



**PLANNING COMMISSION MEETING**  
**March 22 & 24, 2010**  
**Meeting Minutes**

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March 22, 2010 – 6:30 p.m.

Commissioners present: Carter, Chaney, Dominguez, Finkeldei, Hird, Moore, Rasmussen, and Singleton

Staff present: McCullough, Day, J. Miller, M. Miller, and Ewert

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**MINUTES**

Receive and amend or approve the minutes from the Planning Commission meeting of February 22, 2010.

Motioned by Commissioner Singleton, seconded by Commissioner Rasmussen, to approve the February 22, 2010 Planning Commission minutes.

Motion carried 6-0-1, with Commissioners Hird abstaining. Commissioner Dominguez was not present for the vote.

**COMMITTEE REPORTS**

Receive reports from any committees that met over the past month.

Commissioner Moore said there was an Industrial Committee update during the Planning Commission mid-month meeting.

Commissioner Hird said the Agri-tourism Committee did not meet in March but will meet the 2<sup>nd</sup> Thursday in April.

**COMMUNICATIONS**

Mr. Scott McCullough reviewed new attachments/communications that were posted to the online Planning Commission agenda after the initial posting date.

No written action of any waiver requests/determinations made to the City Engineer.

**EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- Ex parte:

Commissioner Moore said he received a few calls from Mr. Bill Newsome regarding the Lawrence Community Shelter and he discussed mostly what was in the letter he submitted.

Commissioner Rasmussen said he received the same type of call from Mr. Newsome expressing his general opposition to the proposed location of the Lawrence Community Shelter.

Commissioner Chaney said he also received the same type of call from Mr. Newsome.

Mr. McCullough said the Commissioners were part of a meeting that met with the development group for Bauer Farm. He stated a letter was included in the Planning Commission packet that discloses that discussion.

- Abstentions:  
Commissioner Hird said he would abstain from Item 4 for the Lawrence Community Shelter.

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**ITEM NO. 1      PRELIMINARY PLAT FOR LAWRENCE MUNICIPAL AIRPORT ADDITION  
NO. 2; 15.7 ACRES; 1915 AIRPORT RD (SLD)**

**PP-1-2-10:** Consider a Preliminary Plat for Lawrence Municipal Airport Addition No. 2, approximately 15.7 acres, located at 1915 Airport Rd., and variances from Sections 20-801 & 20-810 of the Subdivision Regulations regarding the portion of property to be platted and number of access points to the site. Submitted by the City of Lawrence, property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

**PUBLIC HEARING on Variances only**

No public comment.

**ACTION TAKEN**

Motioned by Commissioner Hird, seconded by Commissioner Carter, to approve the variance from Section 20-801 (c) of the Subdivision Regulations requiring all property of contiguously owned land be platted; and approve the variance from Section 20-810 (d)(2)(iii) of the Subdivision Regulations requiring a second access to development with more than 25,000 SF; and approve the Preliminary Plat of Lawrence Municipal Airport Addition No. 2 and forwarding it to the City Commission for consideration of the proposed dedication of easements and rights of way.

Unanimously approve 7-0. Commissioner Dominguez was not present yet at the meeting.

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**ITEM NO. 2A PRELIMINARY PLAT FOR FOUR SEASONS PUMP STATION; 30.894 ACRES; SE OF W 27<sup>TH</sup> ST & CROSSGATE DR (MKM)**

**PP-1-1-10:** Consider a 2 lot Preliminary Plat for Four Seasons Pump Station, containing approximately 30.894 acres, located southeast of W 27<sup>th</sup> St. & Crossgate Dr. Request for variance from Section 20-810(b) to permit the creation of a lot without road frontage and Variance from Section 20-801(c) to permit the platting of a lot without requiring the platting of all contiguously owned lands that are not platted. Submitted by Bartlett & West for the City of Lawrence, property owner of record.

**ITEM NO. 2B PUD TO OS; 8.18 ACRES; SE OF W 27<sup>TH</sup> ST & CROSSGATE DR (MKM)**

**Z-1-2-10:** Consider a request to rezone approximately 8.18 acres from PUD (Planned Unit Development) to OS (Open Space), located southeast of W 27<sup>th</sup> St. & Crossgate Dr. Submitted by the City of Lawrence, property owner of record.

**ITEM NO. 2C SPECIAL USE PERMIT FOR LAWRENCE PUMP STATION 09; SE OF W 27<sup>TH</sup> ST & CROSSGATE DR (MKM)**

**SUP-1-2-10:** Consider a Special Use Permit for the City of Lawrence Pump Station 09 Wet Weather Storage Expansion, a minor utility, on approximately 8.18 acres, located southeast of W 27<sup>th</sup> St. & Crossgate Dr. Submitted by the City of Lawrence, property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented items 2A-2C together.

Mr. Philip Ciesielski, Assistant Utilities Director, was present for questioning.

Commissioner Rasmussen inquired about the undeveloped portion north of this site.

Ms. Miller said there is an area in the Four Seasons Development Plan that was platted and they do have lots but it is not part of this development. At some point it was divided into lots which are mostly within the floodway and building on that would not be possible. She stated back when they did that those were allowed to be platted lots.

Commissioner Rasmussen asked if there was no hope for that chunk to be developed at any point.

Ms. Miller said there are variances for the floodway but they are stringent and may not meet the requirements.

Commissioner Rasmussen asked how they would get access to that area.

Ms. Miller said if something was developed there it would have to find access and perhaps that could be done by purchasing some of the land and extending the road. She said that is a piece of land that would be difficult to develop.

Commissioner Rasmussen asked if there have been any complaints about odor from the retention basin.

Ms. Miller said no, but the Utilities Department said with the additional detention it would possibly improve any odors that were present and that they did not expect them to increase.

## **PUBLIC HEARING**

No public comment.

### **ACTION TAKEN ON ITEM 2B**

Motioned by Commissioner Finkeldei, seconded by Commissioner Singleton, to approve the rezoning request for approximately 8.18 acres from PUD (Planned Unit Development) District to OS (Open Space) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 7-0. Commissioner Dominguez was not present for the vote.

Motioned by Commissioner Finkeldei, seconded by Commissioner Singleton, to initiate the rezoning of the remainder of the property, approximately 22.63 acres (Lot 1 on the Four Seasons Pump Station Addition), from PUD (Planned Unit Development) to OS (Open Space) District.

Unanimously approved 7-0. Commissioner Dominguez was not present for the vote.

*6:50pm - Commissioner Dominguez arrived at the meeting.*

### **ACTION TAKEN ON ITEM 2A**

Motioned by Commissioner Finkeldei, seconded by Commissioner Hird, to approve the variance requested from Section 20-810(b) to permit the creation of 2 lots without street frontage subject to the condition that any development proposal on Lot 1 would require the variance be re-evaluated and re-enacted by the Planning Commission. Approval of the variance requested from Section 20-801(c) to permit the platting of the subject property without the platting of all contiguous property under the same ownership. Approval of the Preliminary Plat of the Four Seasons Pump Station Subdivision and referring it to the City Commission for consideration of dedication of easements subject to the following conditions of approval:

- 1) The preliminary plat shall be revised with the following changes:
  - a. A detail shall be included which illustrates how the facility is accessed and the easements which are utilized (both on- and off-site) shall be noted.
  - b. The on-site easement used to access to the facility shall be renamed a 'municipal access and utility' easement to clarify its purpose.
  - c. The floodplain note will be revised to reference the Base Flood Elevation, rather than the 'surface elevation'.
  - d. If the Planning Commission votes to grant the variances requested, the plat shall be revised to reference the variances identified in this staff report and note the date the Planning Commission granted them.
    - i. The note for the variance from the requirement that each lot shall have street frontage shall include the following condition: *"The variance for Lot 1 shall be re-evaluated and re-enacted by the Planning Commission prior to approval of any development proposal on Lot 1."*

Motion carried 7-0-1, with Commissioner Dominguez abstaining.

### **ACTION TAKEN ON ITEM 2C**

Moved by Commissioner Finkeldei, seconded by Commissioner Hird, to approve Special Use Permit, SUP-1-2-10, for a wet weather storage expansion for Pump Station 09, a minor utility, based upon the findings presented in the body of the staff report and subject to the following conditions:

1. Publication of an ordinance per Section 20-1306(j).
2. Approval of a Floodplain Development Permit required prior to release of Special Use Permit for building permits.
3. Approval and recordation of a Final Plat required prior to release of Special Use Permit for building permit.
4. Applicant shall provide a revised site plan with the following changes:
  - a. Label the 30 ft easement along the east side of the property which provides access to the facility as a 'municipal access and utility easement'.
  - b. Note dimensions of holding tank—diameter.
  - c. Note the Base Flood Elevation on the plan.
  - d. Note the type and maximum wattage of the new lighting.
  - e. Label the width of the access drive.
  - f. Add the following notes:  
Current zoning PUD  
Proposed zoning OS;  
Current Use: Pump station and wet weather detention;  
Proposed Use: Additional wet weather detention for pump station
  - g. Add City of Lawrence as property owner:  
*City of Lawrence, KS*  
*PO Box 708*  
*Lawrence, Kansas 66044*  
*785.832.3000*

Motion carried 7-0-1, with Commissioner Dominguez abstaining.

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**ITEM NO. 3      PRELIMINARY DEVELOPMENT PLAN FOR BAUER FARM; 43.88 ACRES;  
4700 W 6<sup>TH</sup> ST (MKM)**

**PDP-1-1-10:** Consider a revised Preliminary Development Plan for Bauer Farm, on approximately 43.88 acres, located at 4700 West 6<sup>th</sup> St. Associated variances include a request for a reduction in the parking requirement and approval of the variances previously approved with the Preliminary Development Plan for Bauer Farm, PDP-03-02-05, to permit reduced peripheral setbacks. The revised plan proposes the development of an assisted living facility on the 4.24 acres located at the immediate SW corner of Overland Dr. & Folks Rd. Submitted by Landplan Engineering, for Free State Group, LLC; Free State Holdings, Inc; Bauer Farms Residential, LLC; Bauer Farm Retail Pad 1, LLC; Kansas CVS Pharmacy, LLC; Lawrence Tunnel Wash, LLC; Pete G & Diana Bernal; and Lee & Karen Schmidt, property owners of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

**APPLICANT PRESENTATION**

Mr. Tim Herndon, Landplan Engineering, discussed the details of the plan displayed on the overhead projector.

Commissioner Hird asked how the change fits into the new urbanism concept.

Mr. Herndon said Bauer Farm has been a hybrid from the get go. He said it has consistently featured numerous components of new urbanism. He said there are some things that have detracted from the purity of the new urbanism approach. He said the building is being pushed up to the reduced setback to create a more urbanized streetscape, particularly along Folks Road. He said in terms of walkability they are still working with staff to continue to investigate better ways to connect pedestrians to the outlying surrounding streets. He said another thing that makes this unique, when the subdivision was first approved the sidewalks on both sides of proposed streets which doubles the pedestrian friendliness of the streetscape. Also, there will be a sidewalk on the south side of Overland Drive that gives access to open space. He said the architect created a building with an exciting façade on every side.

