



**PLANNING COMMISSION MEETING**  
**May 24 & 26, 2010**  
**Meeting Minutes**

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May 24, 2010 – 6:30 p.m.

Commissioners present: Blaser, Carter, Chaney, Dominguez, Finkeldei, Harris, Moore, and Rasmussen

Staff present: McCullough, Stogsdill, Brown, J. Miller, Leininger, Warner, and Ewert

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**MINUTES**

Receive and amend or approve the minutes from the Planning Commission meeting of April 26 and 28, 2010.

Motioned by Commissioner Harris, seconded by Commissioner Blaser, to approve the April 26 and 28, 2010 Planning Commission minutes.

Motion carried 5-0-1, with Commissioner Carter abstaining. Commissioners Dominguez and Rasmussen were not present at the meeting yet.

**COMMITTEE REPORTS**

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

Commissioner Finkeldei said he was appointed to be on the Neighborhood School Taskforce and will report back to Planning Commission any findings and updates.

Commissioner Harris said the Comprehensive Plans Committee met to review the draft chapter after receiving public comment. It was sent back to staff to include the committee's comments and will come back to the committee on June 9<sup>th</sup> at 3:30pm.

**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**

- No ex parte.
- No abstentions.

*Approximately 6:40pm - Commissioner Rasmussen arrived at the meeting.*

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**ITEM NO. 1      SPECIAL USE PERMIT FOR NORTH BOWERSOCK MILLS &  
POWERHOUSE; 1000 POWERHOUSE NORTH RD (AMB)**

**SUP-3-4-10:** Consider a Special Use Permit for the construction of the North Bowersock Mills & Powerhouse, Utility and Service, Major, located at 1000 Powerhouse North Road. Submitted by Bowersock Mills & Power Company and the City of Lawrence, property owners of record.

**STAFF PRESENTATION**

Ms. Amy Brown presented the item.

Commissioner Harris inquired about the No Rise Certificate.

Ms. Brown said there are specific standards that FEMA gives out for development in the regulatory floodway. One of those is the provision of a No Rise Certificate which basically means there will be no rise as a result of the development.

Commissioner Harris asked if the ground is raised up.

Ms. Brown said no, the water (flood) level.

**APPLICANT PRESENTATION**

Ms. Sarah Hill-Nelson, Bowersock Mills and Power Company, said they would like some evening interior light. She also stated that the ownership may change to a Limited Liability Company, but would be operated by Bowersock Mills.

**PUBLIC HEARING**

Mr. Ted Boyle, President of North Lawrence Improvement Association, felt it was a good project for North Lawrence and would contribute to the economic welfare of North Lawrence. He encouraged Planning Commission to approve the Special Use Permit.

**ACTION TAKEN**

Motioned by Blaser, seconded by Commissioner Harris, to close the public comment.

Motion carried 7-0.

Commissioner Carter asked if there should be a change to the condition for lighting.

Ms. Brown said the applicant submitted information to staff ahead of time and part of that is addressed in the staff report. She said it could be addressed in the photometric plan, which is a condition of approval, so no change is needed to the conditions.

Commissioner Harris inquired about flooding. She asked if the area floods and the building is damaged would there be a cost to the community to repair.

Ms. Brown said by nature the building is meant to be flooded because it is located in the river. She said she was not sure that they could get flood insurance with the nature of the building.

Motioned by Commissioner Carter, seconded by Commissioner Chaney, to approve Special Use Permit (SUP-3-4-10) for the construction of the North Bowersock Mills & Powerhouse, Utility and

Service, Major, 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, including submission of a no-rise certificate and HEC-RAS or equivalent hydraulic model as requested by the Stormwater Engineer, prior to release of Special Use Permit for building permits.
3. Approval of a lease agreement with the City of Lawrence for the use of city-owned property.
4. Submission of a photometric plan showing the location, size and wattage of fixtures.
5. Applicant shall provide a revised site plan with the following changes:
  - a. Correctly show the location of the access road on the southernmost edge of the levee under the Kansas River bridge.
  - b. Move the stand pipe on the south wall as close as possible to the stair door.
  - c. Show location of fire hydrant that meets 2006 IFC C105.1.
  - d. Show location of Fire Department Connection (FDC) on west wall of building next to main door.
  - e. Revision of the surface summary to add square footage amounts for building and pavement.
  - f. Add material notation for canoe portages and fishing deck.
  - g. Add the following notes:  
Proposed Use: "Utility and Service, Major"
  - h. Add City of Lawrence as property owner:  
*City of Lawrence, KS*  
*PO Box 708*  
*Lawrence, Kansas 66044*  
*785.832.3000*

Motion carried 7-0. Commissioner Dominguez was not present at the meeting yet.

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**ITEM NO. 2      PCD-2 TO PCD-2; 2.61 ACRES; 2000 & 2040 W 31<sup>ST</sup> ST (SLD)**

**Z-3-4-10:** Consider a request to rezone approximately 2.61 acres from PD-[Home Improvement Center- PCD-2 with use restrictions] to PD-[Home Improvements Center- PCD-2 with use restrictions amended to include office uses], located at 2000 & 2040 W 31<sup>st</sup> St. Submitted by Landplan Engineering, for Broadway Plaza II Lawrence Inc., property owners of record.

*Item 2 was deferred prior to the meeting.*

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**ITEM NO. 3      PRELIMINARY DEVELOPMENT PLAN FOR CROSSGATE DRIVE CASITAS;  
4.6 ACRES; 2451 CROSSGATE DR (SLD)**

**PDP-3-2-10:** Consider a Preliminary Development Plan for Crossgate Drive Casitas, 46 one bedroom units on approximately 4.6 acres, located at 2451 Crossgate Drive. Submitted by BG Consultants, Inc., for Inverness Park LP, property owner of record. Waivers for reduced parking, building setback and peripheral setback are included in this request.

*Item 3 was withdrawn prior to the meeting.*

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**ITEM NO. 4      COMPREHENSIVE PLAN AMENDMENT TO H2020; CHAPTER 14 –  
NORTHEAST SECTOR PLAN (DDW)**

**CPA-6-5-09:** Consider Comprehensive Plan Amendment to Horizon 2020 – Chapter 14 to include the Northeast Sector Plan.

**STAFF PRESENTATION**

Mr. Dan Warner presented the item.

Commissioner Finkeldei asked about the definition of Soil Conserving Agri-Industry.

Mr. McCullough said Soil Conserving Agri-Industry category has its roots in Chapter 7 that was adopted last year. He said as the sector plan has worked its way through the public process there have been calls on all fronts to better explain, define, and characterize what that may mean for someone looking at this plan and have expectations for that. He stated the underlined blue language is the second round of the draft. It is a term with its basis found in Horizon 2020, Chapter 7. The distinction between soil conserving and straight industrial employment classifications means to staff that there is a component of protecting and/or using the existing ag-land either through ag use or preservation. Staff discussed what examples might help implement that term and reviewed comments that tend to leave out a word or two each way. Staff felt the key components of either using or protecting those soils can come in various forms, whether it's using the soil for crop production with limited buildings, or traditional industrial with protection of a majority of the land through conservation easements.

Commissioner Harris asked about the last part of Mr. McCullough's description where he talked about conventional industrial saving land. She asked if he is still envisioning that to be agricultural industrial.

Mr. McCullough said the question is how defined do they want the term to be. It's a brand new term to Horizon 2020. Staff does not want to box themselves in and it may be traditional industrial with a strong protection component.

Commissioner Finkeldei inquired about the language 'conserve and use class 1 and 2 soils in the area.' He wondered about a grocery store that only sells local food in the area.

Mr. McCullough gave the example of a development application for a 40 acre plot with a small grocery store and parking lot associated with it and a conservation easement. He said it would be a packaged development linked to protection.

Commissioner Finkeldei asked if staff has considered Transfer of Development Rights (TDR's)

Mr. McCullough said not necessarily because of this localized class one and two soil discussion.

Commissioner Rasmussen asked why they were focusing on class one and two soils and not prime farmland.

Mr. McCullough said that is how prime agriculture is defined in Chapter 7.

Commissioner Rasmussen asked if the definition for prime farmland was different than USDA.

Mr. McCullough said through public discussions staff came to that conclusion, yes.

Commissioner Rasmussen asked how much prime farmland, under the Chapter 7 definition, there is in state of Kansas and what percentage is contained in Douglas County.

Mr. McCullough said staff did not have data for the state. He said the majority of Douglas County lies in this township with smaller amounts along the Wakarusa River and other tributaries.

*7:06pm - Commissioner Dominguez arrived at the meeting.*

Commissioner Rasmussen asked what percentage of that is the amount class one and two in Douglas County.

Mr. McCullough said he did not have that information at his finger tips.

Commissioner Finkeldei inquired about the green open space.

Mr. McCullough said that is the floodway.

Commissioner Rasmussen inquired about the mapped soil conserving agri-industry. He asked if it is bounded on the North by Hwy 24/40 and bounded on the West by Hwy 40/59

Mr. Warner said he was correct on the North boundary but the West boundary does not go all the way over to the highway. It is bounded on the South by Interstate 70.

Commissioner Rasmussen inquired about the snowflake at Midland Junction.

Mr. Warner said it is designated as future industrial/employment that comes from Chapter 7. It is designated as a far out (30 years) employment center.

Commissioner Rasmussen asked why on the proposed land use map there is only one small soil conserving agri-industry area.

Mr. McCullough said it is rooted in Chapter 7 as an industrial employment center type land use with the soil conserving agri-industry definition behind it.

Commissioner Rasmussen inquired about map 2-13 – Class 1 and 2 Soils. He said the area shown as class 1 looks a little bigger than the class 1 area where that snowflake is on top of the map. He was curious why the class 1 soils in the area south of the airport deserved special designation.

Mr. McCullough said the plan proposes the snowflake at Midland Junction as a future nodal plan so this plan hasn't planned to the parcel level yet. It may very well have soil conserving agri industry classification when the nodal plan is done because Chapter 7 supports that classification in that area but it hasn't been designated to that level yet for the Midland Junction snowflake.

Commissioner Harris said the plan says soil conserving agri industry should be included in Midland Junction when a nodal plan is developed for that area.

Commissioner Rasmussen said that is not reflected on the map.

Mr. Mr. McCullough said that node has not been classified yet for land use but that it is something that the plan calls for in a future planning effort.

Commissioner Rasmussen asked why Mr. Warner said during his presentation that the area would be particularly suited for urbanization and industrial development.

Mr. Warner said the sheer size of that area versus the entire planning area, and the fact that the airport and highways are right there. That was the original planning area and it got larger through the process. That is the most focused area for infrastructure and different transportation networks.

Mr. McCullough said there will be a Utilities Master Plan presented later on this evening.

### **PUBLIC HEARING**

Mr. Roger Pine said virtually every acre he farms has been changed and he was concerned about what he could still do. He also expressed concern about new rules or regulations for farming class 1 and 2 land. He felt the soil conserving agri industry definition was not clear. He was surprised about industry being there and wasn't sure if it would fit in. He inquired about the rules specific to normal agri production and wondered if an ethanol plant or wind turbines could be put there. He displayed a map that showed people who were opposed to the plan.

Commissioner Dominguez asked how many property owners were on the map Mr. Pine displayed.

Mr. Pine said he hasn't counted the number but that some land owners own multiple pieces of land. He said his best guess would be about 25-50 property owners.

Mr. McCullough said the plan does not annex or rezone property, or create new regulations for the property as it sits today. The uses that exist today will exist and be lawful if the plan is adopted. He said agricultural as a use will not be affected by this planning effort, it is exempt from state statute from zoning laws in the county.

