



City of Lawrence

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CITY COMMISSION

MAYOR
MIKE AMYX

COMMISSIONERS
ARON E. CROMWELL
LANCE M. JOHNSON
MICHAEL DEVER
ROBERT CHESTNUT

May 18, 2010

The Board of Commissioners of the City of Lawrence met in study session at 5:00 p.m., in the City Commission Chambers in City Hall with Mayor Amyx presiding and members Cromwell, Dever, and Johnson present. Commissioner Chestnut was absent.

JOINT CITY/COUNTY MEETING:

The City Commission met in a joint City/County meeting with County officials and KDOT officials to discuss the recently released AMTRAK study. The Commission returned to regular session at 6:35 p.m.

Mayor Amyx pulled from the consent agenda, establishing a Community Improvement District, near 23rd and Ousdahl Streets, for separate discussion.

CONSENT AGENDA

As part of the consent agenda, **it was moved by Johnson, seconded by Cromwell**, to approve minutes from the City Commission meeting of April 6, 2010. Motion carried unanimously.

As part of the consent agenda, **it was moved by Johnson, seconded by Cromwell**, to receive minutes from the Board of Electrical Appeals meeting of April 7, 2010; Board of Zoning Appeals meetings of February 4, 2010 and March 4, 2010. Motion carried unanimously.

As part of the consent agenda, **it was moved by Johnson, seconded by Cromwell**, to approve claims to vendors in the amount of \$1,447,067.43. Motion carried unanimously.



As part of the consent agenda, **it was moved by Johnson, seconded by Cromwell**, to approve the Drinking Establishment license for Yokohama Sushi, 1730 West 23rd. Motion carried unanimously.

Ordinance 8524, allowing the possession and consumption of alcoholic beverages on public property on June 26, 2010 for a wedding ceremony at South Park Gazebo was read a second time. Aye: Amyx, Cromwell, Dever, and Johnson. Nay: None. Motion carried unanimously. **(1)**

Ordinance No. 8521, for rezoning (Z-3-3-10) of approximately 22.63 acres, from PUD (Planned Unit Development) to OS (Open Space), located southeast of West 27th Street & Crossgate Drive, was read a second time. Aye: Amyx, Cromwell, Dever and Johnson. Nay: None. Motion carried unanimously. **(2)**

Ordinance No. 8525, allowing the sale, possession, and consumption of alcoholic liquor during designated times on June 25th and June 26th, 2010 on public property in South Park and the 1200 block of Vermont Street for the St. John Mexican Fiesta, was read a second time. Aye: Amyx, Cromwell, Dever and Johnson. Nay: None. Motion carried unanimously. **(3)**

Ordinance No. 8522, updating the tax abatement criteria for additional incentives for high wages, was read a second time. Aye: Amyx, Cromwell, Dever and Johnson. Nay: None. Motion carried unanimously. **(4)**

Ordinance No. 8523, updating the City's Industrial Revenue Bond Policy, was read a second time. Aye: Amyx, Cromwell, Dever and Johnson. Nay: None. Motion carried unanimously. **(5)**

Ordinance No. 8519, amending Article 16 of Chapter VI of the City Code providing for the licensing and operation of oversized pedicabs within the City of Lawrence, was read a second time. Aye: Amyx, Cromwell, Dever and Johnson. Nay: None. Motion carried unanimously. **(6)**

As part of the consent agenda, **it was moved by Johnson, seconded by Cromwell** to receive final report and approve final change order in the amount of \$40,297.61 to L.G. Barcus & Sons for the Bowersock Dam Maintenance Project. Motion carried unanimously. (7)

As part of the consent agenda, **it was moved by Johnson, seconded by Cromwell** to approve a Special Event (SE-05-18-10) request for a street party for the Lawrence Arts Center located at 940 New Hampshire Street. Motion carried unanimously. (8)

As part of the consent agenda, **it was moved by Johnson, seconded by Cromwell** to approve a temporary use of right-of-way permit allowing the closure of a portion of the 900 block of New Hampshire Street for the Arts Center Street P'Arty from 9:00 a.m. to 3:00 p.m. on Saturday, June 12, 2010. Motion carried unanimously. (9)