**PUBLIC HEARING**

No public comment.

**ACTION TAKEN**

Motioned by Commissioner Rasmussen, seconded by Commissioner Singleton, to approve the parking requirement reduction to permit the construction of 77 parking spaces based on the findings in the staff report and subject to the condition that a note be included on the face of the plan that the parking requirement reduction applies only to the independent and/or assisted living use and is based on the condition that the use of the structure is restricted to an independent and/or assisted living use and may not be converted to a multi-dwelling structure without addressing the parking requirement. Approve the previously approved waivers and variances including the variance which reduced the peripheral setbacks for the subject property from 30 ft to 10 ft. Approve the Preliminary Development Plan for Bauer Farm based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval subject to the following conditions:

1. Review of the maintenance agreement with the City to ensure it reflects the approved changes, if necessary.

2. The landscaping will be reviewed at the Final Development Plan Stage to ensure compliance with Code and that utility/tree/intersection obstruction conflicts are avoided.
3. Access onto Overland Drive is conditioned upon the use of the property as independent and/or assisted living residential use. A use other than independent and/or assisted living residential use may require the closure of the access onto Overland Drive.
4. Provision of a revised Preliminary Development Plan with the following changes/conditions:
  - a. The FDP shall detail appropriate additional pedestrian pathways from the adjacent sidewalks into the development to improve pedestrian circulation and connectivity.
  - b. Show the crosswalk pavement markings on the PRD as shown on the previously approved plans, and include pavement markings for crossings across access drives on the lot with the retirement facility.

Unanimously approved 8-0.



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**ITEM NO. 4 SPECIAL USE PERMIT FOR A TEMPORARY SHELTER FOR LAWRENCE COMMUNITY SHELTER; 3701 FRANKLIN PARK CIR (SLD)**

**SUP-1-3-10:** Consider a Special Use Permit for the establishment of a Temporary Shelter for the Lawrence Community Shelter, approximately 4.15 acres, located at 3701 Franklin Park Cir. Submitted by Lawrence Community Shelter, for Franklin Business Center LLC, property owner of record.

**STAFF PRESENTATION**

*Commissioner Hird recused himself for the evening.*

Ms. Sandra Day presented the item. She stated that the management plan had been updated in the online packet but that it was essentially the same plan.

Commissioner Finkeldei asked if an official position has been taken by the advisory committee regarding the bus route.

Ms. Day said not by the advisory committee.

Commissioner Dominguez asked what year the Community Commission on Homelessness came up with the chart she showed on the overhead during her presentation.

Ms. Day said in 2005 City Commission established Community Commission on Homelessness and adopted the Housing Vision in June of 2007.

Commissioner Dominguez asked if any of the same City Commissioners who were on the commission in 2007 are still serving on the commission.

Mr. McCullough said that current Commissioners Amyx, Chestnut, and Dever were all on the commission in 2007.

**APPLICANT PRESENTATION**

Mr. Loring Henderson, Lawrence Community Shelter, went over how the new shelter would be different than the current location. He stated the new location would not be a drop-in center with people coming and going the way the current location is. He stated that the current 10<sup>th</sup> & Kentucky shelter provides a variety of services with limited space and these would be enhanced at the new location. He said the new location would provide all of its own food service for three meals a day, only for people checked in to the center. He went over the management plan and said they would like to make the following change on the first page of the management plan under number 2.

**Description of all services provided** by removing the last part of the sentence:

- breakfast, lunch, and dinner meals for guests staying in the shelter ~~and lunch for people experiencing homelessness but not staying at the shelter~~

He said the transportation plan for the new site includes a proposed new bus stop near the shelter and a van that the shelter has. He said increased use in the new space by collaborating agencies would reduce traffic in and out of the shelter. He said about 5,400 square feet would be devoted to the jobs program which would allow the potential for guests to work onsite.

Commissioner Carter asked how many passengers the shelter van can hold.

Mr. Henderson said nine.

Commissioner Carter inquired about the hours of operation for the van.

Mr. Henderson said the van will be used as needed.

Commissioner Finkeldei inquired about bus stop discussions.

Mr. Henderson said there was one meeting about a proposed new bus stop and that it was a positive discussion.

Commissioner Finkeldei asked what percentage of guests are considered drop-in.

Mr. Henderson said perhaps anywhere from 10-20% who are not in the program. He said it depends on what is defined as being in the program because some guests try and fail.

Commissioner Carter asked if he thought that was due to lack of programs.

Mr. Henderson said they would not necessarily have new programs at the new location, but rather enhance existing programs. He said they did not currently have enough health type programs but that there would be a clinic at the new location.

Commissioner Dominguez asked if any changes have been made for what constitutes as a Douglas county resident.

Mr. Henderson said no.

Commissioner Rasmussen asked what makes this proposed location his number one choice for the shelter.

Mr. Henderson said because the building is already there and affordable, it has ample space and good outdoor space that will allow for a garden. He stated it is not near houses. There will always be opposition no matter the location. He said it has good space for the jobs program which is key to getting people out of homelessness. He stated they did not know the property was for sale until the seller came forward.

Commissioner Rasmussen asked what the negatives of the new site were in his opinion.

Mr. Henderson said some people would say the distance is a negative but he did not necessarily see that as a negative. He said he did not have any major drawbacks for the new location and said it is the first location he has allowed himself to become excited about.

Mr. Doug Brown, McGrew Real Estate, said they considered over 70 properties and toured over 20 properties. He said they wanted the Text Amendment for industrial zoning because they knew they needed to be away from schools, residential districts, and downtown. He stated the seller of 3701 Franklin Park Circle contacted the shelter and thought the building would work for their needs. He said this location kind of fell in the shelters lap and it makes a lot more sense for a lot more reasons.

Mr. Don Huggins, Lawrence Community Shelter Board of Directors President, said there were a lot of reasons the board likes the Franklin site. The location is pretty remote from businesses and residential areas. The building exists which will cut construction time and speed up occupancy. There will be space for the jobs program and space is one of the factors that effects the shelters success. The recreational area is tucked out of site. From a capital campaign perspective, there is a willing

seller and the building is affordable. He said they have looked at properties that were not affordable. He said the overall cost at the Franklin site to turn it into a shelter is going to cost less than what was proposed at the previous site of Don's Steakhouse. He said with the site, future facility, and more focused management plan will collectively increase the success of moving people out of homelessness.

## **PUBLIC HEARING**

Mr. John Matthews, E 25<sup>th</sup> Terrace, expressed concern about the economic downfall of housing and businesses in the area. He felt the changes with acreage were too aggressive. He said the shelter would be close to a residential area and farther from services that guests of the shelter may use. He stated for the 2010 City budget at least \$84,000 would be spent on the shelter. He felt the City could not afford something of this magnitude. He said the current sidewalks are not adequate. He expressed concern about loitering and felt Mary's Lake would need additional patrol. He said the new site of 25,000 square feet would be more than twice what they have now and he felt that the shelter would not be satisfied with that in the future and would want more space.

Mr. Peter Zacharias, downtown business owner, said the current facility on Kentucky Street is dramatically overcrowded and it's impossible for them to provide adequate supervision for the people they are trying to take care of. He said the current shelter also has problems with its proximity to businesses, schools, and churches and felt the proposed new site on Franklin was the best so far. He urged the Commission to approve the Special Use Permit.

Commissioner Dominguez asked if panhandling has been detrimental to downtown businesses.

Mr. Zacharias answered yes.

Commissioner Dominguez asked how he thought it would affect the new location.

Mr. Zacharias said he did not know. He felt the begging issue was a separate issue and should not be brought into this discussion.

Ms. Lindsey McCaig, Prairie Park Neighborhood Association President, said over 90% of the neighborhood is opposed to the shelter being at this proposed location. She felt they should take a step back and look at why there is opposition to the proposed location and address those issues instead of relocating it to another place. She said the major concern from property owners is increased foot traffic and loitering.

Ms. McCaig said there are reports that say that 55% of the shelter's guests are substance abusers. The proposed new site is fairly close to grade school and near a wooded area. She said when looking at the shelter track record it is difficult for the neighborhood to accept that things will just be better. She said she pulled numbers from an annual report and last year the shelter served 619 separate individuals with almost 200 of those not being Douglas County residents and only half of them entered into programs. She addressed Commissioner Finkeldei's earlier question about what percentage of people take advantage of their programs. She said it is 50% and that she has great concern why only half are taking advantage of the programs.

Ms. McCaig said the neighborhood does not want an unlimited Special Use Permit because it would put the burden on the neighborhood to be watch dogs and make sure the shelter is complying. She said the shelter has already proven they are not a desirable neighbor, demonstrated by the fact they are being pushed out of downtown. She would like to see significant changes and implementation of the management plan before they expand. She would also like to see improvement and standards of

success at the current location before they move. She said she toured the current shelter on Jan 25<sup>th</sup> and was told that the shelter withdrew their application at Don's Steakhouse but they did not mention anything about the proposed Franklin location. She felt like this was sprung on the neighbors. She expressed opposition to the Special Use Permit and asked that it be denied.

Commissioner Dominguez asked why she thought wherever the shelter goes they would not be wanted.

Ms. McCaig said she has offered several suggestions such as jobs programs and volunteer work, such as doing work for Parks and Recreation. She felt that they should be making a difference in the community instead of draining the community. She also felt the shelter should be a good neighbor. She said when she visited the site it bothered her to see people sitting in the day room playing dominos and people on the porch smoking. She said guests are allowed to stay there for 90 days without doing a single thing.

Mr. John Rockhold, property owner in Prairie Park, felt the Franklin site was not right. He felt it defied logic to be on that side of town and away from other community networks. He was concerned about changes to the Farmland area and other businesses in the area. He was opposed to Special Use Permit and wondered about the old Tanger Outlet as being a possible location.

Mr. Hubbard Collinsworth, was concerned about the tax base and wondered if they would be able to generate enough taxes to replace what comes off. He expressed concern about the management plan where it says a limit of guest of 125 but then mentions the excess guests will be temporary housed in the facility. He wondered about the actions and consequences list saying that bans will be reviewed once a month and can be shortened and/or revoked. He questioned how they could have a meeting with the guest when the guest is not allowed on the property.

Ms. Beth Johnson, Chamber of Commerce, reviewed the memo that the Chamber of Commerce sent and was included in the Planning Commission packet. She expressed the need for industrial land and that a homeless shelter in the area would decrease the number of people that the Chamber could attract to that area.

Commissioner Carter asked if the Chamber had an issue with the previous Don's Steakhouse location.

Ms. Johnson said no.

Commissioner Carter asked why the Franklin site was an issue.

