, then the Farmland office building would be appropriate for such use. We note that the building is:

- Buffered by K-10 from all of the uses mentioned below.
- Farther from the City park
- Farther from Prairie Park school.
- Farther from Mary's Lake.
- Farther from existing and planned residential neighborhoods.

The Farmland building has the added benefit of being closer to social services that meet the needs of shelter residents, such as the SRS office and the Social Security office. The City has no immediate use for the Farmland building, so it should be possible to lease the building for a dollar per year for at least several years. This would greatly improve the financial position of the LCS and put more of the LCS dollars to work

providing services rather than buying land. This would immediately – and with certainty – remove the time pressure of the expiration next year of the SUP at the existing LCS site.

The City would not have loitering concerns at the Farmland building because the City has already determined what steps are necessary to “provide privacy for the users in a controlled area and address any loitering concerns.” Specifically, City staff has stated in their report that the issue of loitering is solved by a fence and by “not designating” the front entrance as an outdoor waiting or recreation area.” Those are the two steps that the City has deemed to be sufficient to eliminate concerns about loitering at Franklin Park, so those same steps should be sufficient for the City at the Farmland building.

Furthermore, the Farmland building is **already on a bus route**. The buses would have existing acceleration and deceleration lanes available to them and would only be making right turns to enter or exit the site. Using an existing bus route will result in substantial savings over the cost of adding a new route or providing on-call service as would be required by the Planning Commission’s condition of approval.

VFW FACILITY

The VFW facility has substantial land for future expansion and has the benefit of being located near a cluster of social services, including the Bert Nash Center, Health Care Access, Lawrence Memorial Hospital, the Douglas County Health Department and the Douglas County Dental Clinic. There are also **two existing bus routes** that pass close to the VFW location (and that also do not require left turns onto a major highway for egress from the site as the Franklin Park site will.) Further, the VFW building is already off the tax rolls, so transferring it to the LCS would not result in reducing the property tax revenue for the City, County or School District. The building in Franklin Business Park, however, generates close to \$32,000 per year in property taxes that will be lost to local government if LCS locates there.

POEHLER BUILDING

The Poehler building had a foreclosure action filed against it last month, so this would appear to be an opportune time to buy the property. The building has a great deal of space; it is more conveniently located to social service clusters than is Franklin Park; it is located one block from an existing bus route; and because of its vertical nature it would lend itself to effective separation of housing for families from housing for other clients. In addition it would allow for separation of housing from uses such as offices, cafeteria/kitchen and dog biscuit production. Finally the interior demolition has already been completed; it is ready for interior finish work which can be laid out in a manner that suits the needs of the next owner.

We believe each of these sites is a better alternative for the shelter than Franklin Business Park. **As we have previously stated to LCS we offer our assistance in both investigating and pursuing these sites or others that may be identified in a comprehensive search.** We believe that the work of the LCS is important and we believe the selection of an appropriate site is crucial to the long term acceptance and success of the Lawrence Community Shelter.

Steve Glass, Member
PDO Investors, LLC

S O U T H W I N D :::CAPITAL, LLC:::

April 16, 2010

Mayor Mike Amyx
City Commissioners
City Hall
PO Box 708
Lawrence, KS 66044

Re: LCS proposed site

Dear Mayor Amyx and City Commissioners:

There has certainly been information flying in all directions regarding what a different homeless shelter may look like, but here are some things we know:

1. The reason a new site is being sought is because of problems at the current facility.

LCS blames its problems on an inadequate facility. But why has LCS proved to be unable or unwilling to conform its operations to its existing facility? There will be constraints – albeit different ones – at any new facility, and at this juncture, all that anyone – City, surrounding owners – can rely on relative to adherence to new guidelines are the shelter's promises.

2. Loring Henderson has stated that there will not be a drop-in center in the future.

Why does that promise need to be tied to the Franklin Business Park application? If LCS intends to not operate a drop-in center, why can't that be made effective immediately? How about finding out right now how strong the commitment is to eliminating the drop-in center?

The City wants – and LCS is promising – a different type of facility. LCS is promising improved management. That said, it is not as simple – nor accurate – to blame all problems on an inadequate facility at 944 Kentucky. Willfully or not, management has been unable to manage within the constraints of that facility.

What is being proposed at Franklin Business Park is clearly a trial and error situation. There is zero track record for the City (or surrounding business and land owners) to rely

on. What basis is there for being confident that LCS is capable of operating a dramatically larger facility?

Why would the City give LCS a **permanent** home for what really amounts to an experiment? Why would you do it around land that is ready *today* to create jobs, and adjacent to land uses (retail, residential) that are necessary to support those jobs?