Commissioner Harris had a question about the map that Mr. Pine displayed. She asked if there is a petition of land owners opposed to the plan.

Mr. Pine said there was no petition but that he could gather a list.

Ms. Barbara Clark, owns a farm in Grant Township, said Douglas County has 304,000 acres and of that there are 2.8% capability class 1 soils and 8.2% capability class 2 soils (both percentages including urbanized soils). She said capability class 1 and 2 soils are USDA definitions and that prime soils is a far more encompassing definition used by the USDA. She said former Planning Commissioner Lawson suggested narrowing prime farmland.

Commissioner Carter requested that Ms. Clark resend an email to the Planning Commission that she had previously sent regarding soil information.

Ms. Clark said she would do that.

Commissioner Rasmussen asked if the USDA uses the definition prime farmland or prime soils.

Ms. Clark said prime farmland.

Commissioner Finkeldei asked how much prime farmland is in this area.



Ms. Clark said she did not know but that it was the vast majority. She thanked planning staff for the inclusive nature of this draft document. She said it was done in good faith and community participation was at a high level. She referred to American Planning Association white paper policy guide on agricultural land preservation and one policy guide is *'two primary planning goals are to provide locations for necessary urban development and to protect natural resources such as good agricultural soils. If growth is properly directed the two rarely come into conflict, if it is not, neither goal can be achieved, therefore agricultural land preservation programs should not be independent of more general growth management programs.'* She felt they needed to recognize the importance for both production agriculture and sustainable organic smaller scale agriculture to the future of Douglas County. She said they need to also pursue incentives to assist owners that wish to stop farming. She requested they look into a zoning district definition and identification for soil conserving agri industry. She felt the language in the second draft can be built upon but actually having the zoning regulation is an important aspect of it.

Commissioner Rasmussen said one way to keep agricultural land in use would be to put a prohibition on any uses except agriculture through zoning. He asked if Ms. Clark had any other suggestions.

Ms. Clark said community building is far more than infrastructure and brick and mortar. She felt this is a community building endeavor. She suggested things like Transfer of Development Rights, Purchase of Development Rights, federal funding through the Farmland and Ranch Protection Program, Kansas Land Trust, and conservation easements. She said she would prefer multiple options.

Commissioner Harris asked Ms. Clark why she was asking to have zoning for agri industry.

Ms. Clark said there is insecurity about the definition. She said if it could be defined, clarified, and debated it would be a much healthier way to move forward.

Mr. Jim Congrove, landowner in Grant Township, said prior to the 1951 flood there were 6,000 acres of potato production. He said the document seems to indicate class 1 and 2 soils are the only prime soils in the area. He said class 3 soils that exist in the area are also good and that at least half of his 300 acres of potatoes were in the class 3 soil. He said the sand in the class 3 soil was helpful during wet years. He said they need to talk more about regional food policy, not just local.

Ms. Mary Ross asked for map 3.1 future land use to be on overhead. She said she has a sustainable farm in Grant Township and felt any definition of sustainability should include financial security along with family and environmental wellbeing. She said her feedlot and office are on existing industrially zoned property along the railroad track and that some of the land has been taken for improvements such as the turnpike, airport, and KP&L substation. She said the perception of this map is that her property is being downzoned to agricultural and that reduces the land value. She said the green space shown on the map shows it as public recreation when it is really her private land. She said she does not want the lake taken because it is her private property. She said there is a proposed bike path that would go through her property and under the turnpike and she does not want to have to farm around a bike path due to safety and liability issues.

Mr. Ken Reiling said he is the owner of a 64 acre farm on the far eastern edge of Grant Township. He said he is a former geography teacher. He said the plan overemphasizes prime soils and land suitability. He referenced some information from one of the geography classes he taught that said in the 50 states there is enough land suitability class 1 and 2 to cover Kansas over four times. He said the emphasis on the plan is more restriction and he was not sure that was in the best interest of

Lawrence. He wanted to know if the unconventional land use category of soil conserving agri industry has been standardized in any way. He said if not then it is more localized and he was not sure they should depend on a localized definition. He said it was confusing to land owners, not well defined, and he was opposed to making a new category. He felt it should be more of a regional plan.

Commissioner Moore recommended Mr. Reiling submit to Mr. Warner his information resources.

Commissioner Rasmussen asked Mr. Reiling what type of class he used to teach.

Mr. Reiling said geography.

Commissioner Rasmussen asked if the total number of class 1 and 2 soils in the US equals four times the state of KS.

Mr. Reiling said that was correct.

Mr. Pat Ross said he lives in Grant Township and has had a diverse family farm since the early 1900's. He said he attended all the meetings regarding the Northeast Sector Plan. He said livestock production was only mentioned under floodplain and traditional agriculture has little mention in the plan. He said information from the Kansas Farm Management Association shows the value of traditional crops in Grant Township for 2009 was just under 4 million dollars and livestock production was 2 million. He said class 3 and 4 soils are just as important as class 1 and 2 soils. He also said the railroad is hardly mentioned in the plan. He was concerned about soil conserving agri industry not being accurately defined. He also had questions about the proposed bike path. He requested they delay the implementation of the plan.

Mr. Ron Schneider said he is the landowner of a 40 acre small farm. He said his main concern is that traditional farming is not accurately defined in the draft plan. He said they needed to focus on the goal of conserving valuable farmland. He suggested that they have not gone far enough in doing that with this plan. He said perhaps class 3 and 4 should also be protected. He said the conservation process is important, not necessarily what is being grown. He felt there should be a number of categories in the soil conservation ag industry that should be developed and defined precisely and should be adopted regardless of this sector plan. He felt the map shown by Mr. Pine of property owners who were opposed to the plan was suspect because the map was made by phone calls. He said if he was polled by phone about the proposal the only answer he would have is 'I don't know' because he had not read it yet and he questioned if any or many of the people have even read the plan or what they were told.

Commissioner Harris asked Mr. Schneider to expand further about addressing soil protection outside of this plan.

Mr. Schneider said just to focus on Grant Township is crazy because there is a lot of land in the county. He said they need to be smart about planning and address it county and state wide. He said the state of Iowa in the mid 1980's created a state wide zoning classification dealing with certain categories of soil that basically said something couldn't be built if it would take away the production capacity of the land.

Mr. Gary Price said he has attended many of the Northeast Sector Plan meetings. He has a cattle farm in western Douglas County. He said the definition of preserving from the dictionary means to '*preserve from loss, decay, wreck, or injury.*' He said he was in favor of conserving all soil and felt

the definition for this tract of land is arbitrary. He said when reading Chapter 7 today he thought of a plan, he suggested setting aside a certain amount of land for small farm usage.

Mr. Clint Hornberger, Douglas County Farm Bureau Board of Directors, was opposed to the term soil conserving agri industry as well as the land that has been deemed as such in the plan. He said the term is loosely defined and has the potential to place limits on the land and land owner options. He said a previous commission thought prime farmland should be defined down to class 1 and 2. He said the USDA definition of prime farmland is basically any agricultural land that a net profit is made off of.

Commissioner Harris asked if the Farm Bureau was aware that soil conserving agri industry was added to Chapter 7.

Mr. Hornberger said no. He said he was not pleased about the definition because it is too loosely defined and can be interpreted in many ways.

Commissioner Dominguez asked if he wanted more industrial zoning in the county to lower taxes.

Mr. Hornberger said yes. He said he didn't have that much opposition to the term of agri industry, but has issues with the soil conserving part.

Ms. Trudy Rice said she works at Kansas State working in Community Development. She said in the land grant system they informally define sustainable agriculture as something that sustains the family, business, and environment. When looking at sustainable community development built environment, human environment, financial environment, and environmental capital are important. She said there is room in the Northeast sector plan to ensure a healthy balance for a healthy community. Soil is one consideration but just as important is infrastructure. She said consumers have choices and so should producers. She felt the plan compromises the ability for generations to meet their needs. She thought the plan is a moving target and difficult to plan around a moving target.

Ms. Carolyn Phillips, Husted Management, said her property has been in the family for over 100 years. She said the Northeast Sector Plan attempts to tell property owners how to use land. She wanted to make sure freedom of choice is not taken away from landowners.

Mr. Ted Boyle, President of North Lawrence Improvement Association, worked close with staff in designing the Northeast Sector Plan. He said 2,500 people live in North Lawrence. He was concerned about stormwater and flood control for the residents of North Lawrence. He said the residents are concerned about any high density development that happens north of North Lawrence. He stated there are over 150 new homes in North Lawrence.

Mr. Charles NovoGradac, has a farm in North Lawrence, stated that he is a Farm Bureau member but does not agree with their thoughts. He showed a map on the overhead. He said the north line of his property is ½ mile from Hwy 24-40. He expressed drainage concerns. He said the levee creates a bowl and creates surface problems. He felt it was good to preserve high quality soil. He recommended getting precise topographic and felt it was important to know where the airport drains. He suggested no development north of Highway 40 that would drain into the already overburden Maple Creek.

Mr. Lew Phillips, owns 250 acres located within a mile of Midland Junction. He said the Northeast Sector is considered to be prime farmland but also includes prime land for industrial and economic development. He said factors that favor development of commercial land are excellent

transportation, railway, airport, and there is no other place in Douglas County with these three attributes. Other factors favoring the development include flat land, reduced building cost, nearness to Lawrence and potential for utilities, providing jobs within a few miles, commercial businesses support many philanthropic activities in Lawrence, and the tax rate on business is more than twice the rate of residential property. In Horizon 2020 selectively referenced with bias against development. It clearly identifies Midland Junction and the airport as future hubs for future industrial and commercial development. He said if the residential community is not going in that direction then this is a plus for industrial development. He suggested installing a traffic light at Midland Junction to address safety issue. He felt the elimination of the ability of a farmer to sell his land for the highest and best use is discriminatory. He said most of the opposition to potential development is from people not living on a farm or no direct financial interest.

Mr. McCullough said there has been a request from an audience member to defer item 6 Text Amendment for the IBP district.

Commissioner Moore asked if anyone in the audience would mind item 6 being deferred to next month.

The audience member who requested it asked that the item be heard at the beginning of the agenda when it is scheduled again.

Motioned by Commissioner Harris, seconded by Commissioner Dominguez, to defer Text Amendment (TA-4-4-10) to the City of Lawrence Land Development Code, Chapter 20, Section 20-403 of the Code of the City of Lawrence, KS to permit the Hotel, Motel, Extended Stay use in the IBP (Industrial/Business Park) District.

Motion carried 8-0.

Commissioner Rasmussen said since he came in to the meeting late he wanted to disclose he had no ex parte communications.

Commissioner Dominguez said since he also came in late to the meeting that he did not have any ex parte communications to disclose either.

Mr. Don Westheffer, owns farmland in Grant Township, said if this plan has any flaws it would be that the land owners and producers in Grant Township were not part of it. He said this is the first chance they have had to publically say anything. He said as far as keeping it farmland there are conservation easements for anyone that wants to keep their land from being developed. He said there is plenty of land in the township to meet everyone's needs. He said it is prime farmland and prime development land. He said they need tax dollars in Douglas County. He asked that they delay action until the FAA completes evaluation of the airport.

Commissioner Blaser said there have been three public meetings and asked Mr. Westheffer if he received notice.

Mr. Westheffer said yes, but that they did not get a chance to say very much during the meeting since they were outnumbered. He said at one meeting he asked for a show of hands of owners in Grant Township and it was less than 10%.