Ms. Johnson said it is an existing building that is already zoned industrial so the Chamber did not want to take that building off marketability.

Commissioner Dominguez asked if potential industrial applicants already envision a fence around the property.

Ms. Johnson said the main concern would be additional walking traffic which would be a major deterrent. She said there is also an additional public perception of a homeless shelter as opposed to a residential area. Homeless shelters typically have more loitering than residential areas.

Commissioner Dominguez asked if potential businesses looking at a site in Lawrence do a security review of the area.

Ms. Johnson said yes.

Commissioner Singleton said that the city has told the shelter that they cannot be near downtown, schools, and residential areas, so industrial is what's left. She said there is currently a lot of pedestrian traffic in and out of the jail and it would be better to get a bus stop out there to decrease that. She said there was concern expressed by neighbors regarding the foot traffic but there is already pedestrian traffic out there for the jail and there isn't additional crime because of it. Some inmates are approved for work programs and leave during the day for work and return at night.

Ms. Johnson said she did not remember discussing industrial being an approved location for a shelter. She said there is a lot of heavy truck traffic in industrial areas and she was concerned about any residential use being in an industrial area.

Mr. Brit Kring, Lawrence Community Shelter board, said they looked at many properties trying to find a site that would have the least amount of impact on the community. He discussed the concerns brought up by several people regarding the shelter serving guests who are not Douglas County residents. He stated wouldn't the community want Douglas County residents to be helped if they were somewhere else and needed assistance. He said one of the biggest concerns he's heard is loitering and the current facility has no way to separate the guests and the people walking by. He said the new shelter would not have the capability of loitering. He said a new facility is needed and he felt this was the best site for it.

Mr. Jerry Taylor, owner of Hillcrest Wrecker at 3700 Franklin Park Cir, said the proposed shelter would lower the value of his property and devalue his business. He said he plans to sell the business someday and worries about the value and potential buyers being afraid of the shelter being nearby. He said Mr. Henderson has not been to visit him at all. He felt that housing 125 people in an industrial district is a bad plan. He said the building may fit the shelter's needs but the land use does not. He asked them to deny the Special Use Permit.

Commissioner Rasmussen asked if anyone has come out to visit Mr. Taylor regarding the shelter.

Mr. Taylor said no.

Commissioner Singleton asked if he attended any of the community meetings.

Mr. Taylor said yes but that Mr. Henderson told him he would come see him and never did. He expressed concern for the security and safety of his employees. He said there is already foot traffic from the jail and he has had problems with people breaking into vehicles on his property.

Ms. Deanna Taylor, read a quote from Mr. Loring Henderson from an article in the Lawrence Journal World from Feb 23<sup>rd</sup> *'Everything with the new site is going well enough, it is going surprisingly well, neighbors have had questions certainly, but since there aren't any real immediate neighbors the questions have been a little softer.'* She said that she and her husband, who own Hillcrest Wrecker, are an immediate neighbor and have not been contacted. She said the article goes on to quote a property owner who has both a home and an office near the shelter and he has experienced significant amounts of trespassing, theft, and harassment, which he believes is a result of the shelter. She said the downtown area doesn't want the problems so why should it be placed in her front yard. She said everything west of the proposed site is residential and expressed concern for the safety of the surrounding area. She said Hillcrest Wrecker is a 24 hour business and was worried

about employee safety. She wondered who would pay for the damage to the property and loss of property value. She asked for the Special Use Permit to be denied.

Mr. & Ms. Bill and Bernice Vervynck, live in the area, said they would not feel safe with a homeless shelter being in their area. They wondered what would happen to guests who were turned away and how they would get back to town. They said they are lots of unsecure outbuildings in our area and they were concerned about those buildings being occupied by guests of the shelter. They said there is a future planned residential area near the shelter and wondered what developer would be able to develop that area. They inquired about the Special Use Permit not being reviewable.

Mr. McCullough said the recommendation from staff does not include an expiration date. If the Special Use Permit is approved an annual report would be required as part of that process. He stated any non-compliance with the Special Use Permit conditions, including the management plan, are grounds for review and revocation of the Special Use Permit. He said it can be revoked with cause.

Commissioner Moore said they are compliant driven.

Mr. Vervynck said they live on the county side of the shelter and that this is a city problem being dumped on the county doorstep.

Mr. Bobby Jones, operates Professional Moving & Storage at 3620 Thomas Court, north of the proposed shelter property, said he located his business there because of the businesses that would eventually move out there. He said he has no problems with the jail. He felt the transient population might devalue his business and property and that customer trust could be lost as far as storage usage of his business. His concerns were no transportation and adequate city services to and from the site, no sidewalks on K-10 and high car speeds. He felt a shelter in that area would really be a disadvantage to the population it is trying to serve.

Commissioner Dominguez asked how many people he employs.

Mr. Jones said currently 10 people.

Commissioner Dominguez asked if any of his employees ride the bus.

Mr. Jones said two of his employees occasionally ride the bus.

Commissioner Rasmussen asked Mr. Henderson to comment about concerns expressed about the potential for guests to be turned away. He inquired about what the process would be.

Mr. Henderson said the management plan states they would not turn anyone away without a destination and the shelter would provide transportation to a destination.

Commissioner Dominguez asked if he would drop them off at the bridge if they wanted.

Mr. Henderson said yes, it's not a great destination but that it is a destination. He stated that they could be dropped off with a family member, friend, church, or anywhere else the guest makes arrangements to stay.

Commissioner Dominguez asked if he could assure that turned away guests won't just pass out and sleep outside the shelter.

Mr. Henderson said yes.

Commissioner Dominguez asked what would happen if someone passes out in a field near the shelter.

Mr. Henderson said he would have to know about it but that he would go get them if he is informed of the situation. He said he would pick someone up not only for the safety of the neighborhood, but for the safety of the individual.

Commissioner Dominguez asked if a driver would always be available to go pick someone up who, for example, passes out at the fairgrounds.

Mr. Henderson said yes.

Ms. Anne Bracker, serves on the board of directors for Lawrence Community Shelter and lives in the Prairie Park neighborhood. She urged them to act on the Special Use Permit tonight. She urged them to act with land use in mind since they are a land use committee.

Mr. Terry Jacobsen, CEO of Printing Solutions and owns land near Hillcrest Wrecker and was going to build a business there. He said he has employed guests from the shelter over the past year. He said he hasn't heard anyone talk about the level of crime at the current location. He said the jail is not a police station and not equipped with police officers who can run out and deal with issues. He felt the problem was just being moved to another location. The neighbors who live in the area will have to deal with whatever comes with the shelter. He felt the management plan needs to be more specific and address specific issues and how they will be handled.

Commissioner Moore said there were extensive public hearing discussions when the Don's Steakhouse location was discussed and that Don Huggins went over police reports and statistics so he suggested Mr. Jacobsen talk to Mr. Huggins.

Mr. Brad Cook, social worker at Lawrence Community Shelter and co-Chair of the Coalition for Homeless Concerns. He spoke in favor of the Special Use Permit and said the new facility will offer more space. A common criticism is that the same people are always there and that is not the case. He said many homeless experience physical disabilities, mental illness, and substance abuse issues and others should not judge for the perceived lack of their expeditious change. He said as far as safety of female employees, there have been several female students helping at the shelter and have had no problems with the homeless individuals bothering or harassing them. He disagreed with the notion of guests being only Douglas County residents and said individuals are not bound by manmade lines. He spoke in favor of the shelter.

Mr. Steve Glass, managing member of Franklin Business Park, spoke in opposition of the Special Use Permit. He recapped his letter that was included in the Planning Commission packet. His primary concern was a residential use being introduced to an area zoned and planned for industrial use. He said one of the issues he has with the rear gathering area is that three of the surrounding lots for sale look right into that area. He said he was involved in the creation of the Southeast Area Plan. The plan separates industrial uses from residential on purpose. He felt that if the Special Use Permit is approved the value of surrounding land will diminish.

Mr. Bill Newsome, representing the development Fairfield 180 acres around proposed site, said when the area is built out it will have over 700 housing units. He said this is the wrong application in the wrong location. He said job growth is important and jobs can't be created in a vacuum and the

surrounding land uses are critical to creating jobs. He said pretty soon this area is not going to be at the edge of the city and they need to look at what will be there in the future. He felt it would diminish value around the location.

Mr. Roger Johnson, represents land to the north, expressed opposition to the Special Use Permit. He said that acreage surrounding the proposed site will be difficult to sell. He said nobody ever contacted him.

Mr. Todd Thompson, represents members of PDO Investors Limited Liability Company who own property adjacent to the site. He said this project is being rushed and crammed through and needs to be slowed down for more review. He did not think it was good planning to put a residential use in the middle of an industrial park. The least amount of impact is an operational issue, not a locational issue. He said the Code allows a shelter to be granted in the appropriate residential or commercial neighborhood. He felt that East Hills Business Park was a better site than this one because it is farther from residential, park, lake, school, buffer of K-10, on an existing bus route, and there are lots for sale there. He wondered what about the shelter makes it inappropriate for downtown, the location or the operation. He said the only evidence is that there will be a reduction of value in property.

Commissioner Dominguez inquired about how many social services there are in the city.

Mr. Thompson said there are only a few located near the proposed location so it would be moving the wrong direction from services. He suggested relocating the shelter to the VFW hall.

Mr. Price Banks, professional planner and attorney, said he was familiar with more shelters in industrial and commercial than residential. He said this process first came to Planning Commission three years ago and has not been rushed. He said there were a number of public hearings regarding the Text Amendment to enable homeless shelters in industrial districts and tremendous evidence put before Planning Commission, City Commission, and Community Commission on Homelessness. This is a process that has been ongoing for a long time and there have been many sites looked at. This site works because of the size and will allow the shelter to do their job better. He urged Planning Commission to approve and not defer the request.

Ms. Katherine Dinsdale, Chair of Community Commission on Homelessness, said every community that cares about its citizens has to have an emergency shelter. The Text Amendment was written so that more sites could be looked at. She said an industrial site was not the first choice but that it was from being turned away from other sites. She said the property there already is near the jail so property value wouldn't be that different with a homeless shelter there. She said the Community Commission on Homelessness strongly advises approval.

Mr. John Tacha, board member of Lawrence Community Shelter, said homelessness is a fact of life in Lawrence and that it is a shelter for the people of Lawrence and they deserve a chance. They are people down on their luck. He said he would rather pass this issue and then make a commitment to be part of making it something worthwhile. He said a work program is needed and could help make businesses grow. He said it takes a community to make a village and that there is no place in Lawrence where it wouldn't be near people who are opposed.