As part of the consent agenda, **it was moved by Johnson, seconded by Cromwell** to approve a temporary use of right-of-way permit for the Lawrence Public Library to close a portion of the 700 block of Vermont adjacent to the Library on Saturday, May 29 from 9:00 a.m. – 1:00 p.m., for the summer reading event kickoff festival. Motion carried unanimously. (10)

As part of the consent agenda, **it was moved by Johnson, seconded by Cromwell** to declare an emergency and adopt on first and second reading, Ordinance No. 8527, authorizing the possession and consumption of alcoholic beverages at Clinton Park on May 22, 2010 from 7:00 – 10:00 p.m. Aye: Amyx, Cromwell, Dever, and Johnson. Nay: None. Motion carried unanimously. (11)

Mayor Amyx said regarding the establishment of a Community Improvement District near 23rd and Ousdahl Streets, a 2% sales tax would be passed along to people that shopped in that area to pay for those improvements. Over the last week, several members of the public had contacted the City Commission regarding this matter and it was important to explain this process.

The City Commission's goal was to protect the taxpayers, follow state law, and come up with a better solution for this community, making sure the taxpayers were not left holding the bag on any type of development.

The Commission suggested 100% participation by the property owners in this particular district, not allowing the use of General Obligation Bonds and set up a pay as you go system. He said but because of the correspondence received by the public, the City Commission needed to take a step back and setup a time to better address the policy changes made last week by the City Commission.

Commissioner Johnson said based on the number of comments he received and the misunderstanding, it would not hurt to educate the public on this matter.

Mayor Amyx said State law allowed for those types of districts, but it was time for clarification, such as a study session and public education. He said they could have more discussion about the transfer of tax money from a user to a particular development and how that transfer happened.

Vice Mayor Cromwell said there were a lot of legitimate concerns about notification, implementation of an additional sales tax at a time when the State was already levying an additional sales tax. Most of the comment he received were of confusion about what happened. The biggest help would be education. He said the City Commission did not establish a new tax, but approved a series of restrictions on a State law to make its use more restrictive in this community. He said each one of those CID's (Community Improvement Districts) would require individual approval from the City Commission as well as through PIRC (Public Incentive Review Committee), requiring a level of scrutiny each time.

Commissioner Dever said he understood it was the City Commission's direction regarding this issue to officially receive this request and not officially take any action. It was a

good time to acknowledge the confusion and questions from the community and those questions needed to be answered before spending any additional time vetting a single application.

Mayor Amyx said before the City Commission asked staff to spend time going through the process in looking at this request, the Commission needed to make sure there was a policy in place.

Mayor Amyx called for public comment.

Matt Gough, Barber Emerson Law Firm, said the CID Act was an important enough tool and they needed to take the time to make sure that people know how it worked, when it worked and supported the initiative for additional study sessions and planned to participate to help people understand this was a very strong benefit to the community. National retailers were embracing the use of CID and there were not a big resistance to large groups that bared the risk that the sale tax would draw business away or in some way make it difficult for those retailers to operate. The CID required notification by publication, mailed notice, and a public hearing. He said it was a very public process. The taxes that were assessed were paid in the exact same way as all the other sales taxes that were paid which those taxes go to the State Department of Revenue and back down to the city, into an account that ultimately benefitted the beneficiaries of the community improvement district. The important idea was there was absolutely no loss of sales tax that the City otherwise collected and there was no money being siphoned away from streets, schools, or any other public benefits. He said to follow the Chamber of Commerce motto, they needed to start with this community and in order to do all shopping in Lawrence, the community needed to have people in the market place to provide the community with more things to buy. One way to make that happen was to compete against the Legends which were a Star Bond Project, the grand daddy of all public incentives. Community Improvement Districts were a way to draw businesses to this community and could get the developer a loan.

He said the resolution that was adopted by the City Commission last week, was just a lens to help see the petition in the way it could be best to this community. There was no need to make any big move at this time and it was appropriate to send this item to another study session. The important thing to say was this was a once in a decade opportunity to have this program and it was important to find the best way to use the program, in this community.