Mr. Ron Rice, Douglas County Farm Bureau, wanted to clarify that the Bureau speaks for a majority of the members but not every individual. He felt the plan was too restrictive on what a farmer could do with their land.

Commissioner Harris asked if he would be okay if every land owner in the township sold all the agricultural land and it went away.

Mr. Rice said there are many farmers that would not sell their land but that they should have that option.

Ms. Natalya Lowther, Pinwheel Farm, said proximity to infrastructure has not been that important to growth. She said there has been an increase in awareness of the value of class 1 and 2 soils. She wondered whether the soil preserving ag industrial would be subject to a public hearing during a rezoning.

Mr. McCullough said some of this development can occur without being annexed. He said Sector Plans may not always be urbanization and that it is feasible that in some areas it is a County Commission site plan with the current zoning. He said there are other things that the Sector Plan mentions, such as the cost of infrastructure, the cost of storm drainage, and levee issues. He said if there is rezoning there will be a public hearing with notice.

Ms. Lowther said she supports the North Lawrence Improvement Association's interest in not having any development north of North Lawrence. She said the Farm Bureau does not represent her views. She said the combination of the class 1 and 2 soils with the very shallow ground water that underlies them is important. She said farmers should be able to live off of farming. She said the existing regulations already affect the right to choose.

Commissioner Rasmussen asked if Ms. Lowther if she is a member of Farm Bureau.

Ms. Lowther said yes.

Mr. Kent Nunemaker said he makes his living in Grant Township. He was concerned about public access, such as a bike path or open space, on his property. He felt that the soil classification should not be a determination of the ground use.

Commissioner Harris inquired about public access on private property. She said her understanding is that the plan would not take private land for public access.

Mr. McCullough said that was correct and that staff may need to work on the language to clarify. He said open space corridors are sometimes where utilities lines run and there are opportunities to do some amenities such as park trails but that it is an option and not intended to take land.

Ms. Debbie Milks, Chestnut Tree Orchard, said farmers have been the most stable businesses in the area. She said that by increasing development in the area it would put pressure on other places to develop in a domino effect and create problems for people who do want to stay and farm. She said she ran across an article of performance measures in Ann Arbor, Michigan about how they preserve farmland around the community by working toward tax policy and development rights policy that allows for some equity for farmers keeping farmland preserved.

Ms. Dorothy Congrove, owns three tracts of land in Grant Township, said she attended and participated in all the Northeast Sector Plan meetings. She said her comments were not included in

the draft plan. She wondered what soil conserving agri industry means was and how exactly the soil would be conserved, does it limit her choices, how would a company coming to Douglas County view those terms, and how do the terms of the policy change the value of her land. She said a farmers net worth is tied up in the land, not a 401k, and she believes property owners have the right to do what they want with their land.

Mr. Frank Male, part owner of Lawrence Landscape, said the North Lawrence Drainage Study was completed a few years ago and identified 40 million dollars in drainage improvements that were recommended. He said the only way to fund the improvements is with high quality industrial development. He felt they should take advantage of the current infrastructure of highways, airport, and railway. He said there are very few neighbors in that area.

Ms. Beth Johnson, Lawrence Chamber of Commerce, said industry and agriculture are not mutually exclusive and there is enough acreage to accommodate both. She felt it would be pertinent to not proceed until the airport master plan is completed.

Commissioner Harris asked Ms. Johnson how she would propose doing both industry and agriculture in the community.

Ms. Johnson said when she looks at the map she sees the color purple (representing industrial) in the same areas where purple is currently. She also said there is a snowflake at Midland Junction and there used to be a snowflake around the airport as well but when an industrial user came forward that project was denied. She said she does not like it when a project comes forward that then gets turned down even though the future land use maps indicate that's what the area is classified as. She said she wants to make sure that options are truly options.

Commissioner Harris asked what is in the Airport Master Plan.

Mr. McCullough said it looks at the area of the airport to look at how it may be developed in future years.

### **COMMISSION DISCUSSION**

Commissioner Carter said the plan maps and verbiage in the plan should include more regarding the railroad and the opportunities it may present. He asked if flood control would be looked at prior to something being built.

Mr. McCullough said that was correct, local regulations would look at local floodplain impacts. The bigger policy issue is when the drainage study improvements get triggered with development in the area.

Commissioner Carter agreed that the Airport Master Plan should be completed before the Northeast Sector Plan. He also agreed that soil should be a consideration but should not trump everything else. He said he valued the class 1 and 2 soils but felt they needed to look bigger. He felt that incentives were the way to encourage ag uses versus prohibiting.

Commissioner Finkeldei said based on the comments this evening, at the very least there needed to be another public educational session. He asked if staff sees soil conserving agri industry is being a zoning category or as a suggested sub category.

Mr. McCullough said as it moves through the Commission it could turn into an implementation strategy to create a zoning district. He said on the top page 3-11 of the draft plan talks about county zoning districts and Lawrence zoning districts that would be appropriate here.

Commissioner Finkeldei felt they could not push forward with the plan without knowing if there would be another zoning category or possibly an overlay district. He said if it is going to be zoning category then it needs to be better defined. He said Chapter 7 states soil conserving ag industry business that will protect the quality of existing high quality land either through agricultural use or preservation for future ag use should be encouraged to locate in the airport start. He said he supported that it should be encouraged, but that was different then a plan that says it is mandatory. He said the draft should have the right balance of agricultural significance of the site against the need for industrial and employment related development. He said the most common solution that other communities have used is transfer of development rights. He also suggested incentivizing conservation easements. He said he has a hard time seeing how open space mimics floodplain and floodway and what the open space means. He said the section on ag economics in the plan does not flow as much as it should. He asked when the Airport Master Plan would be complete.

Mr. McCullough said he has heard that the Airport Master Plan would be done by the end of the year. He said there is also a Utility Master Plan that is ramping up and that these are evolving documents as the community is planned.

Commissioner Rasmussen had specific comments about the plan. On map 2-1 the title should be Existing Land Use, not Existing Water Infrastructure. He said there are two different colors for farm and farm residence and he was curious why that was separated out and it gives the impression that it's two different land uses.

Mr. Warner said the county appraiser tags that land use.

Commissioner Rasmussen said on map 2-3 it looks like there is a water line in the airport but it is not colored the same as the other lines.

Mr. Warner said the pink overlay is defined as Rural Water District #13. He said yes, that is a water line in the airport.

Commissioner Rasmussen said on page 3-2 of the plan, section 3.1.1.1.c(1), he recommended eliminating the second sentence. He also recommended deleting the second sentence of section 3.1.1.1.c(3). He did not feel that was inconsistent with section 3.1.2.1(a) on page 3-4 of the plan. He pointed out language that he felt was not consistent:

Page 3-2, section 3.1.1.1.b(1,2), the word 'encourage' is used.

Page 3-2, section 3.1.1.1.c(1, 2,4) the word 'support' is used.

Page 3-2, section 3.1.1.1.d(2) the word 'allow' is used.

Page 3-3, section 3.1.1.1.e(1,2) the word 'encourage' is used.

Page 3-3, section 3.1.1.1.f(1) that word 'protect' is used.

Page 3-3, section 3.1.1.1.f(2) that word 'encourage' is used.

He felt there should be consistency in the language.

Commissioner Harris would like to see the plan address public use of land around the Ross property and clarify that. She would like to revisit the soil conserving agri business definition so that it is clear to anyone reading it what it means. She would like to discuss and incorporate Ms. Linda Finger's written comments from the county. She would like to see both agriculture and other uses in the plan. She would like to see a mechanism for getting what they envision there. She liked the idea of

using incentives to achieve the vision but she needs more confidence that incentives will work. She said there were lots of concerns about drainage in the plan and she felt they needed to articulate more how drainage off of new developments will be addressed so that it doesn't impact other land. She was concerned about development effecting agriculture around it from runoff, vehicles, and drainage. She was interested in the comment about perhaps expand the types of soils to protect. She said she would probably support that. She would like traditional agriculture mentioned in plan. She agreed to some extend with delaying the plan until the Airport Master Plan is completed but felt they should continue with their overall policy discussions and research. She would like to see real vision for the area and the tools to make it happen.

Commissioner Moore agreed with a lot of the comments. He said TDR's is one way to solve the issue.

Mr. McCullough said there is a reason this area hasn't developed substantially over the decades. Those reasons have to do with the cost of development, public infrastructure, and storm drainage. He said they need to continue to think about where to put limited resources in relation to development cost.

#### **NO ACTION TAKEN**



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**ITEM NO. 5 TEXT AMENDMENT; LAND DEVELOPMENT CODE; MU DISTRICT (MJL)**

**TA-1-1-10:** Consider Amendments to the City of Lawrence Land Development Code, various sections of Chapter 20, to permit Bars or Lounges and to consider changes to development standards for various Eating & Drinking Establishments in the MU (Mixed Use) District and to consider a new Mixed Use Entertainment District. *Initiated by City Commission on 2/2/10.*

**STAFF PRESENTATION**

Ms. Michelle Leininger presented the item.

Commissioner Harris asked what happens when the asterisk about Quality Restaurant and Fast Food is removed.

Mr. Leininger said if the asterisk is removed the Jayhawk Bookstore could have a larger Fast Order Food Use. The asterisk for the Quality Restaurant use does not apply because there are no regulations where it refers you to the district.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, said this all started with the desire to put in safeguards for the Hawk and the Wheel. He suggested adding the following language to recommendation 2a of the staff report:

2. Section 20-403

- a. Adding a "S" for the Bar or Lounge use in the MU District to permit the use by Special Use Permit, *for properties zoned MU after June 1, 2010*

He also said a possible fifth recommendation may be to exclude the bars and/or lounge from the tertiary zone.

**PUBLIC HEARING**

Mr. Bill Muggy, owner of the Jayhawk Bookstore, said he spent 30 years trying to secure his property. He said it was not his intention to rezone and expressed concern over personal comments that have been made about him and the Jayhawk Bookstore.

Commissioner Harris said she hoped that the public comments this evening would not be personal. She said Planning Commission needs to consider the property and possible future uses. She said it is about the use, not the owner.

Mr. Bill Mitchell said the staff suggestion to allow bars with a Special Use Permit only after this date may serve to forestall a bar at 1420 Crescent but he liked the idea of a bar-less MU district for use elsewhere in town. He said he can imagine other neighbors accepting plain MU zoning if they had assurance that bars would not be one of the uses. He stated whatever mechanism Planning Commission comes up with he was confident it was their intention that a bar not be permitted at 1420 Crescent. He expressed disappointment that his chief concern, the lack of notification of zoning changes made by innocent appearing Text Amendment administrative decisions, was not addressed in the staff recommendations in spite of Mr. McCullough having said at the March 24 Planning Commission meeting that it could be looked at. He said this whole matter arose because the administrator was focused on MU at 14<sup>th</sup> and Ohio and failed to see the implications of the Text Amendment at 1420 Crescent. He said a similar thing can happen again under different circumstances, different zoning districts or uses, slipped in by Text Amendments. He rejected the contention that notification at the site plan stage is sufficient because at that point the deal is done

and is a new use by right. He felt neighbors deserve timely notice of zoning changes no matter the means used to initiate the change.