Ms. Jane Pennington, Director of Downtown Lawrence, said she was in favor of new location. She said there will never be a perfect place for a homeless shelter. She said the fact that the shelter has any success in their current location is an amazing thing and wanted to give them the opportunity to expand and succeed. She commented on the earlier discussion about 50% of people not taking



advantage of services being used. She said when the drop in center is taken away it will greatly reduce that number. She said that loitering downtown is on public property and they can't really be asked to leave but if they loiter on residential or business property it would be private property and something could be done about that. She asked the Commission to act and not defer.

#### **APPLICANT CLOSING COMMENTS**

Mr. Loring Henderson thanked everyone for their comments. He said regarding the comments about him not talking to people individually, he is not a perfect person and just hasn't gotten to them yet but that he would talk to them before the City Commission meeting. He said they had a public meeting and sent over 900 notice letters to invite people to the meeting.

Commissioner Finkeldei inquired about the statistics of 50% of people taking advantage of the shelter programs.

Mr. Henderson said the 600 number was people who passed through during the year. He said those are people using all kinds of services, for example just coming in to use the phone.

Commissioner Finkeldei asked about intakes into the case management program.

Mr. Henderson said intakes into the case management program is about 50%. Some people might stay the night and not be taken into the case management program. Guests can stay up to 90 nights during the evaluation period, which is the time period in which the shelter reviews the individual.

Commissioner Finkeldei said the Special Use Permit states that 125 people can sleep at the shelter per night, he wondered if that is the number of beds.

Mr. Henderson said 125 people is what was used based on the total capacity of the shelter and Salvation Army had together on very cold nights. He said that is the worst case scenario. He said they are finding that the family problem is so much more serious so they may increase the family number and decrease the individual number. He said if they go over that number they will ask downtown churches to help house people.

Commissioner Moore asked if he has looked into some sort of automated population system besides just a sign in sheet.

Mr. Henderson said several agencies use the Homeless Management Information System that HUDD mandated across the country. He said the sign in sheet information is put into the database after the intake. He said that is paid for by a grant from the state.

Commissioner Carter inquired about the letter regarding the Don's Steakhouse location that Mr. Newsome mentioned.

Mr. Henderson said he did not know about it.

Mr. McCullough said there was a letter submitted after the 10:00am communication deadline that referenced Don's Steakhouse still being available for purchase.

Commissioner Dominguez inquired about police reports.

Ms. Day said she met with Ms. Kim Murphree with the Police Department and discussed what other use downtown has the same number of calls, which she said is bars. She said all those calls are not

necessarily directly related to the shelter, for example it could be a traffic report near that location. Staff talked with police staff about trying to come to the Planning Commission Mid-Month meeting to do a study meeting but that hasn't been coordinated yet.

Commissioner Finkeldei asked staff to comment on housing residents in an industrial area.

Mr. McCullough said it has been a lengthy discussion and year long process for the Text Amendment debating whether this use should or could go in industrial districts. When we've gone through the public discussion about where should this type of land use exist in this community, least desirable locations are downtown and residential, and then it filters down to commercial and industrial as the most desired locations and then the discussion turns to which industrial locations. Staff does not view this as a purely residential use, it is an institutional use. There is an Alzheimer's facility in an industrial park west of Wakarusa. It could be argued that it's not the same type of industry but they can exist if properly mitigated. Staff's position of support is derived because it's adjacent of the jail which is community facility, it's on the periphery of this business park, and it's not surrounded by dirty industry.

Commissioner Finkeldei inquired about the Southeast Area Plan.

Mr. McCullough said sector plans don't highlight every use in the zoning use tables or whether or not they will be compatible. They are generally 30,000 foot analysis and then it goes through this type of public process to look at specific uses. Staff does see this as a potential expansion of the community facility use that is the jail today. The jail has room to expand as well and do any number of things on their property.

Commissioner Singleton said in reference to the industrial use, she has seen a lot of cities moving toward putting homeless shelters in industrial areas. She inquired about an overlap map that was shown at the last Planning Commission Mid-Month meeting that showed most industrial areas in Lawrence abutting residential areas.

Mr. McCullough said the majority of industrial is flanked by residential of some sort.

Commissioner Singleton discussed police calls. She said a lot of those calls are not necessarily crimes that have taken place at that location. She gave the example of a victim of domestic violence fleeing an emergency situation with her children and the first place she goes that she's safe to report a crime is the shelter, which could be included in the number of reported calls.

Mr. Don Huggins said there were 422 confirmed calls for 2009. That means the location the officer reported was in or around the shelter.

Commissioner Finkeldei asked staff about a previous location being conditioned with approval of a bus route.

Ms. Day said she did not recall whether staff or Planning Commission added that condition. The Planning Commission can certainly add it as a condition. She said the discussions with Mr. Robert Nugent, Public Transit Administrator, were very positive and it is actively on their radar to be able to provide service to that location. Staff did not feel it was a needed condition because a bus route is something outside of the shelters control, it is a City Commission thing.

Commissioner Finkeldei inquired about Special Use Permit time limit.

Ms. Day said there was very specific and direct discussion at the City Commission level with the current site about the city's ability to revoke or to initiate actions to revoke a Special Use Permit. It is very clear that authority does exist in the Code regardless of there being a time limit or not. The annual reporting pieces engage staff in looking at things and a part of that includes complaints as well that will be looked into by Development Services.

Mr. McCullough said the current shelter was never approved with the intention of being a permanent shelter. If the new site is approved the city has the mechanisms in place to enforce the code.

Commissioner Moore asked if there has been thought to having Development Services have some sort of interaction with the shelter.

Mr. McCullough said the Community Commission on Homelessness is currently involved in terms of trying to mediate with neighbors next to shelter.

Commissioner Dominguez asked how many Special Use Permits have been revoked in the last year.

Mr. McCullough said none have been revoked but there was a revocation hearing for the current location of shelter.

Mr. McCullough said staff is not trying to sugar coat this use in any way, this is a use that will have neighborhood impacts. In staffs opinion it has greater neighborhood impacts at its current location because it doesn't have the space to function appropriately. This is a land use application that's applicant driven and the Planning Commission purpose is to react to the application. Policy wise a lot of these things have been discussed through the Community Commission on Homelessness, City Commission, and Planning Commission with Text Amendments.

Commissioner Moore said this is tough issue but that he is not too concerned about the transit issue because the city will probably make that commitment. He said he liked the increased size for job training. It is a land use issue for Planning Commission and it's allowed in the proposed zoning. He said he thought there were more people present for the previous location at Don's Steakhouse. He said that wherever it is proposed there will be a room full of people. He stated it seems like the community wants to fix the problem but not in their backyard.

Commissioner Carter said the Planning Commissions job is to act on this application and land use. He did not feel there was a site that would work better that they knew of. Wherever the shelter is located it will eventually be built around unless it is put so far out that it wouldn't serve a purpose. He said if the current facility was adequate he would be hard pressed to move the facility at all. He said if he lived adjacent to the property he would be living adjacent to Hillcrest Wrecker and the jail. He stated he has family that lives adjacent to the property and he has family that has business adjacent to the property. Concerns about loitering will be addressed with the size of the site being adequate. He felt the success of the capital campaign is very important. This site gives the shelter the chance to be successful. The drop in center not being at the new location and room for collaborating programs, it's going to be a different shelter with different results. He felt it was critical that the bus route be a condition of approval. He said he would support the Special Use Permit.

Commissioner Finkeldei agreed the bus route needs to be a condition. He stated a shelter is needed. He said he lived in Prairie Park for 8 years and was .82 miles from the proposed location and then he moved to Sunset Drive which is .87 miles from the current shelter location. He said both of his children went to preschool across the street from the shelter at First Christian Church and then to St. Johns which is .4 miles from the current shelter location. He said he never feared for his children and

does not have any safety concerns but could understand why neighbors would. He thought with a bigger site that issues could be controlled better. He said the issue he was struggling with a bit is if this was in East Hills Business Park would he support it there. He said having a homeless shelter in a prime industrial space did cause him some concern. He was hesitant about the unlimited Special Use Permit and whether or not there should be some concern of putting a condition on that. He said last time he supported the deferral of this plan because he wanted to see changes in the management plan and he has seen those changes.

Commissioner Rasmussen said in his gut he had concern about the location within reference to the rest of the community because it is way out on the edge of town which he felt was no different than putting it in the country. He has concerns about access and proximity to services used by guests that stay there. He said they needed to know there would be bus service to and from the location. He did not think it was reasonable to say that one or two vans will service the facility. He said a good point was made about what if this was located in East Hills Business Park. He said he was unhappy to hear that the immediate neighbors were not contacted personally. The community needs a place for a homeless shelter. He said he was not sure what criteria and evidence was used to determine that this is the best location for the homeless shelter. He said he was inclined to support the Special Use Permit with the condition of bus service. He felt the management plan should have more forceful language for offsite behavior and felt that the language could be strengthened. He does not want to see people standing out on 23<sup>rd</sup> or K-10 with a sign asking for money.

Commissioner Carter said his thoughts about not setting a time limit on the Special Use Permit is because that issue is more about financing.

Commissioner Rasmussen said the time limit is not necessary because City Commission is an elected body and will be responsive to complaints and have the authority and power to revoke the Special Use Permit at any time because there are already conditions to require annual reporting to City Commission.

Commissioner Singleton commented regarding the safety of female employees that was brought up earlier. She said she lived at 10<sup>th</sup> & New Hampshire and felt much safer there then walking through campus at night. She said she was not concerned about that particular issue. She said she has been in the Prairie Park neighborhood and has friends who live in the neighborhood. She said when looking at maps of industrial abutting up to residential use it was not planned appropriately a time ago. In looking at current usage there is a lot of high density residency next to industrial in this community already and the shelter would actually be a buffer between that. She does not see homeless people as being criminals, she sees them as the women she talks to every day in her job who have to decide to be homeless or stay with the men who beat them. She said she worked with people who were indigent and who lived in the shelter. She said that when someone asks what they will see in the backyard of the shelter they are going to see people building a community garden, which is not a bad thing. She spoke about the topic of what the residents are doing during the day that was brought up in public discussion. They are running errands, taking kids school, they are trying to get to the social services office and trying to get their lives together. They are not the same people just sitting around playing bingo. She said the idea that this plan was rushed is false because it has been in discussion for years but people may not have known about it if it didn't touch their property. She felt the capital plan will determine the success of the shelter and is important so a time limit is not needed for the Special Use Permit. She thought the Lawrence Community Shelter has made every type of effort possible regarding the transportation and the rest is left up to the city. In reference to Mr. Henderson not having talked to all the people across the street, she said she could only imagine what his day is like and probably spends it going from crisis to crisis. She said she understood why maybe he did not have the opportunity to speak with every person but she said she

would like to see that happen over the next few months. She supported Mr. Cook's earlier comments about how the community treats the poorest people is a reflection of who the community is. She thought this was a good plan and would benefit the community in a variety of ways.