Hank Booth, representing the Lawrence Chamber of Commerce, said they would be glad to sit at that table as well and concurred with Goff's comments. He said anything the Chamber could do to aid in the attraction of new retail in this community, when studying the issue of why this community needed to develop that retail base, the Chamber would be glad to be part of.

Karl Capps said when they submitted the petition for this CID, they submitted the petition in conjunction with a site plan and had concerns how those two documents worked together. He said he did not know if they would have submitted the site plan, without submitting the CID Petition. He said they were willing to go through an educational process for the community and understood the community did not understand how this item worked. He said he urged the community to consider this policy in the event additional retailers wanted to located in the City of Lawrence. Potential retailers looked to this type of legislation as an incentive to do business. There were a number of developers and retailers looking at the Community of Lawrence to expand their companies and those companies would be doing the same thing with this process.

He said he did not know the timeline of this educational process, but to the extent that the process could be expedited would be appreciated.

Mayor Amyx suggested deferring the item and under calendar items, set times for public education.

As part of the consent agenda, **it was moved by Cromwell, seconded by Dever** to defer receipt of a request to establish a Community Improvement District (Ousdahl 23 Community Improvement District) near 23rd and Ousdahl Streets from Lawrence 1714, LLC, Lawrence 23 Ousdahl, LLC, and Got-Mor, LLC. Motion carried unanimously. **(12)**

CITY MANAGER'S REPORT:

During the City Manager's Report, David Corliss reported that Legal staff had completed a thorough analysis of the Kansas Indoor Clean Air Act. Staff recommended a discussion of the smoking regulations be scheduled in early June so that any changes to our local ordinances could be enacted and effective prior to July 1, the effective date of the Kansas Indoor Clean Air Act. **(13)**

REGULAR AGENDA

Conduct a public hearing for the dilapidated structures located at 1313 Haskell Avenue. Consider adopting Resolution No. 6885, declaring the structure unsafe and dangerous and ordering the property owner to repair or remove the structure within a specified period of time. Should the property owner fail to comply the City would contract for the removal of structures.

Brian Jimenez, Code Enforcement Manager, presented the staff report. He said a memorandum was provided by staff outlining the history along with some of the inspection results that occurred from a search warrant executed in early March and pictures taken during that inspection.

In early October 2005, the owner of 1313 Haskell Avenue, Greg Seibel, moved this house from 15th and Haskell. He said from October 2005 to July 10, 2006, the property sat on moving trailers and staff opened up a case for unsafe and dangerous structures at that time. Eventually, the house was sat on a new foundation.

Over the course of this time, this property had been in some type of violation since the very beginning of its inception and the owner was taken to Municipal Court on two different occasions, the most recent time resulted in a trial before the Municipal Court Judge on January

21, 2010 and a guilty verdict was obtained and court cost and fines were assessed. The owner had appealed that decision to district the court date and the next court date was June, 2, 2010 which was a jury trial in district court. In addition to those two court proceedings the following actions were initiated by staff:

“On April 30, 2009, staff received a complaint from a neighbor adjacent to the property that Mr. Seibel appeared to be staying in the house overnight. Staff placarded the house as an unsafe structure unfit for human occupancy on that date and advised Mr. Seibel that he could not live in the house until all building inspections had been approved. Mr. Seibel denied living there but admitted he was there often which included late at night.

On August 12, 2009, staff notified Mr. Seibel through a letter that he would be required to obtain the services of a City licensed Class C residential contractor due to his documented lack of ability to complete the work and the failure to move the project towards completion.

On October 5, 2009, Mr. Seibel submitted a new building permit for review which identified the licensed contractor as Struct/Restruct LLC. Plan review staff verified the contractor listed on the permit had no intentions of taking on the project therefore the permit was denied. Mr. Seibel was informed of this decision and has not resubmitted a building permit application for staff to review.

From October 2009 to March 3, 2010 it appeared Mr. Seibel completed little if any work to improve the structures' blighted conditions. The only change staff noticed during this time period was the re-configuration of the support posts for the roof porch of the house. The roof was originally supported with angle bracing that was attached to the east exterior wall. The support posts now sit on the footings that were approved.