Ms. Mary Lake, Sigma Corporation Board of Gamma Phi Beta, said the sorority at 1339 W Campus Road is just around the corner from the proposed property. She said to her knowledge all five sororities and fraternities along W Campus Road oppose a drinking establishment of any kind at the applicant property. She said alcohol abuse in Lawrence is an issue and felt that part of the City's responsibility was to address those issues by refusing to allow a drinking establishment so close to the University and so close to housing establishment where the majority of those students are underage. She also expressed concern about parking. She said among the alumni of the University in Johnson County the perception is that the City of Lawrence does very little about the drinking problem at KU and in fact encourages underage drinking because of the economic impact of the bars on the city.

Commissioner Rasmussen asked Ms. Lake to clarify when she referred to applicant property.

Ms. Lake said 1420 Crescent Road.

Commissioner Rasmussen said the property has been zoned MU for quite some time and that the real applicant who initiated this whole issue is where the Hawk and the Wheel are located. The applicant applied to be incorporated into the MU District but because the current zoning ordinances do not allow bars or lounges in the MU District they asked that it be changed. He wanted to clarify that all Ms. Lake's comments were focused on the Jayhawk Bookstore, who is not the applicant, not the Hawk and Wheel.

Ms. Lake said it was her understanding that in the future there would be an application to make drinking available at the Jayhawk Bookstore.

Commissioner Rasmussen said nobody has asked to make that available at this point. He said this change would not apply to anything that was zoned MU prior to this taking effect so it would not apply to 1420 Crescent.

Commissioner Harris said Ms. Lake's comments were not inappropriate because if Planning Commission does not approve that provision to have the bar use happen after the first MU approval then it would apply to that property.

Mr. Jim Sherman said many neighbors would prefer two different districts, one that permits bars and one that does not. He thanked Planning Commission, staff, and Mr. Muggy in trying to resolve the issue. He said option number one suggested by staff was perfectly satisfactory. He also requested consideration of broader notification.

Ms. Gwen Klingenberg, President of Lawrence Association of Neighborhoods, she asked that Planning Commission protect the adjacent neighborhood. She said if the neighborhood had not found out about this and come forward Planning Commission wouldn't even be discussing this one district possibly having a change. She said it takes the neighborhood to help the Planning Commission understand the consequences of their decisions. She requested better notification of the public.

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to close the public comment.

Motion carried 8-0.

### COMMISSION DISCUSSION

Commissioner Finkeldei asked for clarification on the recommendation for non-conforming.

Mr. McCullough said the Legal Department recommended tweaking the language a bit for Section 20-1108 (d)(4):

*Any use existing at the time of rezoning to the MU District that is regulated as a Special Use upon rezoning to the MU District shall be considered an approved Special Use and will be allowed to continue without an additional public hearing. Any alterations or expansions of the use are subject to the Special Use amendment procedures of Section 20-1306.*

Commissioner Harris asked if that would allow someone with a non-conforming use to change or expand that use beyond what it is.

Mr. McCullough said no, the last sentence of the same section talks about any alterations or expansion of the use are subject to the Special Use amendment procedures of Section 20-1306.

Commissioner Harris asked if someone has a non-conforming use that requires a Special Use Permit they wouldn't have to apply for a Special Use Permit they would just be granted one for that non-conforming use.

Mr. McCullough said it would be granted one but it is not a blanket exception to never being regulated by the Special Use Permit criteria. If there are issues that the governing body believes should be addressed through conditions then they can start a proceeding to seek conditions to address a community need.

Commissioner Harris asked why staff was not pursuing two different MU districts.

Mr. McCullough said the MU district is relatively young and there is currently only one district, so staff would like time to get a feel for how the district will work in the community. Staff feels that the Special Use Permit is the mechanism that protects neighborhoods when there is a specific use that isn't necessarily compatible as a permitted use in a district.

Commissioner Harris inquired about the bar use with a Special Use Permit and asked under what conditions would staff envision that not going through in a Mixed Use area.

Mr. McCullough said it would be compatibility issues. It may be those issues of tertiary versus primary versus secondary. Staff has discussed different areas of the community where there aren't a lot of adjacent residential uses that may be more compatible with a bar use than an area that has a lot of residential around it.

Commissioner Harris asked if putting a bar next to a residential area would be a City Commission decision.

Mr. McCullough said yes.

Commissioner Dominguez said it seemed like they were tweaking this to have the Hawk and Wheel remain in MU district. He wondered about legal challenges.

Mr. John Miller said there wasn't any way to prevent someone from saying that it is unfair and bring a challenge against the City. He said if it is the issue of saying the MU District in this circumstance is going to allow existing legal non-conforming uses to continue but wouldn't be allowed in another district, the governing body has the authority to establish the zoning regulations in the fashion that permits that to occur.

Mr. Werner said the difference is that the Hawk and the Wheel are already there.

Commissioner Dominguez asked if grandfathered clauses legally work.

Mr. Miller said yes. He also stated that having a separate MU District would not make a stronger argument.

Commissioner Carter said his concern with not doing separate districts was that neighborhood reaction will be more common with infill projects and Special Use Permits will mean Planning Commission will have to go through the same process for each request.

Mr. McCullough said other uses such as homeless shelters also require Special Use Permits. The MU District requires mixed uses, not just a stand alone bar. There are some inherent compatibility issues for developers that want to do Mixed Use in that sense to really control the bar impacts of their development.

Commissioner Moore felt there was a lot of merit in trusting the Special Use Permit process.

Commissioner Rasmussen said when the original applicant came before us to rezone the Jayhawk Bookstore from a non-conforming zoning classification MU the entire Planning Commission expressed concern about what type of uses could go there. Planning Commission specifically excluded the sexual oriented media store and light manufacturing. At that time bar and lounge was not a use. All property will require MU zoning regulations. He felt they should proceed with the staff recommendation.

Commissioner Harris said she liked the idea of excluding the original MU zoned property from consideration from having a bar. She liked Mr. Werner's idea of excluding the tertiary district from consideration for a bar. She also preferred having two MU districts, one allowing for a bar with a Special Use Permit and one without. She felt it would be clearer and give neighbors more comfort on what would be allowed.

Commissioner Moore agreed with the staff recommendation.

Commissioner Blaser also agreed with the staff recommendation.

Commissioner Dominguez agreed with Commission Harris and felt that having two separate districts would provide more clarification for the public, especially if no notification is provided for Text Amendments.

Commissioner Carter felt they should pay attention to how much resistance they get to infill projects because they aren't separating out the district. He said he trusts the process and felt that Special Use Permits would not be approved in areas that were not appropriate.

Commissioner Rasmussen asked if they could also consider changing the sexually oriented media store zoning table to S instead of P in the MU District.

Mr. McCullough said yes.

Commissioner Rasmussen said he did not understand why it would be a permitted use instead of a special use to begin with.

Mr. McCullough said the legal advertisement for the Text Amendment did not include that as one of the things being looked at so if the Planning Commission would like to look at that issue it will need to be advertised.

Commissioner Finkeldei asked staff to look into the issue.

Ms. Leininger said in the standards there is a section that talks about no sexually oriented business may be located in the same block as property in an R zoning district or a religious assembly, school, daycare, community recreation or cultural exhibit, or library uses.

Commissioner Finkeldei addressed the audience members who discussed public notification and encouraged them to stay for the next item on the agenda which is an update on public notification.

#### **ACTION TAKEN**

Motioned by Commissioner Finkeldei, seconded by Commissioner Rasmussen, to approve the proposed amendments of TA-1-1-10 to Development Code and forward to the City Commission with the following conditions:

1. Revisions to Section 20-223 as noted in the staff report;
2. Section 20-403
  1. Adding a "S" for the Bar or Lounge use in the MU District to permit the use by Special Use Permit
  2. Add an asterisk for the Bar or Lounge use to refer to Section 20-509
  3. Removing the asterisk from the Quality Restaurant use in the MU District
  4. Removing the asterisk from the Fast Order Food use in the MU District
3. Section 20-509
  1. Removing references to the MU District in Section 20-509(3)
  2. Add number 6 and add text to the Bar or Lounge use is only permitted by SUP for properties zoned MU District after the effective date of the amendment
4. Revisions to Section 20-1108 as noted in the staff report and with a change to proposed Section 20-1108(d)(4) to read "Any use existing by-right at the time of rezoning to the MU District that is regulated as a Special Use upon rezoning to the MU District shall be allowed to be continued with out a public hearing. Any alterations or expansions of the use are subject to the Special Use amendment procedures of Section 20-1306".

Commissioner Rasmussen asked if Planning Commission could recommend to City Commission that they change the note on Sexually Oriented Media Stores from permitted to special.

Mr. McCullough said City Commission could initiate a Text Amendment and then it would come before Planning Commission.

Motion carried 6-2, with Commissioners Dominguez and Harris voting in opposition. Commissioners Blaser, Carter, Chaney, Finkeldei, Moore, and Rasmussen voted in favor.

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**ITEM NO. 6      TEXT AMENDMENT; LAND DEVELOPMENT CODE; IBP DISTRICT (MJL)**

**TA-4-4-10:** Consider Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Section 20-403 of the Code of the City of Lawrence, KS to permit the Hotel, Motel, Extended Stay use in the IBP (Industrial/Business Park) District. *Initiated by Planning Commission on 4/26/10.*

**ACTION TAKEN**

Motioned by Commissioner Harris, seconded by Commissioner Dominguez, to defer to the June Planning Commission meeting.

Motion carried 8-0.

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**ITEM NO. 7 CITY & COUNTY PUBLIC NOTIFICATION**

Receive staff memo regarding City and County public notification of Planning items.

**STAFF PRESENTATION**

Ms. Michelle Leininger presented the item.

Commissioner Dominguez asked why the notification is 200'.

Ms. Leininger said that is what state statute requires. She said the items in bold is what is done above and beyond state statute.

Mr. McCullough said site plans used to be notification of adjacent properties and staff expanded that to 200' to better align with rezoning requirements.

Commissioner Dominguez asked why the notification was not 500'.

Mr. McCullough said there would be additional cost associated with that.

Commissioner Harris said she personally thought the state statute requirements are antiquated. She said there is opportunity with email to do a lot more than what is done now. Citizens in the community that wanted to be notified of changes could be through email.

Mr. McCullough said that is currently done through the website list serve that the community can sign up for to receive on a variety of topics via email.

Commissioner Harris felt it could be more narrowly defined.

Mr. McCullough said the general public doesn't often pay attention about legislative type functions and that staff experience is that they don't plug in to the policy issues. He said there are a lot of good comments received on the website, list serve, and all those outreach things that the city does over and beyond state statute.

Commissioner Rasmussen asked if a Text Amendments would fix typos in the Code as well.

Mr. McCullough said that was correct.

Commissioner Rasmussen said if notification is sent for Text Amendments, other than the newspaper, then hundreds or thousands of residents could potentially be notified.

**PUBLIC HEARING**

Ms. Gwen Klingenberg, President of Lawrence Association of Neighborhoods, inquired about which items are neighborhood notification.

Ms. Leininger said anything that would receive a mailed notice the neighborhood association would be contacted as well.

Ms. Klingenberg said not all neighborhoods are active at all times. She felt that a Text Amendment that adds a use to a zoning is considered a zoning issue. She said Final Plats and Final Development Plans need neighborhood input because there have been instances where the developer made

changes to the plan after the neighborhood had input on the preliminary plans. She said the City Manager told her she needs to do a better job with her position. She said she is trying and does what she can. She felt it was the Planning Commissions position to see to it.

Commissioner Harris asked what Lawrence Association of Neighborhoods does and what her position is.

Ms. Klingenberg said the Lawrence Association of Neighborhoods is an umbrella organization to help neighborhoods work together.

Commissioner Harris asked if the Lawrence Association of Neighborhoods receives funding from the city.