Commissioner Dominguez said he felt the opposite of Commissioner Singleton. He said he sees this as rewarding failure and that is what he considers the program at this point. He felt the shelter should prove their success and then be allowed to expand. He said he did not buy the fact that all the shelters failures are due to lack of space. He said the area was planned for industrial and now a homeless shelter will go there which is not fair to the people who live around the area. He felt in this economy they should be trying to bring jobs to the city and he did not feel this sends that message. He said he lives downtown and has to walk his children back from St. John's every day because the homeless badger them and causes fear in his children. He said they cannot play in South Park after dark because of the homeless that hang out there, sleeping and urinating. He said property owners invest in the community and then their livelihood is devastated by a shelter for people who are not even from Lawrence. He was opposed to the Special Use Permit. He felt the shelter needed to taper down their clients and then expand and show what they can do. He said there was more to it than giving them space.

Commissioner Chaney felt the proposed location had more cons than pros. He expressed concern about the bus route not being there and pedestrians having to cross a major street. He said that was a concern at the previously proposed Don's Steakhouse location and it was already on the other side of the street. He was concerned about pedestrian connectivity and said there were no sidewalks connecting it to the majority of town. He was unsure if this was the best industrial area for this type of Special Use Permit and also did not think it was appropriate for this gateway to the community. He said even though there was not a residential area there now, there soon would be. He did not like the idea of an unlimited Special Use Permit. He discussed a few pros to the site, such as it currently being separated from residential areas, an existing facility that needs a tenant, and the jail and shelter benefiting from a transit route there. He felt the shelter has failed at their current location and have not shown improvement. He said a bigger facility might cause more problems. He indicated he would vote against the Special Use Permit because he did not feel it was the best location for it.

Commissioner Carter said if the bus stop is conditioned it may motivate the city to get it done.

Commissioner Moore agreed with Commissioner Carter.

## **ACTION TAKEN**

Motioned by Commissioner Singleton to approve a Special Use Permit, SUP-01-03-10, for a Temporary Shelter (Lawrence Community Shelter) to be located at 3701 Franklin Park Circle, based upon the findings presented in the body of the staff report, contingent upon a bus stop being within a reasonable distance prior to occupancy, and subject to the following conditions:

1. An ordinance per Section 20-1306(j) shall be published by staff.
2. Provision of a revised site plan to include the following notes and changes:
  - a. State that missing or diseased landscape shall be replaced as a condition of occupancy of the site.
  - b. Provision of a revised site plan to include a note that states maximum sleeping capacity shall not exceed 125 individuals.
3. Submittal of an annual report to the City Commission within the first calendar quarter of each year. The report shall include the number of guests who obtain jobs and housing, the number of guests who utilize the day and nighttime services, and an update on the on-going

commitment to communicate with the surrounding neighborhood to address concerns of neighbors, and a statement of compliance with these conditions, the approved site plan, and the approved management plan.

4. A signed Site Plan Performance Agreement shall be submitted to the Planning Office.

Mr. McCullough suggested language of the applicant working with the city because the applicant can't themselves put the bus route there.

Commissioner Carter said it is not an appropriate site without a bus route.

Commissioner Moore agreed.

Commissioner Finkeldei asked if the condition says it is contingent upon the bus route being approved and City Commission approves the Special Use Permit, can they remove the condition.

Mr. McCullough said yes or they could return it to Planning Commission for additional discussion.

Commissioner Singleton asked if they could approve the Special Use Permit and then also have a resolution or motion where Planning Commission says they strongly think City Commission needs to put a bus site out there.

Mr. McCullough said it could be included in the motion without making it a condition.

Commissioner Moore said he was fine with that and did not want to bog down the applicant with process.

Commissioner Rasmussen said he would not vote for it without a strong condition that bus service is required out there. Just saying the applicant needs to work with the city is not strong enough and he would not support that. He would also not support it if it is a separate item. He said having a bus route is important and should be a condition.

Commissioner Carter agreed.

Mr. McCullough suggested wording such as 'prior to occupancy of the structure as a temporary shelter a bus route shall be operational within appropriate distance to the shelter.' He said it is a process within itself on where the stops would be, where the routes would be, how they would circulate, and it's hard to condition specifics at this time.

Commissioner Rasmussen said he didn't think there needed to be a stop right at the front door but the nearest stop shouldn't be at 23<sup>rd</sup> and Harper. He thought it should be within the industrial park.

Mr. McCullough said it could be determined by City Commission.

Commissioner Singleton said the only reason a bus stop would be out there would be for the jail and shelter so it would serve no function unless it is right by the jail and shelter.

Commissioner Rasmussen said it might enhance development to the west if there is a known bus route that loops through and comes out on 23<sup>rd</sup> and goes through the residential community.

Seconded by Commissioner Carter.

Motion carried 5-2, with Commissioners Chaney and Dominguez voting in opposition.  
Commissioner Hird abstained.

#### **MISCELLANEOUS NEW OR OLD BUSINESS**

Consideration of any other business to come before the Commission.

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**Recess at 10:47pm until 6:30pm on March 24, 2010.**

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Reconvene March 24, 2010 – 6:30 p.m.

Commissioners present: Carter, Chaney, Finkeldei, Harris, Hird, Moore, Rasmussen, and Singleton  
Staff present: McCullough, Stogsdill, Leininger, J. Miller, and Ewert

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**BEGIN PUBLIC HEARING (MARCH 24, 2010):**

**COMMUNICATIONS**

No communications received.

**EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- Ex parte:  
Commissioner Carter said he had a conversation with Mr. John Davis and Mr. Jeff Hatfield in a social setting and briefly discussed the Oread Neighborhood Association.  
Commissioner Rasmussen said he had a conversation with Ms. Marci Francisco regarding congregate living standards.
- No abstentions.



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*The Commission heard item 6, then item 7, then item 5.*

**ITEM NO. 6      AMENDMENTS TO DEVELOPMENT CODE; MU DISTRICT (MJL)**

**TA-1-1-10:** Consider a Text Amendment to Sections 20-403, 20-509(3), and 20-524 of the Development Code to permit Bars & Restaurants in the MU District. *Initiated by City Commission on 2/2/10.*

**STAFF PRESENTATION**

Ms. Michelle Leininger presented the item.

Commissioner Hird asked who the applicant was.

Ms. Leininger said it was initiated by City Commission and the applicant is Paul Werner Architects.

Mr. McCullough said several sector plans mention the MU district and staff is actively speaking with applicants about development in North Lawrence that could benefit greatly, in staff's opinion, by an MU district zoning designation. He urged the Commission to think about this issue more globally because it has implication city-wide for whether a bar or lounge should be included in the use table as a Special Use Permit.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, said he was representing The Hawk and The Wheel to provide those businesses security if something should happen. He said it is not his intention to encourage a bar to replace the Jayhawk Bookstore. He said they considered zoning The Hawk and The Wheel as CS but MU made more sense in that area. He thinks the Special Use Permit is appropriate. He said the 5,000 square feet may not be needed because even with the Special Use Permit they cannot build anything bigger because the addition would have to meet the Development Code. He was frustrated by a quality restaurant being limited to 3,000 square feet and felt that should be changed in the Code. He reiterated that nobody thinks a Special Use Permit at 1420 Crescent (Jayhawk Bookstore) is a good idea.

Commissioner Harris asked about the definition of a quality restaurant.

Ms. Leininger said a fast food restaurant is packaged food to eat on the premises or readily take off the premises. A quality restaurant would be a sit down type restaurant such as Applebee's or Perkins.

Mr. McCullough read the definition from the Code:

***Restaurant, Quality***

*An eating establishment where the principal business is the dispensing and consumption of prepared foods and/or beverage at tables, not including bars, brewpubs or nightclubs. Table service by food & beverage servers is available at "quality restaurants".*

Commissioner Harris asked if that was in the code before the Krause's project.

Ms. Leininger said the term Private Dining Establishment was what was added to the Code for the Krause Dining.

Commissioner Finkeldei asked if the Text Amendment is passed as written could it be possible to have a bar at 1420 Crescent (Jayhawk Bookstore).

Mr. McCullough said yes, it is possible that if this is included in the Code then the owner of any Mixed Use district could come in and apply for a Special Use Permit to have a bar at that establishment through the Special Use Permit process which is a public hearing process. He stated that staff has not done any analysis on the Jayhawk Bookstore site to determine whether or not any use in the Mixed Use district would be Development Code compliant. He said it's possible a bar could work but that site is a bit constrained so the building would have to be raised with underground parking. He said it was important to remember that the MU district has language that requires mixed uses in certain zones and that is done through vertical structures and horizontal structures. He said what is not likely to happen is one use, such as one bar at one site. It would most likely be residential, retail, office, or some mix of those. In staff's opinion, the Special Use Permit is typically the protection to allow in a context where it is compatible with surrounding uses but be able to deny it when it is not compatible with certain uses. He said he was not prepared to speak tonight about if they could retroactively go back and do something with Jayhawk Bookstore and that it is not the issue being discussed tonight.

Commissioner Hird asked if the Special Use Permit for The Hawk and The Wheel would be an irrevocable permit.

Mr. Werner said essentially. There are other instances in the Code when site plans have changed by right.

Commissioner Hird asked if they would remain a non conforming use.

Mr. Werner said yes, they would be non conforming uses that would be able to rebuild if a fire or something else should happen.

Mr. McCullough said staff will be better prepared to discuss the issues next month when it is brought back before the Commission. He said the language is modeled after some existing concepts in the Development Code that bring in uses into any district that doesn't meet Development Code standards at that time. He said the form of the MU district is different than conventional districts because the building is brought up to the line instead of setbacks so staff felt it was appropriate to grandfather those in so they wouldn't be considered legal non-conforming, they would conform to the MU district because there would be language in the MU district to give them that land use right.

Commissioner Harris asked if because the current buildings conform more to the MU district is that why the client is going for the MU rather than CS.

Mr. Werner said after discussions with staff the MU works for the clients so they agreed to go down that path.

Mr. McCullough said staff laid out options for the applicant and the Code does not encourage any more CS zoning in the city.

Commissioner Carter inquired about the possibility of applying an overlay district to the Jayhawk Bookstore.

Mr. McCullough said the overlay districts cannot introduce new uses that the Development Code does not already contain. He said the Jayhawk Bookstore is not in the Oread neighborhood area in terms of where the overlays will occur. He said the Commission will hear a lot of testimony tonight about different perspectives and there are no guarantees in land use development. Governing bodies

can take certain actions on a property to change the land use, although it is preferred to operate in a system that does have some perceived guarantees in the Development Code and property rights, but things change and the will of the governing body changes and they have to work within that system as well. He said staff could explore adding an overlay district.

Commissioner Moore said at least it would convey the idea that the Commission does not agree for a bar to be located where the Jayhawk Bookstore is.

Mr. McCullough said it would not have that right if this Text Amendment is approved, it would have the opportunity to request a Special Use Permit.

Commissioner Harris asked if something could be conditioned after the fact.