We are experienced commercial real estate developers, and I can assure you that a **permanent** homeless shelter location at Franklin Business Park will be a significant detriment to the marketing of our CC200 retail space. It is indisputable that our development will provide the retail services over the next 10-20 years which will provide the critical and necessary support to the city's job growth efforts. In addition to our private dollars, there is significant public investment in this corridor, and it would be a mistake to unwind momentum that is finally building.

If the City wants to give LCS an opportunity to expand, why not let LCS lease the Farmland Industries administration building over an interim period – less than five years – for \$1/year? This would provide many benefits:

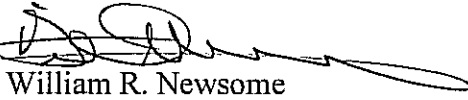
1. It would provide LCS an ample opportunity to prove that it can truly adhere to a different management plan.
2. It would give LCS more time to raise funds for a permanent location without the undue time pressure it is under today (I know LCS is saying that certain sources may go away if the City doesn't "act now", but long term, stable sources of funding – if they exist today – will be there in the future). An improving economy over the next few years would certainly be helpful in this regard.
3. Spending some money on a positive, interim solution is prudent when you consider (1) the savings LCS would realize with a \$1/year lease and (2) the realization of this savings (even if it was netted against costs to prepare the Farmland building for occupancy) should allow the City to eliminate or significantly cut back the funding it today provides LCS. Why not take some time to determine the actual costs associated with putting LCS in the Farmland building?
4. The City would be *completely* in control of this situation as the landlord. A property written lease would bind both parties to definitive dates, including definitive move-out and demolition dates.
5. For all of the reasons that Staff said Franklin Business Park should be an acceptable location, the Farmland location is better: (a) it is further from residential, (b) bus service is much easier and less costly to provide, (c) it is on the correct side of K-10.

This would also provide ample time for LCS to find a permanent location that is closer to the core of the city – but further from Downtown than the present location – and closer to where the services are located that these residents will need.

Thank you for your consideration.

Sincerely,

FAIRFIELD INVESTORS, LLC



William R. Newsome

Cc: Dave Corliss

Oread Neighborhood Association

PO Box 442065
Lawrence, Kansas 66044

April 20, 2010

The Lawrence City Commission
6 East 6th
Lawrence, Kansas 66044

RE: SUP-1-3-10 Lawrence Community Shelter

Dear Commissioners:

I am writing on behalf of the Oread Neighborhood Association to express our conditional support for the approval of SUP-1-3-10. As we are all aware, the current facility on 10th Street is inadequate and has become a nuisance to the neighborhood.

Our support of the SUP is conditional upon the LCS abandoning its current location along with the drop in shelter's permanent closure. The neighborhood is very concerned that the LCS or another organization will continue to operate a "drop in" style shelter downtown. This would defeat the purpose of the Community Commission on Homelessness' vision for Lawrence and exacerbate the damage to the Oread Neighborhood created by the LCS.

We urge the Commission to require the LCS follow any management plan adopted and cease their laissez-faire attitude toward their guests' behavior. The LCS has a history of making promises which it has failed to keep. This new location needs to take a new direction one which is in alignment with the CCH's vision.

As it appears that the LCS will continue to occupy its current location for several more months, we would request that the LCS be required to operate under the proposed management plan at its current location effective immediately. This would allow for immediate improvement at the current location, as well as a testing period for the new management plan prior to relocation.

Thank you for your time and consideration.

Sincerely
Oread Neighborhood Association
By:



Brandy L. Sutton

Bobbie Walthall

From: Daniel Poull [dpjp8@yahoo.com]
Sent: Monday, April 19, 2010 11:10 AM
To: Bobbie Walthall
Subject: Homeless Shelter

Dear Ms. Walthall,

Please pass along to the City Commissioners my support for the new homeless shelter to be placed on the East side of Lawrence, near the jail as it is currently being proposed. I think this could be a good site for this program.

Having said that, I do not want the City to fight a prolonged legal battle to acquire this site.

Thank you for letting me voice my opinion on the matter.

Daniel Poull
821 Ohio
Lawrence, KS 66044
749-5578

Bobbie Walthall

From: Angela and Jeff Shaner [sphynxpaw@hotmail.com]
Sent: Saturday, April 17, 2010 8:50 PM
To: Bobbie Walthall
Subject: Supporter of Lawrence Community Homeless Shelter

I failed to include you on our emails
both myself, Angela Jones and my husband, Jeffrey Shaner are both supporters of the homeless
shelter and have put our names on the list

Angela