Ms. Klingenberg said no.

Commissioner Rasmussen asked if she was suggesting that if there is a Text Amendment change to the language of the RS district that everyone within 200' should be notified.

Ms. Klingenberg said a change to the wording to clean up and clarify is one thing but if a zoning use is within the Text Amendment then notification is. She said it depended on what the Text Amendment change was for.

Commissioner Finkeldei said if the Text Amendment has an applicant then maybe notification could be within 200' of the applicant. He agreed with Commission Rasmussen's example that notice cannot be sent to everyone living within 200' of an RS district for a text change because then it might end up being 80,000 letters. If there is a reasonably identifiable Text Amendment that would need notification then notification would be useful to send out. He suggested the neighborhood associations be notified of all Text Amendments so that then only 12-15 or so extra notifications are sent out.

Mr. McCullough said those are worth looking at but that staff has encouraged the neighborhood associations to plug into the list serve. He said it is difficult to figure out what people will be interested in. It needs to be a consistent process which is why staff push the list serve. The neighborhood associations have standing in some of the development processes, not because the state statute requires it but because staff have chosen to go above and beyond to give them that standing. He said asking staff to guess what is important to people is unreasonable.

Commissioner Finkeldei agreed that they did not need to guess on what is important. He agreed with Commissioner Harris that it may be hard for people to separate out email notification of what is important and what is not. He suggested the applicant send the notification.

Commissioner Dominguez asked how many letters are typically mailed for 200'.

Mr. McCullough said it depends on the item.

Ms. Leininger said the MU District of 200' was approximately 16 letters. She said 200' around all the IBP Districts would be around 350 letters.

Commissioner Dominguez said there shouldn't be a cost factor with 16 letters.



Mr. McCullough said there would be 350 letters for the IBP district and that is just one of the many Text Amendments done each year.

Mr. McCullough said it is a matter of if the process is broken. He said there never seems to be a situation where people aren't notified even though there are people who say "if it weren't for me there wouldn't be a room full of people here." He said he has never seen an item go all the way through the process and adopted and then someone comes forward to weigh in on it. Somewhere through the process notice is provided and notice is picked up. He said he was not sure the process is broke.

Commissioner Dominguez felt that 200' was not enough range for notification.

Commissioner Rasmussen felt the 200' criteria was good enough.

Commissioner Dominguez asked what the largest notification has been.

Mr. McCullough said the recent Lawrence Community Shelter Special Use Permit was approximately 400 letters.

Ms. Leininger said that Long Range Sector Plan notification letters could be 500-700 letters, three to five times.

Commissioner Harris suggested having a neighborhood association structure that covers everyone in the city and have a Planning and Development Committee in each association. Then have some kind of training (possibly online) available so those groups understand what their role is in notification and understand how the development of planning process works. Then notify the president of the association and committee of development and zoning issues that affect that area and have the city proactively notify those people instead of relying on Lawrence Association of Neighborhoods to do that.

Mr. McCullough said staff experience is that neighborhood associations are ebb and flow out of activity. There are many areas of the city that do not have associations and the city cannot make them associate and organize. He said they can keep this kind of discussion going and maybe bring back next month for additional consideration. He said the city does not have authority and control over neighborhood associations and that they are private organizations. Staff are challenged in getting updated contact info for neighborhood associations. He said a staff employee attends the monthly Lawrence Association of Neighborhoods meetings when invited. They are private organizations and sometimes city employees are not always welcome.

Commissioner Harris said to answer Mr. McCullough's question about if the process is broken; there has been some evidence from people that think the notice isn't working well and they are angry and in some cases do not know if people have been notified.

Commissioner Rasmussen said having angry citizens is not good for the community but that he feels the system is working. He said even Mr. Bill Mitchell said in a previous meeting that he found out by reading the paper and saw the public notice so the system works. He did not feel substantial changes should be made.

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**MISCELLANEOUS NEW OR OLD BUSINESS**

**MISC NO. 1** Provide comment on Lawrence Wastewater Master Plan boundaries and growth assumptions. (SDM)

Mr. Mike Lawless, Utilities Department, and Mr. Scott McCullough presented the item.

Commissioner Finkeldei asked if City Commission approves this then it will go to consultants.

Mr. Lawless said that was correct.

Commissioner Finkeldei asked what the report will be that is received from the consultants.

Mr. Lawless said it will summarize the public comments received and the master plan will include a working model of the collection system to assist in planning for the future.

Commissioner Harris asked in developing a wastewater master plan if commercial and industrial development is considered.

Mr. Lawless said it is. It's included in terms of the actual population. The modeling program allows projections to be changed.

**MISC NO. 2** Letter received regarding Woody Park

Consideration of any other business to come before the Commission.

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**Recess at 12:00am until 6:30pm on May 26, 2010.**

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Reconvene May 26, 2010 – 6:30 p.m.

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

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

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**BEGIN PUBLIC HEARING (MAY 26, 2010):**

**COMMUNICATIONS**

No communications received.

**EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- Ex parte:  
Commissioner Hird said the Agri-Tourism Committee met and in the process of drafting a mission statement for the committee. He also said he visited Pinwheel Farm after the last meeting walked the property.
- No abstentions.

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**ITEM NO. 8      CONDITIONAL USE PERMIT FOR BLUEJACKET CROSSING WINERY; 1969 N 1250 RD (MKM)**

**CUP-3-2-10:** Consider a Conditional Use Permit for accessory uses such as outdoor weddings, picnicking, and outdoor music, with the Bluejacket Crossing Winery, approximately 20 acres, located at 1969 N 1250 Rd, Eudora. Submitted by Kandaya Selvan, property owner of record. *A joint Planning Commission meeting will be held with the Eudora Planning Commission.*

**Eudora PC members present:**

Mr. Kurt von Achen, Mr. Pat Jankowski, and Mr. David Montgomery

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

Commissioner Dominguez asked how close the neighbors homes were to the road.

Ms. Miller showed on a map on the overhead.

Commissioner Dominguez expressed concern about dust.

Ms. Miller said a chemical palliative treatment can be applied to gravel roads, but that there is a charge for it.

Commissioner Hird asked if the restricted number of guests, ending time, and number of times per year were proposed by the applicant or staff.

Ms. Miller said the applicant proposed them based on his intentions.

**APPLICANT PRESENTATION**

Mr. Kandaya ('Pep') Selvan, Bluejacket Crossing Winery, said at the intersection of 1975 and N 1250 both homes are quite close to the road. Most of the dust problems affect the people living on the north side of the road. He said during the Farm Tour in October they had 300 guests per day during those two days and that should have been a reasonable test for the extreme. He gave his background on his involvement in the wine industry. He is the President of the Local Vineyard and Winery Association. He said there are 2 ½ full time employees and 6-12 seasonal employees for harvest from April to October. He said most work at the winery is done by volunteers. He felt there was a need for increased opportunity with rural involvement. He said he sent a letter that extended the 1000' notification area to make sure all residents on the unpaved portion of the preferred route were notified. He said earlier this month they had a birthday party with a loud band at the winery and that several neighbors complained. He apologized and said that was not a smart move on his part and that the party was more than he expected it to be. He felt it was important that his activities are limited in order to maintain the responsibility to his neighbors. He said the proposed location for the stage would decrease the noise level.

Commissioner Carter inquired about what it would entail to move the stage area.

Mr. Selvan said it is all portable, the stage is 4'x4' and sits directly on the ground and can be picked up and moved. He said the goal is to build a new winery, tasting room, and storage facility and develop the landscape and then move the events to the western location.

Commissioner Carter asked if he was going to rent portable toilets.

Mr. Selvan said the Health Department wants to see one toilet for every 100 guests. He said there is one bathroom in the tasting room and that if needed they would rent a portable toilet.

Commissioner Blaser asked if there were any plans for the county to pave the road in front of his house.

Mr. Selvan said he had heard that N 1200 Road is a priority road due to its connection with the Eudora Subdivision but did not know of any set timeframe to do that.

### **PUBLIC HEARING**

Mr. Richard Higgins said he lives next to applicant. He said he has been there for 30 years and the traffic has gotten worse since the winery was opened. He said the noise from bands is disturbing. He did not like the plan. He felt that 6-8 events a year might end up being 30 events a year. He was concerned about dust from road because he lives within 50' of the county road.

Commissioner Hird said the new proposed winery location would be further away from his property. He asked Mr. Higgins if he thought moving the winery farther away would help reduce the noise.

Mr. Higgins said it would help but that the car traffic would increase greatly.

Commissioner Hird asked Mr. Higgins if the new winery was on a different area of the property would that help alleviate his concerns.

Mr. Higgins said no, not really.

Motioned by Commissioner Moore, seconded by Commissioner Blaser, to close the public comment.

Motion carried 9-0.

### **APPLICANT CLOSING COMMENTS**

Mr. Selvan said it makes a big difference to him that Mr. Higgins is comfortable with the effort that they are making.

Commissioner Finkeldei asked if Mr. Selvan would be okay with the condition of no electronic amplification.

Mr. Selvan said that would be fine.

Commissioner Finkeldei asked if he had a firm timeline on when the winery would be moved.

Mr. Selvan said the goal is to break ground in the fall but that the economy is affecting that so his best guess would be 2 years.

Commissioner Dominguez asked if he was willing to restrict the events to 8 per year.

Mr. Selvan said Springtime is about the only time it is comfortable for outdoor events and at this time 8 exterior events is more than he can handle. He said currently it is about 3 events per year.

Commissioner Rasmussen asked if the 10 year limitation makes it harder to get financing.

Mr. Selvan said yes.

### **COMMISSION DISCUSSION**

Commissioner Rasmussen inquired about the parking capacity.

Ms. Miller said the site plan needs to clearly define the area which would show how many cars.

Mr. Selvan said there are 21 parking spaces and overflow in the pasture that holds 40 cars.

Commissioner Rasmussen asked if there would be cars backed up along the road.

Mr. Selvan said no, if parking is not available then he will turn people away.

Commissioner Rasmussen asked why there is a paved ADA requirement but not one for Pinwheel Farm.

Ms. Miller said with Pinwheel Farms there was a requirement for ADA spaces for the farmers market but with her other type of events of educational activities or camping there isn't an established location so there wouldn't be specific place to locate it. She said Planning Commission could require one ADA paved space at Pinwheel Farm if they desired. She said that Bluejacket Winery already has the ADA parking space for the wine tasting room which is required.

Commissioner Rasmussen asked why the Pinwheel Farms Conditional Use Permit expiration date was proposed for 20 years and Bluejacket Winery for only 10 years.

Ms. Miller said the expiration dates aren't set by Code, time limits were something the previous County Commission wanted for Conditional Use Permits. She said with Pinwheel Farm staff originally suggested 10 years but the applicant requested 100 years and Planning Commission indicated at last months meeting that they were not comfortable with that and moved it to 20 years. Time limits can be set by Planning Commission.

Commissioner Rasmussen said it is difficult to get loans on shorter Conditional Use Permits.

Ms. Miller said if Planning Commission feels it is appropriate they can increase the 10 year time limit. She said 10 year is just the standard timeframe.

Commissioner Rasmussen said he would like to see a longer time period for this if approved.

Commissioner Carter asked if the applicant would like the time frame extended.

Mr. Selven said 20 years is a great starting point and would give a reasonable amount of time to cover the asset.

Commissioner Harris expressed concern about the dust that could be generated by the winery. She wondered if the neighbors have recourse if the dust becomes a problem. She suggested the possibility of the applicant paying for the dust treatment of the road.