Mr. John Miller said he would have to research that. His impression would be that a condition could not be placed after the fact and that the property would have to go through the normal rezoning process with a public hearing.

Mr. Werner said asked what zones the Jayhawk Bookstore has, and if they are primary and secondary.

Mr. McCullough said when a Text Amendment is requested staff does not think about one property only, they think about city wide implications and implementation. In staffs opinion the Special Use Permit is protection for a neighborhood as requests come in.

Commissioner Harris gave the scenario regarding the Jayhawk Bookstore where students living close to that lot would want a bar there so then the Planning Commission and City Commission would have to weight that, so it could go the other way based on those circumstances. She said at the time when the rezoning of Jayhawk Bookstore was granted there was a definite sense that a bar would not go there.

## **PUBLIC HEARING**

Mr. Bill Mitchell reiterated the main points of his letter included in the Planning Commission packet. He stated that text amendments that change land use are, effectively, changes of zoning and neighbors should have timely notification. He stated that when 1420 Crescent was rezoned MU the neighborhood was assured that bars would not be allowed. He felt that making bars a Special Use would assure the neighbors that, until a bar is granted, they will face the harassment of having to fight it again and again. He said that bars are inappropriate uses west of campus. He felt the university should be solicited for their input.

Commissioner Carter asked staff to comment about Mr. Mitchell suggestion in his letter that any substantive change to land use requirements in the zoning district should require notification of all parties.

Mr. McCullough said there is one property in the city zoned MU district. He said the next agenda item is for a Text Amendment in the IL district which would require notifying thousands of property owners. He said staff can explore some of that language but Text Amendments are typically seen as policy issues. He said he did see the point that if there is a use being added by right, for example, in a district it does provide the owner within that district the ability to use that land use. He stated staff can explore some of that regarding notification. He said upon Mr. Mitchell's urging staff did notify those within the notification area of the MU district.

Mr. James Sherman, 1511 Crescent Road, representing the University Heights Neighborhood Association. He read a letter from the President of the University Heights Neighborhood Association Allan Miller that stated the neighborhood was assured they would be notified if issues like this came up and that he was disturbed by the new proposal. *The rest of what Mr. Sherman said were his own words:* He said he likes the Jayhawk Bookstore but does not want it to become a bar of any kind because it would tremendously increase traffic, noise, litter, and raise the possibility of violence in the neighborhood. He felt like he was railroaded into making this an MU district without knowing all the consequences. He asked that they not approve the Text Amendment and put a special restriction on 1420 Crescent prohibiting a bar, or develop some other type of zoning. He feels like they are being pushed into doing this because there are other bars that are non-compliant.

Commissioner Finkeldei asked staff when the rezoning of Jayhawk Bookstore was approved.

Mr. McCullough said October, 2008.

Ms. Stacey Dillon, Chi Omega Sorority 1345 W Campus Rd, said it is an historic site and that the idea of having a bar near there is awful. She expressed concern about increased traffic. She said alcohol is a huge issue on the campus and a bar would encourage what they are trying to fight.

Mr. McCullough said staff is aware of the historical implications of land use and development with the Historic Resources Commission and there is a process for that. He said the Jayhawk Bookstore does not have any application submitted to the Planning office for any change of use or development at that side, nor The Hawk or The Wheel.

Ms. Faye Watson, 1516 Crescent Road, asked if their area was still the only MU district in the city.

Mr. McCullough said yes.

Ms. Watson said the neighborhood was assured a year and a half ago that 1420 Crescent would not become a bar and that the atmosphere and hours of a bar would disturb the neighborhood.

Mr. David Holroyd, 1224 Louisiana St, said 5,000 square feet is slightly under the size of lots in the Oread neighborhood. He said there is an ongoing problem of trash but that it is a citywide problem. He asked if the Jayhawk Bookstore site would allow housing for seniors on that property.

Mr. McCullough replied yes.

Ms. Jenna Sheldon-Sherman expressed opposition to a bar at 1420 Crescent.

Mr. McCullough said an option to consider is the MU district requires designating one of three zones; primary, secondary, and tertiary. Primary is the most intense zone. The Jayhawk Bookstore was zoned with a tertiary and a secondary zone, not primary. He said they might consider permitting, with a Special Use Permit, only primary zones allowed to have bars or lounges. He said he did not know if the primary zone would work for The Hawk and The Wheel and that staff would have to look into that.

#### **APPLICANT CLOSING COMMENTS**

Mr. Werner said he is willing to work on figuring it out.

#### **COMMISSION DISCUSSION**

Commissioner Rasmussen suggested a potential solution since Jayhawk Bookstore is currently the only MU in the city. He said he remembered discussing the issue and that the Commission did not want a sex shop, bar, etc at that location. He said since it is the only MU zoned property why don't they leave it zoned MU and create a new district to allow bars and lounges. He said as they go forward with MU districts in the city there could be a category that allows bars, such as MU-BL (Mixed Use-Bars Lounges) and one that does not, such as MU. He also questioned the square footage restrictions and felt that it was micromanaging businesses.

Ms. Leininger said currently quality restaurants have restrictions in the CN1 and CO districts only. There are no regulations that apply to the MU district. If the Commission wants standards for the quality restaurants then they should be added under this section. If the Commission doesn't want standards then the asterisk would be removed from the use table that directs to that section. Currently there is an asterisk that directs to that section where there are no regulations that apply to it. Staff would not recommend adding any square footage restrictions. The applicant said if the Commission is looking at keeping the asterisks there and adding regulation then this is what is proposed.

Commissioner Rasmussen inquired about an accessory restaurant.

Mr. McCullough gave the example of a Barnes and Noble with a coffee shop.

Ms. Leininger said the square footage of bars and dance floors is what the applicant proposed but staff is looking for direction from the Planning Commission.

Commissioner Harris asked why staff thought use standards were appropriate for CN1 and CO but not the MU district.

Ms. Leininger said those are currently in the code.

Commissioner Harris asked if the extra standards were necessary for quality restaurants in those areas, why they would not be necessary in another kind of area.

Mr. McCullough said the MU is a more active district than the commercial districts. There is more intensity and when envisioning what a Mixed Use District can hold the restrictions may not be needed and the other districts don't have that intensity of use.

Ms. Stogsdill commented on the size restrictions by saying the CN1 district was supposed to be very small development sites and the CO district limitation is so there isn't a district that becomes commercial as opposed to mostly office.

Commissioner Harris asked how to prevent a MU district area from being mostly commercial instead of mixed with residential.

Ms. Stogsdill said the MU district has built into the district all sorts of requirements for how to mix those uses. There are already protections in there for the mixing and ratio.

Commissioner Hird asked if staff has explored other alternatives to protect The Wheel and The Hawk without having to implement a Text Amendment.

Mr. McCullough said yes, staff has. If we assume we want to protect the interests of The Hawk and The Wheel then staff has explored several options including rezoning to CS or other Text

Amendments to the non-conforming article. This option seemed the most appropriate because of the designation in the Oread Neighborhood Plan. Staff did consult the City Historic Preservation Administrator, Lynne Braddock Zollner, when those discussions were had. Staff focused on the 14<sup>th</sup> Street corridor and this is one that staff felt they could support.

Commissioner Hird felt the irrevocable Special Use Permit looked like something other than a Special Use Permit because Special Use Permits by nature are things that can be revoked or have a time lime associated to it. He said he doesn't necessarily object to the irrevocable Special Use Permit but that he was unsure what that becomes.

Mr. McCullough said those were the applicant's words. Staff needs to explore that more.

Commissioner Hird said this appears to be an issue that can be resolved. He said he sensed everyone all going in the same direction of not wanting a bar at that location.

Commissioner Moore said Planning Commission previously promised the neighborhood that there wouldn't be that use at the Jayhawk Bookstore.

Commissioner Finkeldei said Planning Commission conditionally zoned that location to restrict certain uses, such as brewpub at the Jayhawk Bookstore. He said there cannot be a brewpub there because it was removed from the use table and conditionally zoned it. He said a regular bar wasn't conditionally zoned out because it wasn't in the use table to begin with. He said if the Planning Commission would have even considered this happening they could have added that as a condition. He said the site was limited it in all sorts of ways except in this way and he didn't blame the neighbors for being upset.

Commissioner Carter liked Commissioner Rasmussen's idea of having separate MU districts. He also agreed with removing the square footage requirements.

Commissioner Singleton said Planning Commission promised not to modify this district and assured homeowners that there wouldn't be a bar there. She was not comfortable making modifications to that district. She felt zoning issues related to drinking around campus are important.

Commissioner Finkeldei recalled past Planning Commission discussions where they removed bars because Mixed Use would be mostly infill and if there is infill it was hard to imagine an infill district in East Lawrence where a bar would be wanted. He said they pulled that out for a reason. He liked Commissioner Rasmussen's idea because he could see areas where they would want Mixed Use but if it allowed a bar it would be a problem. He did not think conditioning was always the best route.

Commissioner Harris supported Commissioner Rasmussen's suggestion of two MU districts. She said it would help in the future if a district was approved for a bar that future people moving to the area would know the area has been approved for a bar. She also agreed with removing the asterisks from the use table.

Mr. McCullough said it leads to discussion of other uses in the MU district. He stated the vehicle staff typically uses in this type of neighborhood protection is the Special Use Permit. He said staff can come back with a series of uses that segregate out more neighborhood friendly versus a district that allows uses that may have more impact. He said they could also explore other ways to protect the Jayhawk Bookstore and keep the Special Use Permit in one district.

Commissioner Rasmussen asked if there was merit in having a more neighborhood concept of a Mixed Use and then a more commercialized MU type area.

Mr. McCullough said the standard employed by the Development Code is the Special Use Permit process for those uses staff determines should not be determined by right and demand some sort of public process to analyze the compatibility of whatever neighborhood it is in. He said one concern is for another use to come in, such as entertainment and spectator sport use, so then there would be multiple mixed use districts for different types of uses when there is already a mechanism in the Code that helps get to the issue of compatibility. He said staff will explore options and felt there were ways to get at protection for the neighborhood.

Commissioner Singleton asked if Commissioner Rasmussen's suggestion for multiple MU's was used would that mean that the Oread neighborhood could have, with a Special Use Permit, more bars.

Mr. McCullough said it is possible, depending on how that districts ends up looking. He said there are a lot of variables for what could occur.

Commissioner Harris asked staff to discuss the idea about notice for changes to uses in zoning areas. She agreed that zoning type notices should be required for any change of use.

Mr. McCullough said it could be looked at.

Commissioner Finkeldei said Mr. McCullough made a good point earlier that if the city notified changes in the IL district, for example, then there could possibly be thousands of letters being sent out.

Mr. McCullough went over the different types of media ways that the city does get the word out to the public such as mailed notice, newspaper, website, list serve, and relationships with organizations and neighborhood groups.