Ms. Miller said it is not a current condition but could be added.

Commissioner Finkeldei said condition 1c in the staff report says 'up to 8 live music events may occur per calendar year.' He asked what the recourse would be if the number of events is exceeded.

Mr. McCullough said when staff knows that a condition is being exceeded the county office enforces the conditions of the Conditional Use Permit. If it is during the first year staff would work to remind the applicant of the condition and if it happens again then staff can initiate a revocation process to bring it back for hearing and revoke the Conditional Use Permit.

Commissioner Hird said this topic ties into the Agri-Tourism Committee that he serves on and Mr. Selvan has been attending those meetings as well. He said he is a vineyard owner himself. He said on April 8<sup>th</sup> he and his wife toured Bluejacket Winery but were not aware of this Conditional Use Permit at the time and did not discuss it. He felt this is exactly the type of activity the state is trying to promote and this is what gets people out to the country. He felt it was a positive activity. He said the dust problem is inevitable in the country and he hoped the county and township can help address the issue. He did not think a total of 8 afternoons a year for outdoor events was a terrible imposition, especially with the ending time of 8:30pm. He felt this was the type of thing that should be promoted and extending the timeframe for the Conditional Use Permit made sense because a vineyard is a long term investment. He would like to see the Conditional Use Permit extended 20 years at a minimum. He felt the applicant has gone above and beyond the call of duty to include the neighbors in the process. The new facility will be built a lot farther away from Mr. Higgins property. He said he would support the application.

Mr. Kurt von Achen, Eudora Planning Commission, said a quorum could not be formed since there were only three members of the Eudora Planning Commission present this evening. He expressed concerns about traffic and dust. He said as a consensus they recommend approval but would not be in favor of extending the Conditional Use Permit timeframe.

Mr. Selvan said he will be part of the Farms Tour this year and the committee is doing research to find some public form of transportation such as a school bus or senior citizen bus to move 20-40 people.

Commissioner Carter asked when the 6-8 outdoor events will occur.

Mr. Selvan said during a 6 week window in March, May, or April.

Commissioner Carter asked Mr. Selvan if he would be willing to pay for the county to treat the road during that 6 week time period.

Mr. Selvan said he would consider it if the cost was affordable. He said he thought the treatment lasted around 4 weeks.

Commissioner Hird said his neighbors treat the road in front of their homes and the treatments last longer than 4-6 weeks and he believed the cost was about \$1.35 per foot so for Mr. Selvan to treat the entire road would be too costly.

Commissioner Rasmussen asked what the Eudora Planning Commission opposed about extending the Conditional Use Permit to 20 years.

Mr. von Achen said they felt the 5 year review with a 10 year permit was just fine. He said they felt that 20 years was too long.

Commissioner Blaser asked staff if the Conditional Use Permit is extended to 20 years could it be reviewed every 5 years.

Mr. McCullough said it could if it is written that way. He said the reason why there are expiration dates on many Special Use Permits is because it is a special use in an area that has the opportunity to evolve and change over the years. Often times what may be very compatible with an area today may grow out of its compatibility in a specified time period so part of the discussion and analysis should be how quickly an area is turning over, growing, and changing.

Commissioner Finkeldei asked if the applicant owns other property in the area.

Mr. Selven said he is the trustee to his mothers estate of 85 acres that is adjacent to the east and immediately south he has 22-23 acres.

Commissioner Finkeldei said he could support an extension of the overall length of the Conditional Use Permit with the condition of it moving to the future site. He said if the winery moves to the east he could support the 20 years, but if it stays to the west it should be 10 years. He also said that as long as it is located on the west side there should be no amplification for music.

Commissioner Rasmussen said he would support Commissioner Finkeldei's suggestions.

Commissioner Finkeldei said the 5 year review was appropriate as well.

Mr. McCullough said a typical review of conditions is administrative. If staff finds that a condition is not being met an avenue to seek relief from that could be an amended Conditional Use Permit and change one specific condition. 5 year reviews have been staff going to the site with a list of conditions.

Mr. von Achen said that the Eudora Planning Commission could support Commissioner Finkeldei's suggestion if the extension was tied to the new site.

Commissioner Moore asked if a requirement should be included to address no parking on N 1250 during events.

Ms. Miller said it is not a requirement since there usually is no parking on county roads but it could be added.

Commissioner Harris inquired about adding a condition regarding the dust.

Commissioner Blaser said he liked the 20 year timeframe with 5 year reviews. He said as far as the dust, he would not put a condition about the applicant paying for the treatment of the road. He thought if the entire road was treated the cost should be shared by neighbors, not just the applicant. He said he would support the project.

Commissioner Carter asked for clarification on Commissioner Finkeldei's 20 year timeframe.

Commissioner Finkeldei said he would suggest a 10 year Conditional Use Permit unless during that period it is moved to the future site, at which time it would be extended to 20 years.



Commissioner Hird asked if 3 years from now the applicant moves to the new location, he would have a total of 18 years left for the CUP. He asked if Commissioner Finkeldei is saying that it would be extended 20 years from that date.

Commissioner Finkeldei said he was saying 20 years total. He said he felt like they were pushing the limit anyway and if the applicant decides to move 9 years from now then it would be a 29 year Conditional Use Permit.

Commissioner Moore said financing is important but at the same time Planning Commission should look at the compatibility of the use.

Mr. McCullough suggested that they could consider the 20 year term with a specific condition to move the site within 5 years. If it is a condition that the facility move within 5 years and the applicant is coming up on that 5 years and it is not met he has the ability to go back through the public hearing process to ask for relief from that condition and explain the circumstances. Staff likes the expiration date to be firm instead of a moving date.

Commissioner Carter recapped what he was okay with; 20 years contingent upon moving in 5 years, a condition added for no parking on the road, no electronic amplification at least until it is moved, and he would not be in favor of putting the burden of the dust control on the applicant for 8 events over a 6 week period.

Mr. McCullough said he thought he heard the applicant say he was comfortable with the condition of no amplified noise. Noise is one of those tricky things that even moving it several hundred feet it isn't probably going to mitigate it. He urged them to consider a condition of just no amplified music at the site.

Commissioner Hird said given the number of events a year he felt that was unreasonable. He said low level amplification of a blue grass band was not offensive and would be over by 8:30pm.

Commissioner Rasmussen agreed with Commissioner Hird.

Commissioner Finkeldei stated the applicant said there was a hill in between. He said he still thinks that as long as the winery is on the west there should be no amplification but once moved to the east he would withdraw that.

Commissioner Rasmussen asked if the condition was for no amplified music until the site is moved or no amplification at all.

Commissioner Moore felt it would be cleaner for it to say no amplification at the site.

## **ACTION TAKEN**

Motioned by Commissioner Finkeldei, seconded by Commissioner Rasmussen, to approve Conditional Use Permit (CUP-3-2-10) for 1969 N 1250 Road and forward to the Board of County Commissioners subject to the following revised conditions of approval (new language is shown in **bold** print and deleted text is shown as ~~struckthrough~~):

- 1) The provision of a revised site plan with the following changes:
  - a) Addition of a note which states "The permit will be administratively reviewed by the County in **every** 5 years (Calendar Year 2015, **2020, 2025, 2030**)".

- b) Addition of a note which states "The permit will expire at the end of ~~10~~ **20** years (July 1, **2030** ~~2020~~), unless an application for renewal is approved by the local governing body."
  - c) **Addition of a note which states "The event area will be moved to the eastern location within 5 years of approval."**
  - d) Addition of a note which states "Events will typically occur on Saturdays, although Friday and Sunday events may be permitted. Up to 8 live music events may occur per calendar year. These events will conclude by 8:30 PM and the clean-up will be completed by 10 PM. Maximum attendance at live music events is 150."
  - e) **Addition of a note which states "No parking will be permitted on N 1250 Road."**
  - f) **Addition of a note which states "No electric amplification of music in current location."**
  - g) Addition of a note which states "The parking area will be surfaced with gravel and the ADA accessible parking spaces will be paved. The ADA accessible parking space will be constructed to meet ADAAG (American with Disabilities Act Accessibility Guidelines) requirements, including signage."
  - h) The second access shall be located per the County Engineer's approval.
  - i) Landscaping shall be added to include evergreen trees and shrubs along west property to screen activity area from residence to the west.
  - j) The parking space dimensions shall be noted on the plan.
  - k) The capacity of the overflow parking area shall be noted on the plan.
  - l) A parking summary which notes the number of parking spaces required per Code, and the amount of parking provided shall be included on the site plan.
  - m) Both the event area being proposed at this time and the future event area shall be shown on one plan along with a proposed phasing schedule.
  - n) Addition of a note on the plan which states: "A revised site plan showing the details of the future event area and any associated parking would return for Staff approval prior to construction of the future event area."
  - o) Additional measures being used to buffer the property to the west shall be noted on the plan (orientation of music, use of farm vehicles, etc)
  - p) Note added to the plan which states that chemical toilets may be used for the first year, at a rate of 1 toilet per 100 attendees. Any use of chemical toilets past the first year would require approval of the County Health Official.
- 2) Permits secured from the Douglas County Health Department for new septic system, if applicable.
  - 3) Approval of an entrance permit for the new driveway from Eudora Township.
  - 4) Chemical toilets may be used for the first year of the CUP to allow the applicant to determine if the events are successful.
  - 5) When the plans are combined, Note No. 1 regarding RV parking spaces should be removed.

Commissioner Harris said she would support the motion but felt the dust issue should be addressed. She said the area wasn't really designed for a business out there. She felt there should be clarification for amplification at the new location to say low to moderate amplification at the new site.

Commissioner Hird said he would reluctantly vote in favor of the motion. He said his reluctance has to do with the amplification issue. He said he understood the concern about dust and wished there was a solution. He did not agree with the condition of no amplification and felt it was unnecessary for 8 events a year and felt it was micromanaging.

Commissioner Rasmussen said he did not want try to micromanage the amplification. Agreed with Commissioner Hird about not wanting to micromanage by putting this restriction on it.

Commissioner Chaney agreed with Commissioner Hird about the micromanaging. He said there are only 8 events a year that will end by 8:30pm. He thought the applicant was really working to come up with something that will make everyone as happy as possible. He said he would reluctantly support the motion.

Commissioner Dominguez said he would support the motion but felt they have over managed the issue of amplification and financing. He said he was still concerned about the dust but felt the applicant would do what he could to try to fix the problem.

Commissioner Hird said he would be willing to vote against the motion and remake a motion without the condition regarding the amplification.

Commissioner Moore said he would support the motion as is.

Commissioner Carter said when amplification was initially brought up the applicant readily nodded about not needing amplification in its current spot. He said he would be in favor of approving the motion as is.

Commissioner Rasmussen thanked the Eudora Planning Commission for their assistance.

Unanimously approved 9-0, with consensus from Eudora Planning Commission.

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**ITEM NO. 9      PRELIMINARY PLAT FOR JOHNSON & ELLIS INVESTMENTS ADDITION;  
.538 ACRES; 1804 W 6<sup>TH</sup> ST (MKM)**

**PP-3-3-10:** Consider a Preliminary Plat for Johnson & Ellis Investments Addition, with one lot, approximately 0.538 acres, located at 1804 W 6<sup>th</sup> St. and a variance from the right-of-way requirements in Section 20-810(d)(4)(i). Submitted by Bartlett & West, Inc., for Johnson & Ellis Investments, property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

Commissioner Finkeldei inquired about sidewalk connection.

Ms. Miller said it would not connect but that the City has identified the area as part of their gap program and are willing to make that connection.

**APPLICANT PRESENTATION**

Mr. Darron Ammann, Bartlett & West, was present for questioning.

**PUBLIC HEARING on Variance Only**

No public comment.

Motioned by Commissioner Hird, seconded by Commissioner Carter, to close the public comment.

Motion carried 9-0.

**ACTION TAKEN**

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve the variance requested from Section 20-810(d)(4)(i) to permit the right-of-way for W 6<sup>th</sup> Street to remain at 100 ft.

Unanimously approved 9-0.

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve the Preliminary Plat of the Johnson & Ellis Investments Addition and forwarding it to the City Commission for consideration of dedication of easements subject to the following conditions of approval:

- 1) City Commission approval of the variance request from City Code Section 19-214 to permit the private sanitary sewer line to extend more than 15 ft into the right-of-way.
- 2) The preliminary plat shall be revised with the following changes:
  - a. A 5 ft wide sidewalk shall be shown along Colorado Street, 3 ft from the curb as approved by the City Engineer.

Unanimously approved 9-0.

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**ITEM NO. 10      CONDITIONAL USE PERMIT FOR PINWHEEL FARM; 1478 N 1700 RD  
(MKM)**

**CUP-2-1-10:** Consider a Conditional Use Permit for camping, sale of farm products, and events at Pinwheel Farm, approximately 11.79 acres, located at 1478 North 1700 Road. Submitted by Natalya Lowther, property owner of record. *Deferred by Planning Commission on 4/26/10.*

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

Commissioner Moore asked about a timeline for the maintenance of structures.

Ms. Miller said staff had not considered a timeline but that it could be included.

Commissioner Dominguez asked if there was a charge for camping.

Ms. Miller said there is no charge, this is just to house the volunteers.

Commissioner Dominguez asked if Ms. Lowther would keep a log of the campers.

Ms. Miller said yes. Staff recommended camping for 2 week intervals.

Commissioner Dominguez inquired about the alternative pavement.

Ms. Miller said it would be wood chips.

Commissioner Dominguez asked if campers would need to be in a tent, not just a sleeping bag on the ground.

Ms. Miller said the applicant has asked for tents and mobile homes.

Commissioner Rasmussen stated that the original application included components for operating a farmers market or vegetable stand.

Ms. Miller said the applicant has decided to stay with the temporary stand.

Commissioner Rasmussen asked what a registered natural landscape is.

Ms. Miller said it is landscaping you allow to grow intentionally. She said there is a registration process through Development Services.

**APPLICANT PRESENTATION**

Ms. Natalya Lowther, Pinwheel Farm, said when she read the comments from the North Lawrence community there were several people's names she did not recognize so she said they must not live all that close. She said Pinwheel Farm is here to stay. She said what the neighborhood is afraid of is not the farm and that she's just the scapegoat. She presented alternative conditions on the overhead. She said she cannot justify moving forward with the current restrictions of the staff report.

Commissioner Moore asked if she wouldn't proceed with the Conditional Use Permit as presented by staff.

Ms. Lowther said that was correct. She said she is being asked to do a lot of things and they would have to be in place before camping.

Commissioner Harris asked if her objections were based on principal or cost.

Ms. Lowther said more on cost, time, and energy. She said she is trying to run a farming operation and this is the busy season and she needs to do what needs to be done. She said it is looking like it would be quicker to put in a septic system and mobile home. She said she just can't comply with all of staff provisions.

Commissioner Rasmussen asked if staff have seen the alternative conditions she presented on the overhead.

Ms. Lowther said no.

Commissioner Rasmussen said he liked her suggestion of a 1 year time period. He asked her to comment on the two month time limit on volunteers.

Ms. Lowther said some of the volunteers want to learn the farming process through the seasons of the year.

Commissioner Carter expressed concern about the months of the year where vegetation would not shield tents and toilets.

Ms. Lowther said if someone camps year round it would probably be a self contained camper, not just a tent. She said she would like to install bamboo screening. She said she would not have a problem with putting a wood fence around a chemical toilet.

Commissioner Finkeldei asked staff to comment on the applicants proposed conditions.

Mr. McCullough said staff prefers hard expiration dates but that sometimes a use demands a short timeframe to demonstrate to the neighborhood that it cannot impact the neighbors. He said he could not offer an official answer since this is the first time staff has seen the revised conditions.

Commissioner Dominguez asked if the item should be deferred since the applicant was not willing to accept it.

Mr. McCullough said it may be worth going through the public hearing because the applicant has not withdrawn the application. He said it was the will of the Commission.

## **PUBLIC HEARING**

Mr. Ted Boyle, president of North Lawrence Improvement Association, said the signatures that were submitted were from individuals who live in the North Lawrence area. He said they did not have a problem with the agricultural part of this. The only objection is the camping part. He said this is not a camping area and that there is a KOA nearby for people wanting to camp. He said during the discussion of Bluejacket Winery the owner said they have volunteers who help with the harvest that only come during the day and do not stay overnight. He wondered why Pinwheel Farm couldn't do the same. He said there have been past problems with campers who moved from the river to

Pinwheel Farm. He felt it would set a precedence. The said their only objection was to the camping part of it.

Commissioner Rasmussen asked if he would have the same objection if there were bunk houses instead of camping.

Mr. Boyle said no, as long as there were water and sewer facilities. He said he did not know a property owner could not pitch a tent and felt that policy was a bit too strict.

Ms. Laylee Campbell said she was opposed to camping of any kind. She said she used to live next to Ms. Lowther and moved because of her. She said she was in favor of a water line being installed. She said yesterday she was walking on the levee and was hassled by transients and that transients have been a problem in the area.

Ms. Diane Hamblin, 509 North Street, said her property is separated from Pinwheel Farms by 6' privacy fence on the north side and half of a privacy fence on the west side. She appreciated the cleanup that Ms. Lowther has done lately to clean up. She expressed concerns about the main access driveway being a mud puddle and that it is 22' from her property line. She would like to see requirements for how far away chemical toilets would be from her back property line. She wondered how often the toilets would need to be dumped. She was concerned about an increase of mosquitoes and flies.

Ms. Kristen Walker asked for clarification on camping and wondered if any of the state/federal regulations on camping would apply.

Ms. Sarah Campbell expressed concern for the neighborhood children's safety and wondered about background checks for the volunteers. She was concerned about increased traffic and how to keep track of the people camping.

Commissioner Hird asked if Ms. Campbell knew of any instances where workers from Pinwheel Farm molested a child in the area.

Ms. Campbell said no, but that there is a large population of transients in the area.

Commissioner Hird asked if KOA requires a background check of their campers.

Ms. Campbell said she did not know but that the people coming and going from Pinwheel Farm would not be known to the neighborhood.

Ms. Barbara Higgins-Dover said in the past homeless individuals have been pushed away from the river and ended up living at Pinwheel Farm. She said that Ms. Lowther has even mentioned she has received physical and verbal threats.

Commissioner Carter asked if she was referring to past incidences of violence that were directed at Ms. Lowther.

Ms. Dover said yes that is what she understands, physical and verbal violence toward the property and owner.

Motioned by Commissioner Finkeldei, seconded by Commissioner Dominguez, to close the public comment.

Motion carried 9-0.

#### **APPLICANT CLOSING COMMENTS**

Ms. Lowther said she would like to correct the misunderstanding. She said the Lawrence Journal World ran an article about 10 years ago where she explored the idea of camping. She said nobody actually camped there. She said she did offer those people a piece of garden land which they used responsibly. She said there were a lot of other misconceptions of truth stretching. She said it does not sway her from wanting to camp on her land. She said she did not know how she could summon the courage to knock on her neighbors doors who have expressed negative comments and does not want to be thrown off their property for trespassing.

Commissioner Carter asked how many people have stayed at the farm recently.

Ms. Lowther said the most number of people staying at the farm would probably have been 9 for a short period and several were in the residence.

Commissioner Carter asked if there were any issues with people staying there.

Ms. Lowther said there was one person that lived in the structure who displayed belligerent behavior so she asked him to leave. She said she does not tolerate inappropriate behavior.

#### **COMMISSION DISCUSSION**

Commissioner Dominguez said he was torn. He said he admires what she does in teaching a skill to people but can empathize with the neighbors. He said he was willing to think about the applicants proposal if staff wants. He said he would like to see a police record of calls made to the area. He said the way it stands now he would not vote for it.

Commissioner Moore said he would lean more toward staff recommendations but felt the applicants proposal should be looked at. He asked staff to look into initiating a Text Amendment for camping on own property.

Ms. Miller said staff talked to Keith Dabney, Director of Douglas County Zoning and Codes, he suggested that it be included in the revisions of the County Zoning Regulations.

Commissioner Moore said that might resolve some of Ms. Lowther's issues.

Mr. McCullough said there are different levels of camping, private and public.

Commissioner Rasmussen inquired about county enforcement.

Ms. Miller said it is complaint driven.

Commissioner Finkeldei gave an example of abuse in the county where a house had three RV's where people were living for long periods of time and let the raw sewage run into the yard. He said it is very hard to regulate agriculture property in the context of a neighborhood. He agreed with Ms. Lowther that these recommendations on the Conditional Use Permit go far beyond what could ever be required of someone who lives in an agriculture zone but that they are appropriate recommendations.



Commissioner Hird said part of Horizon 2020 talks about conserving class 1 and 2 soils and this is one of those uses that promotes it. He said he visited Pinwheel Farm and Ms. Lowther was not there so the workers gave him a tour and they were fully committed to learning the agriculture process and made a favorable impact on him lessening the fear that the people camping there were pedophiles. He felt the fear of the workers and transient issue is unfounded. He said he liked the idea of a trial period and that it would give the neighbors the chance to see what it is about.

Ms. Miller pointed out the condition that says the camping would be reviewed after one year.

Commissioner Rasmussen asked who would review it.

Mr. McCullough said that language could be worked on to firm it up. He said review is typically administrative but that it could be brought back to the governing body or Planning Commission for a formalized review. As long as the conditions are being met then the Conditional Use Permit remains.

Commissioner Finkeldei asked if it is denied then the applicant could reapply for the Conditional Use Permit in one year.

Mr. McCullough said it would have to be reviewed.

Commissioner Rasmussen said property owners should be able to camp on their own property. He said he was not worried about people staying there. He stated he is not worried about visitors to his own neighbors house or who they might rent a room out to. He said there has been a negative foundation laid in the neighborhood. He said he was more concerned about camping on the south end of the property with how close it is to the neighborhood. He said he wouldn't be as concerned if the camping was restricted to the northern portion of the property. He liked the idea of a one year trial period. He was optimistic that the neighbors would not be back because it would be working. He said the location for this application is important and should be held to a different standard because it is at the edge of the city. Micromanaging may be necessary given the location of this particular piece of property. That being said there are 4 pages of recommendations and restrictions and that was a red flag to him. It all seems to go back to the camping. If camping is so important to the WWOOFing activities maybe they should consider turning one of those structures into a bunkhouse. Almost all of the proposed recommendations from staff deal with camping. He felt they should encourage this type of activity and figure out a way to make this application work.

Commissioner Carter said at this point he would be in favor of deferring the item instead of denying it. He suggested a way to identify farm workers and perhaps having volunteers sign something regarding their commitment to the neighborhood. He suggested maybe something such as an armband to identify to the neighbors who the volunteers are to better associate them to the neighborhood.

Commissioner Finkeldei said he would not support deferring the item. There are rules in the County Code that allow great possibilities to allow Ms. Lowther do what she wants to do under the existing rules. He recommended non-approval.