Mr. Bill Mitchell said notice did get out only because he read the legal notice in the newspaper, visited Planning to find out what was going on, then notified the neighbors.

Ms. Judy Kish, lives near Jayhawk Bookstore, said the neighborhood associations have a feeling that the city considers them snoops and pests. She felt the city should spend more time getting notice out to people.

Ms. Leininger said city staff did notify the adjacent neighborhood association.

**NO ACTION TAKEN**

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**ITEM NO. 7      AMENDMENTS TO DEVELOPMENT CODE; IL DISTRICT (MJL)**

**TA-1-2-10:** Consider a Text Amendment to Sections 20-403, 20-601(b) and 20-601(b)(1), to permit Hotel/Motel/Extended Stay Use as an allowed use in IL Zoning. *Initiated by City Commission on 2/2/10.*

**STAFF PRESENTATION**

Ms. Michelle Leininger presented the item.

Commissioner Rasmussen inquired about lower height limitation in IL districts.

Ms. Leininger said staff was responding to what the applicant requested but that staff could look at making it taller. Staff was going with the idea of it being a transitional district and at a minimum it would match the high density residential districts height maximum.

Commissioner Harris inquired as to if the Farmland site was zoned IG.

Mr. McCullough said Farmland is not zoned yet but that East Hills Business Park is zoned IG.

Commissioner Chaney asked if the term Extended Stay could include a temporary shelter.

Ms. Leininger said that Temporary Shelters are their own use category.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, said they have a potential hotel user. He agreed with the first two conditions. He said he struggled with footnotes 14 and 15 regarding setbacks being recommended for denial.

Mr. McCullough said the footnotes were derived from an issue that when several M districts were folded into the IG District, it left a lot of developments with a closer setback than the new code so structures could not be expanded. The fix to that issue were the footnotes for the IG properties zoned that were previously zoned M2 District. Any new IG zoning has to comply with the table of 50' setbacks so it was only meant for those parcels that were zoned M2 and already developed and any other issues could be brought to the BZA for a variance.

Mr. Werner said hardships through the Board of Zoning Appeals are hard to prove. He said the footnote would only apply to this piece of property. He did not see the harm in taking the setback from 50' to 25'.

Commissioner Harris asked why the applicant was going with this zoning and not a zoning that would allow the use.

Mr. Werner said the options are CS which they and staff discussed but since it's caddy-corner to the Holiday Inn Holidome, there is a specific provision in the code that in theory discourages CS. He said it was turned down for rezoning years ago because everyone was afraid a convenience store would be built there.

Mr. McCullough said looking globally across the city staff had discussions about if the hotel use would be appropriate in the IBP District. Staff found it appropriate for the IBP and IL district, not the IG district.



Commissioner Hird asked why not in the IG district.

Mr. McCullough said the compatibility of uses. That is a heavier use that allows dirtier industry.

Commissioner Rasmussen said he thought the Industrial Design Guidelines tries to encourage bicycling, walking, and beautiful streets so why would a motel/hotel not be allowed.

Mr. McCullough said staff are encouraging that context specific to the use that they are proposing, mainly for not just any pedestrian or bicyclist, but employees or visitors to the site. He said they could discuss the appropriateness of IG.

### **PUBLIC HEARING**

No public comment.

### **COMMISSION DISCUSSION**

Commissioner Finkeldei asked if IL or IBP were more like an office park.

Mr. McCullough said that all the industrial districts allow administrative and professional offices with some use standards. IG does not allow financial insurance and real estate offices. The greatest difference comes between IG and IL with fast order food, several retail uses, and heavy industrial uses are allowed in IG but not IL or IBP.

Commissioner Finkeldei said if Farmland and East Hills developed out with a whole bunch of offices he could see someone wanting to put a hotel there for the people coming in from out of town.

Mr. McCullough said they could request rezoning. Staff struggles when looking at these uses about whether the industrial zones are being watered down out of industrial.

Commissioner Finkeldei inquired about the setback issue.

Mr. McCullough said if it were developed under IG it would have 25' and 20' setbacks because of the decision to honor the previous setbacks of the M-2 District.

Mr. Werner said the only other property it would impact would be another IG zoned property rezoned to IL.

Mr. McCullough looked at a map of M-2 and M-3 zoning and said it looked like there was no IL zoning today that would be affected by those footnotes. By rezoning this and creating an IL district where M-2 once existed would likely be the only property affected with the footnote.

Commissioner Harris said what was the harm in having every property that was zoned M-2 have 25' setback like it had before no matter what it's rezoned.

Mr. McCullough said the harm is when the Development Code is changed and then new development will be expected to meet those codes. There were no IL Districts at the time that were M-2 because they all folded into IG.

Commissioner Rasmussen inquired about height restriction. He said in his mind the progress from IBP to IL to IG got more intensive in use so he was curious why there would be such a low height restriction in IL and should they take this opportunity to make it equivalent to IBP.

Mr. McCullough said he cannot speak to why it's 35' today. He said it was worth exploring. The development in IBP District has been more of a campus type office development so multi-story, versus manufacturing warehousing which typically have a lower height structure. On the surface it demands a higher height than 35'.

#### **ACTION TAKEN**

Motioned by Commissioner Finkeldei, seconded by Commissioner Hird, to approve the following portions of Text Amendment TA-1-2-10 to amend the Land Development Code and forward to the City Commission:

1. Amend Section 20-403 Nonresidential District Use Table, to permit the Hotel, Motel, Extended Stay use in the IL and IBP Districts; and
2. Amend Section 20-601(b) Nonresidential Districts, Density and Dimensional Standards, for the IL District, for the maximum building height to be 45'; and
3. Amendments to Section 20-601(b)[14] and Section 20-601(b)[15] to add the IL District in the table footnotes related to setbacks.

Commissioner Rasmussen asked if they vote for this tonight could there potentially be an application for hotel/motel/extended stay facility in the area of Bob Billings and Wakarusa.

Mr. McCullough said yes, it would be a permitted use by right so it would be an administrative site plan.

Commissioner Hird thought it would be an acceptable use in that area.

Commissioner Harris said she would vote in favor of the motion. She expressed concern about multiple hotels and motels which would erode the ability to have industries in those areas. She did not think it would be a good amenity for the community to have it become a district like that. She did however think it was a good use of the property.

Unanimously approved 8-0.

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**ITEM NO. 5      IG TO IL; 5.252 ACRES; 151 MCDONALD DR (MJL)**

**Z-1-1-10:** Consider a request to rezone approximately 5.252 acres from IG (General Industrial) to IL (Limited Industrial), located at 151 McDonald Dr. Submitted by Paul Werner Architects, for Downtown Equities II, LC, property owner of record.

**STAFF PRESENTATION**

Ms. Michelle Leininger presented the item.

Commissioner Harris asked if a personal convenience, retail sales, or food service could be inside the hotel.

Ms. Leininger said they would probably be considered more of an accessory uses and if the uses are permitted in the use table as an accessory use then they would be allowed.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, agreed with the staff recommendation. He was concerned about the list getting long of uses not permitted. He said he did not agree with conditions F, I, J, and K and would like them removed. He suggested possibly limiting the square footage to 20,000 for conditions I, J, and K.

Commissioner Carter inquired about the covenants.

Mr. Werner read from a list such things as mixed media, convenience stores, fast food, theaters, thrift stores, adult themed retail and shows. He said some commercial there makes sense and they would be willing to limit that.

Commissioner Rasmussen inquired about a snack/gift type shop in the hotel.

Mr. McCullough said if conditions I, J, and K are stricken they would still accept some ancillary hotel related retail but that staff would not support standalone retail at the site.

Commissioner Rasmussen inquired about condition G.

Ms. Leininger said that is a grocery store type of use.

Mr. Werner said they have possibly thought about a coffee shop within the hotel.

Commissioner Hird asked if they wanted to lease out space in the hotel to Starbucks how that would work.

Mr. McCullough said staff would have to see a specific plan for it but that it could be an ancillary use to the hotel but if they did a drive thru then it would not be an ancillary use.

Commissioner Hird asked if the commercial parking facility exclusion would exclude valet parking.

Mr. McCullough said no.

Commissioner Finkeldei asked if they passed the rezoning as suggested in the staff report could it still have ancillary uses.

Mr. McCullough said they can have those accessory ancillary uses with the hotel as the primary use.

Commissioner Finkeldei asked if a Jimmy John's inside the hotel, like the Oread Hotel, would be an ancillary use.

Mr. McCullough said it would be site and plan specific.

Commissioner Moore inquired about the footprint of the hotel.

Mr. Werner said 2-2 ½ acres, possibly 3 stories in height, no more than 15,000 square feet.

Commissioner Rasmussen thought commercial parking as ancillary might be okay because it could be, for example, a stop for a shuttle to the airport.

Commissioner Harris was comfortable with the uses not permitted list but suggested adding something at the top that says 'except those asterisked as possible accessory uses' and then asterisk those uses that would be appropriate for a hotel.

Commissioner Moore asked about the out parcels.

Commissioner Harris said it depends on what it is.

Commissioner Moore said if the square footage was capped then it would be married to some type of hotel use.

Commissioner Finkeldei was in favor of a 15,000 square foot cap.

Commissioner Moore stated that when trucks turn onto N. Iowa from Princeton it stops traffic dead. He asked if there were plans to address that.

Mr. Werner said it would be a right in, right out along Princeton. He said it is designed for a free flowing truck lane.

Commissioner Moore asked if the R-O-W would be there.

Mr. Werner said the R-O-W is there.

Commissioner Singleton asked if the applicant wanted 20,000 square feet of retail.

Mr. Werner said 15,000 square feet seems reasonable.

Commissioner Harris asked what Design Guidelines would apply to the property.

Mr. McCullough said anything under the Commercial Use category would apply to the Commercial Design Guidelines.

## **PUBLIC HEARING**

Mr. Steven Holton, said this would result in another hotel being across from the existing Holiday Inn Holidome. He read the Convention and Visitors Bureau (CVB) 12 month occupancy rate in Lawrence, 56% for 2009. He said this was before the new Oread Hotel. The average daily rate in Lawrence,

according to the CVB, is \$81. This is the lowest rate since 2005. He said the Holidome only sells out 8-10 times per year on weekends. He discussed the impact to the hospitality industry. He was opposed to the rezoning.

### **COMMISSION DISCUSSION**

Commissioner Harris inquired about screening of possibly allowed tractor trailers.

Mr. McCullough said the appropriate buffer yards would apply.

Commissioner Harris asked if they would be sufficient to screen the view of big trucks from the road.

Mr. McCullough said it would be hard to screen semi trucks.

Commissioner Moore asked what side the detention basin was on.

Mr. Werner said the northeast side. He said the only commercial parking he could foresee would be cars to the airport.