Commissioner Harris agreed with what Commissioner Hird said earlier about the project. She was in favor of deferring. She said she visited with some of the workers at the farmers market, not about the project, and found them to be intelligent and delightful. She did not feel it was their job to regulate the people who are there because the same farm workers could live by right on the farm in another type of structure. She said a Conditional Use Permit can contain sensible restrictions that address proximity to neighbors but should not restrict farm operations that are allowed by right. She

objected to the word micromanage when talking about a Conditional Use Permit. She said it was their job to create restrictions that they feel are appropriate. She said she would vote for a deferral.

Commissioner Moore said he would support a deferral.

Commissioner Dominguez asked if they defer the item what will change.

Mr. McCullough said it would help to get direction of what they hope the outcome of deferral would be.

Commissioner Hird said a deferral could allow time to examine and explore alternatives that Ms. Lowther has presented tonight. He said the best alternative for camping would perhaps be to move to the north end of the property which may reduce impact issues. He said they need to examine whether there have been too many conditions created and see if they can be simplified. He felt the main issue of the timeframe for the Conditional Use Permit is for the camping and he felt there should be review of that.

Commissioner Finkeldei inquired about condition 1 regarding the physical appearance condition.

Commissioner Hird said to his understanding if those are buildings used for agricultural purposes they are exempt anyway and he was not sure they had right legally to impose conditions on those.

Mr. McCullough said there is a nexus between the conditions and request. He said the applicant handed him a note that said if the item is deferred she cannot get back to it until January because of the season.

Commissioner Blaser said the physical conditions should be included. He said he got the feeling the camping is only a means for the neighbors frustrations to come out about the physical condition of the property.

Commissioner Harris inquired about timing.

Mr. McCullough said if the County Commission approves it then Ms. Lowther would have a year to act on it or it expires and she would have to make the request again.

Commissioner Blaser asked Ms. Lowther what she would prefer.

Ms. Lowther said she was not sure she could predict the outcome of either option.

Commissioner Moore said they need to make a motion to approve, deny, or defer.

Commissioner Rasmussen said the only two options he would support would be denial or deferral. He thought it needed to be reworked. He said if deferred he would like the applicant attempt to talk to neighbors.

#### **ACTION TAKEN**

Motioned by Commissioner Hird, seconded by Commissioner Harris, to defer indefinitely, subject to the applicant requesting placement on the agenda.

Motioned carried 7-2, with Commissioners Blaser and Finkeldei voting in opposition.

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**ITEM NO. 11      TEXT AMENDMENT; LAND DEVELOPMENT CODE; ADAPTIVE REUSE  
OF DESIGNATED HISTORIC PROPERTY (SDM)**

**TA-7-20-09:** Consider Text Amendments to various sections of the City of Lawrence Land Development Code to (1) correct language regarding Adaptive Reuse of Designated Historic Property in section 20-501, and (2) revise language in sections 20-1310 and 20-1311.

**STAFF PRESENTATION**

Mr. Scott McCullough presented the item.

Commissioner Finkeldei inquired about the scenario of a single family home with an attached dwelling that has been used as a fraternity for the past 60-80 years.

Mr. McCullough said there were some of those scenarios that were talked about and looked at and at the end of those discussions this is the language that staff felt gave the neighborhoods the protection. If it was built for residential purposes then it could be used for residential purposes.

Mr. Finkeldei inquired about a house at 805 Ohio Street that he thought was originally built as a hospital.

Mr. Jim O'Malley (speaking from the audience) said it was built as the Jacob House House.

Mr. McCullough said this reduces its use and flexibility. The neighborhood association is looking for ways to restrict its use as a land use tool.

Commissioner Rasmussen inquired about the definition of adaptive reuse.

Mr. McCullough said it is the conversion of a structure listed individually or as a contributing structure to another specified use, with the intent of preserving the listed structure. He said if there is a listed structure in the RM district that wants to do light manufacturing it is a possible use that could be considered through the Special Use Permit process.

**PUBLIC HEARING**

Mr. Jim O'Malley, 626 Ohio, spoke on behalf of the Old West Lawrence Neighborhood Association, thanked staff. He said the best way to promote historic preserve of Old West Lawrence and other single family historic districts is to promote and protect the single family use. He felt the current adaptive reuse ordinance is so overbroad that it invites efforts to convert single family houses to uses that are inconsistent with the historic single family use and character of the houses in those districts. He said the proposed amendments would remedy that and the Old West Lawrence Neighborhood Association supports the Text Amendment.

Motioned by Commissioner Carter, seconded by Commissioner Hird, to close public comment.

Motion carried 9-0.

**COMMISSION DISCUSSION**

Commissioner Harris thanked staff for being willing to make changes to make this better than it was before.

**ACTION TAKEN**

Motioned by Commissioner Harris, seconded by Commissioner Hird, to approve Text Amendment (TA-7-20-09) to various sections of the City of Lawrence Land Development Code to (1) correct language regarding Adaptive Reuse of Designated Historic Property in section 20-501, and (2) revise language in sections 20-1310 and 20-1311, and forward to the City Commission.

Commissioner Finkeldei said he would reluctantly support.

Unanimously approved 9-0.

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**ITEM NO. 12 TEXT AMENDMENT; LAND DEVELOPMENT CODE; BOARDING HOUSE  
(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.

Commissioner Finkeldei asked if staff wants specific language.

Mr. McCullough asked for majority direction and unity to take back to City Commission.

**PUBLIC HEARING**

Mr. Dennis Brown, President of Lawrence Preservation Alliance, supports property investors that have gone through the site plan process and worked to adhere the Code. He said the time limit for illegal properties to come into compliance should be 3 years. He said congregate living should be limited. He felt the parking requirement should be 1 space per bedroom unless otherwise defined by overlay district guidelines, if applicable. He felt there should be an on-site authority.

Ms. Gwen Klingenberg, President of Lawrence Association of Neighborhoods, said there is no better place to look for goals than Horizon 2020. She reviewed the goals.

Mr. Jim Hicks said there is no other use for a 14 bedroom house than to turn them into boarding house. He said large houses are no longer able to be used by families. He did not want a policy that drives down property tax.

Ms. Marci Francisco, 1101 Ohio Street, agreed that very large historic properties are appropriate for this use but that language allows for expansion to create them. She wondered why they are giving special uses special parking, when in fact they should be looking at special structures and finding ways to use.

Ms. Candice Davis said she wants to save the integrity of the neighborhood. She reviewed the letter she sent that was included in the packet. She suggested text for a minimum of 6 bedrooms to be boarding houses. She would like to see smaller structures be eliminated as boarding houses. She supported legal non-conforming uses and should be grandfathered in. She was concerned about illegal cheaters and that they should not be given special consideration. They can become legal by reducing the number of people in their houses.

Mr. David Holroyd requested copies of correspondence from the Oread Neighborhood Association when initiated, a list of Oread Neighborhood Association membership at that time, and a list of City Commission members at that time as well.

Ms. Fadila Boumaza said she was still not sure what problem was trying to be solved. Is it parking, safety, preservation of historical structure, or all of the above. She felt they were trying to solve too many things at one time and the document was taking on many forms.

Mr. Shane Munch asked if anyone on the Planning Commission has applied for a boarding house. (The Planning Commission indicated no) He said it is not that common. He said he has a 5 bedroom house and wanted to legally put 5 people in the house. He followed the process through the city and was told he had to install a sprinkler system. He felt the Text Amendment was another layer of excess regulation further restricting and confusing people like himself trying to run a rental business on the side. He said they need to deal with the problem of 4 unrelated people.

Motioned by Commissioner Rasmussen, seconded by Commissioner Dominguez, to close the public comment.

Motion carried 9-0.

### **COMMISSION DISCUSSION**

Commissioner Dominguez asked why speakers mentioned bringing the number of bedrooms down from 8 to 6 in boarding houses.

Ms. Francisco said there needs to be a minimum because many single-family homes will be converted into boarding houses. It makes sense to have a minimum so it is clear that some houses are single-family and some congregate living in order to keep a variety of housing types.

Commissioner Rasmussen inquired about parking for fraternities.

Ms. Francisco said she addressed that in her letter. She would consider any uses that do not have a structured meal plan to have the same parking requirements.

Commissioner Finkeldei felt they should simplify the standards relating to building additions. He said he would need to know more information about the standard of 1 parking space per parking and variance possible for large structures before agreeing to it. He said he did not support Special Use Permits. He said he would not support all the language from March. He did not feel that they had come up with the answer yet.

Commissioner Moore said he did not support a Special Use Permit either.

Commissioner Harris agreed about the comments by the Lawrence Preservation Alliance and that this is a good use for large historic structures. She said they should focus on the historic structures for this use.

Commissioner Carter wondered what the neighborhood associations thoughts were.

Commissioner Rasmussen said when they first started looking at this the concerns were party houses, damaging the quality of life in the neighborhood, parking, taking a small home drastically increasing the size to a boarding house, and taking advantage of parking. He did not feel like the current proposal solved those issues. He said rather than putting maximum on the boarding house size, it should be a minimum of at least 5 bedrooms so it ties it into the definition of family. He favored the same type of parking restrictions as apartments. He did not feel they should be subject to Special Use Permits. He did not feel that boarding houses were oversaturated.

Mr. Hicks said the Oread Neighborhood Association meets tomorrow night to address this issue and that's why they didn't speak tonight because they did not have a consensus.

Commissioner Hird said the nature of discussion has evolved from initially being about behavior and now about land use issue. He liked the concept of having a designated person of authority in the boarding houses. He did not think they should provide more favorable parking for this use but also did not want the backyards turned into concrete parking lots. He said the emphasis on historical structures is a very commendable route and he favored it.

Commissioner Rasmussen said he also liked the idea of a reasonable party being attached to these uses.

Commissioner Hird hoped they could craft a solution to stop the abuse of additions.

### **ACTION TAKEN**

Motioned by Commissioner Hird, seconded by Commissioner Harris, to defer for two months.

Commissioner Finkeldei said he would rather defer it indefinitely to have something to come back with. He suggested possibly forming a committee to come up with ideas.

Commissioner Hird said the reason he motioned for 2 months was because the Oread Neighborhood Association would be meeting tomorrow and he was hoping for some leadership from them.

Commissioner Rasmussen said he would prefer to see it deferred indefinitely with the expectation of receiving leadership from the Oread Neighborhood Association.

Motion failed 4-5, with Commissioners Blaser, Chaney, Finkeldei, Moore, and Rasmussen voting in opposition. Commissioners Carter, Dominguez, Harris, and Hird voted in favor.

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to defer indefinitely.

Motion carried 6-3, with Commissioners Dominguez, Harris, and Hird voting in opposition. Commissioners Blaser, Carter, Chaney, Finkeldei, Moore, and Rasmussen voted in favor.

PC Minutes 5/26/10

**ITEM NO. 13    TEXT AMENDMENT; LAND DEVELOPMENT CODE; CHAPTER 20, ARTICLE 8 (SMS)**

**TA-3-3-10:** Consider Text Amendments to the Land Development Code, Chapter 20, Article 8 – Code of the City of Lawrence, Kansas to revise requirements and standards related to the processing of Minor and Major Subdivisions. *Initiated by City Commission on 2/16/10.*

*Item 13 was deferred prior to the meeting.*

**MISCELLANEOUS NEW OR OLD BUSINESS**

Consideration of any other business to come before the Commission.

**PUBLIC COMMENT SECTION**

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**ADJOURN 11:50pm**