Commissioner Harris addressed Mr. Holton's comments about hotels and vacancy rates. She said they have the same issue with apartments and she does not feel like she has the tools and knowledge to deny a project. This project is not for a hotel, it is for a rezoning to allow for a hotel. She said this is a concern for the community but she does not know how to address it here. She does not have the tools to evaluate the number of hotel rooms or apartments that are appropriate for a community.

Commissioner Carter said it seemed to be more of a free market issue and a matter of competition. He thought a 65 room hotel sounded like a fairly limited service hotel and something the city could probably still use.

Commissioner Hird said he would probably support the rezoning but was still concerned about parking trucks. He suggested carving it out to say that commercial parking of automobiles will be permitted but not commercial parking of trucks. He did not want to see it become a truck stop.

Mr. Werner said he was fine with that.

### **ACTION TAKEN**

Motioned by Commissioner Finkeldei, seconded by Commissioner Carter, to approve the rezoning of approximately 5.252 acres, from the IG (General Industrial) District to IL (Limited Industrial) District based on the findings presented in the staff report with the following conditions and forwarding it to the City Commission with a recommendation for approval.

1. In lieu of submission and approval of a retail market study (per Section 20-1107), there shall be no more than 50,000 square feet of retail uses, as defined by 20-1107 (b) (1), permitted on the 5.252 acres being rezoned with this application.
2. The following uses shall not be permitted on property:
  - a. Mobile Home
  - b. Detention Facilities
  - c. Cemetery
  - d. Livestock Sales
  - e. Fast Order Food, with Drive-In
  - f. ~~Commercial Parking Facilities~~
  - g. Retail Sales and Services Food and Beverage

- h. Mixed Media Store
  - ~~i. Retail Sales and Services Personal Convenience~~
  - ~~j. Retail Sales and Services Personal Improvement~~
  - ~~k. Retail Sales, General~~
  - l. Cleaning (Vehicle Sales and Services)
  - m. Gas and Fuel Sales
  - n. Heavy Equipment Sales/Rental
  - o. Inoperable Vehicles Storage
  - p. RV and Boats Storage
  - q. Heavy, Wholesale, Storage & Distribution
  - r. Recycling Facilities Large Collection
  - s. Recycling Facilities Processing Center
3. Retail Sales and Service Personal Convenience, Retail Sales and Services Personal Improvement, Retail Sales General shall be no more than 15,000 square feet for these uses total.
4. Commercial parking facilities would not allow commercial trucks.

Unanimously approved 8-0.

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*Work session for the following Text Amendment:*

**ITEM NO. 8      AMENDMENTS TO DEVELOPMENT CODE; BOARDING HOUSES (SDM)**

**TA-6-17-09:** Reconsider Text Amendments to various sections of the City of Lawrence Land Development Code to review standards related to "Boarding House." *This item was originally heard by Planning Commission on 12/16/09. City Commission returned this item on 2/2/10 for additional consideration.*

**STAFF PRESENTATION**

Mr. Scott McCullough presented the item and went over the memo from the staff report.

Commissioner Harris asked if this would affect a good patch of the East Lawrence neighborhood that has single-family homes now but has been rezoned to multi-family.

Mr. McCullough said yes, anywhere that has that unique issue. It needs to be a city-wide set of standards. He discussed nonconformities in the area and said there have been some discussions about the structures that do not comply with the definition of family. He said that staff felt this amendment never set out to address that issue and should not address that issue. There is existing language in the code that deals with non conforming structures.

Commissioner Carter asked staff to comment on the letter sent by Lawrence Preservation Alliance that suggested wording on parking and limitations on expansion.

Mr. McCullough said City Commission directed staff to establish one standard for parking on existing and new construction.

Commissioner Rasmussen asked what type of restrictions there are on the expansion of other types of residential buildings.

Mr. McCullough said setbacks, Design Review Guidelines, impervious surface, lot coverage, and standards applicable to all uses.

Commissioner Rasmussen asked if he had a home and wanted to expand in size, as long as he met setback requirements and height restrictions could he do that.

Mr. McCullough said that was correct.

Commissioner Rasmussen inquired about the restriction 20% rule.

Mr. McCullough said the building footprint was discussed at the City Commission level. A few Commissioners thought that was an appropriate way to look at expansions.

Commissioner Rasmussen asked if there was a loophole where it could be expanded by 19% and then another 20% on top of that.

Mr. McCullough said staff sought to close that loophole with the language in section 20-546(3)(iv)(b):

*A site plan for a Congregate Living use is not eligible for approval if the building footprint, measured at grade, of an existing Structure proposed to contain the use has been expanded greater than 20%*

*within three years of submitting the site plan application for the Congregate Living use.*

Commissioner Rasmussen said if he was trying to get around the language he would expand his house by 19% and build a big deck and then seek to turn it into a boarding house.

Mr. McCullough said decks would be a standard looked at when an application is turned in for a boarding house. If the deck exceeds the 20 square feet per bedroom they would need to remove a portion of the deck or seek a variance.

Commissioner Rasmussen suggested language that says limited to not more than 8 bedrooms.

Commissioner Harris gave the example of a 5 bedroom house where 3 bedrooms could be added to turn it into a congregate living house for 8 people with only 5 parking spaces.

Mr. McCullough said it could be done if the capacity to put all 8 parking spaces on the property was not possible, but that it would have to be shown and justified. He said the structure would have to be greater than 4,000 square feet to have the parking issue looked at.

Commissioner Hird asked if an expansion from 5 bedrooms to 8 bedrooms was limited by the 20% rule.

Mr. McCullough said yes.

Commissioner Finkeldei asked if congregate living would be limited to 8 bedrooms no matter how big the structure is.

Mr. McCullough said yes.

Commissioner Finkeldei gave the example of an old rundown 14 unit apartment building that might forever stay rundown because it will not be given the chance to be revived due to the limitation of 8 bedrooms.

Mr. McCullough said that congregate living is not the only option and there are other uses that the Code allows in RM districts. He said the number 8 that staff came up with wasn't necessarily brought about by City Commission. City Commission made overtures about putting a maximum back in and staff used that as an opportunity to bring forth a recommendation that linked it to the behavioral issues and the definition of family.

## **PUBLIC HEARING**

Mr. Rob Farha, Crimson Properties, felt there should be credit for an on-street parking spot. He also felt there should be 5 parking spots with 7 bedrooms.

Mr. Dennis Brown, Lawrence Preservation Alliance President, agreed with Commissioner Rasmussen's comment about the language stating 'not more than 8 bedrooms.' He said the parking standards should be one space per bedroom. He said 20% of livable space is the best way to go and he wondered about the difference between footprint and livable space. He inquired about the parking standard minimum for a 4,000 square feet structure and asked if that was before the 20% expansion.



Mr. McCullough said the difference between livable square feet and building footprint is based on different math equations because the footprint looks at the two-dimensional square feet of where the building hits the grade, not taking into account how many stories it is or whether there is livable space in the basement. He said the idea on parking was for an existing 4,000 square foot structure to accommodate hardship, not something that creates a hardship. He said staff can work on the language if the Commission would like.

Ms. Gwen Klingenberg, Lawrence Association of Neighborhoods President, said this is a citywide issue. She said they supported Special Use Permits for large Historic Properties. She felt that no structures should be expanded to become boarding houses. She was concerned about the loss of affordable housing. She said they supported one parking space per bedroom, to maintain the definition of family, and maintain nonconformities.

Commissioner Hird asked if an existing house could expand more than 20% if it didn't impact the footprint.

Mr. McCullough said with the current language yes, if it went up.

Mr. James Hicks discussed the history of the Oread Neighborhood as being originally built with boarding houses.

Ms. Candice Davis said the goals in the neighborhood plan include a variety of housing types with diversity of residents. She felt they should concentrate on a variety of housing types. She felt that boarding houses should be a minimum of 6 bedrooms with a maximum of 8 bedrooms. She said an 8 bedroom boarding house should have a Special Use Permit. She did not want all the houses to be boarding houses because it would negate the definition of family. She would also like a registered agent for each boarding house to address behavior issues.

Commissioner Rasmussen asked how it would be handled with just Special Use Permits and would there be specific restrictions.

Mr. McCullough said that many Special Use Permits come with use standards.

Ms. Marci Francisco, 1101 Ohio Street, felt that mixed uses should be preserved. She felt that there needed to be a minimum of bedrooms or size to be a boarding house because if any house with 5 bedrooms can be a boarding house then there wouldn't be any more single-family homes. She felt there should be parking standards for larger houses with overlay districts. She felt they should match the higher density on the plan with areas for boarding houses.

Ms. Carol von Tersch felt there should be a minimum of 6 bedrooms for congregate living and without a minimum it would create amnesty for property owners who have not complied with the law.

Mr. David Holroyd asked about the minimum occupancy required.

Mr. McCullough said it would be in the Building Code standard and that he did not have that in front of him. He said congregate living structures are considered one unit.

Commissioner Finkeldei inquired about setting a minimum of bedrooms.

Mr. McCullough said there are many different goals such as behavior issues, saving historic structures, housing types, definition of family, and parking. He said the definition of congregate living is 5 bedrooms.

Commissioner Finkeldei asked Mr. Farha about the first house he did and if he got a parking variance.

Mr. Farha said he did get a variance.

Commissioner Finkeldei suggested managing thru parking standards rather than number of bedrooms.

Mr. Farha was concerned about what would happen to 5 bedroom boarding houses.

Ms. Francisco said nowhere else in the city is it okay to have 5 unrelated people living together.

Mr. McCullough said this is no different than any time a Text Amendment is done that changes standards and creates non-conformities.

Ms. Francisco wondered if City Commission or Planning Commission could initiate variances for existing boarding houses for those that would not comply with standards.

Mr. McCullough said typically variances are requested by the owner and he did not believe it could be initiated by the governing bodies but that it's an issue that can be looked at.

Commissioner Singleton said those that are in compliance should be protected and rewarded.

Commissioner Harris said there is a place for congregate living in the Oread neighborhood but not if that means losing single-family houses. She felt that congregate living was not appropriate outside of the area near campus. She said she had mixed feelings about using larger structures for congregate living. She said if the house has 5 bedrooms then it shouldn't be expanded unless parking can be provided. She also felt that there needed to be a registered representative for the larger houses.

Commissioner Singleton liked the idea of a Special Use Permit process. She felt there needed to be a designated resident dealing with complaints, one parking space per bedroom, and protection for current registered houses.

Commissioner Rasmussen said he liked the idea of putting a floor on the number of units. He said he didn't know why the floor wouldn't be 5 to tie in with the definition of family. He did not think it was necessary to have a cap on the number of units. He said he was not sure about one parking space per bedroom, possibly .75 spaces per bedroom. He agreed with Commissioner Harris about congregate living being around the university, not throughout the entire city.

## **NO ACTION TAKEN**

## **MISCELLANEOUS NEW OR OLD BUSINESS**

Consideration of any other business to come before the Commission.

## **PUBLIC COMMENT SECTION**

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**ADJOURN 11:05pm**