Once the trial was completed in January staff determined the next step of enforcement would consist of either obtaining consent from Mr. Seibel to inspect the structures or applying for a search warrant if consent was denied. Staff attempted to obtain Mr. Seibel's consent but he did not return any of staff's phone calls. On March 3, 2010 staff obtained a search warrant through District Court. On March 4, 2010 the warrant was executed by entering the curtilage and interior of the structures.”

He said in researching the building inspection history and over that course of time, when the building permit was active, there were 23 building inspections that were scheduled and 18 of those were either denied by inspection staff or cancelled by Seibel. Staff's findings were the following:

- The house does have electrical service; however, staff could only locate operable receptacles in the basement.
- The house is absent an HVAC system and would need heating facilities installed along with the appropriate duct work.
- There is no city water/sewer service to the house.
- Chimney chase is fully exposed from the basement to the roof.
- Roof has large opening at the point of where the chimney chase is located which is allowing weather elements to enter the structure.

- There are numerous broken windows and windows that have no glass throughout the house.
- Porch roof is supported but there is no decking to porch and there are no steps to the exterior doors.
- Interior staircase to 2nd floor is a hazard as there are 2 X 4's nailed to the stair stringers in lieu of code complaint treads and risers.
- Numerous areas where the ceilings and floor coverings are in severe disrepair.
- Second floor bathroom is in a complete state of disrepair and is not a functional, code compliant bathroom.
- Steel I beam (north to south) in basement for floor joist support not appropriately secured.
- Steel I beam (west to east) not properly supported above the pilaster.
- West exterior load bearing wall not properly supported and not enclosed.
- House attachment to the foundation has not been approved. Owner has fabricated steel foundation attachments.

He said staff had tried to work with Seibel for years to get a plan of action and when the plan of action stalled, staff had no other options to consider.

Mayor Amyx said he recalled a similar situation on 4th Street where the City required the owner of that house to sign contracts and have a draft plan to rehabilitate that home which included the issue of financing those improvements.

Jimenez said the only way staff would not allow the demolition of that structure, at that time, was that the owner of that property, submit a certain amount of money into an escrow account that the City would oversee along with a licensed contractor. The City was essentially acting as a quasi contractor and oversaw the project and made sure the contractor was paid when certain work was performed.

Mayor Amyx asked if the process worked.

Jimenez said there would be an update on West 4th Street, but overall that project went smoothly. Staff was trying to move ahead with the next phase of that project which dealt with the interior. He said he thought that project had been a success to this point.

Greg Seibel said the house was moved in 2006 and sat next to the foundation on wheels until July and that was a situation he had no control over. The foundation was ready and the house mover from lola, Kansas, did not come back to complete the work. He made several trips to lola to get the contractor to complete the work, but the contractor always had some type

of an excuse such as not having money or asking for money that he was not entitled to. The contractor never did place the garage on the foundation and he ended up having to find a way to do that, which happened that same year. He said he asked other house movers to get the job done, but no one would come into a job that was half finished with a house sitting on another person's equipment.

He said he acknowledged that since that point, the progress had been slow, but work was done and the electrical service was done entirely on his own and the work was approved. He said he ended up getting the house down onto the foundation.

Another difficulty was the Inspection Department where he went to that department to discuss the plan of anchoring the house down and since it was not new construction a wall could not merely be built and place anchor bolts through. He said he went through with a former City staff inspector, Tim Pinnick, and discussed his plan which included steel plates that held the house down. He said he placed those plates, but then was told that entire system of anchoring the house was not adequate because the metal plates would be in contact with treated lumber. He said there was a small part of the structural inspection related that he had not managed to get back and finish because he had to break into the walls of the house and include epoxy rods into the foundation. If he had know that system did not work before he put the house down, he could have done something different, but now that the house was down, it made it much harder to actually to complete that task.

He said regarding the building permit he submitted with the name of a contractor, Struct/Restruct LLC, he said he talked to someone who worked for that company that stated that they could work with him. He said that person came to the house and looked at the job and the plan was to work out a situation where they would help design it to be sure it was up to code and he would help do the work in order to reduce the cost. He said he would pick up the materials so there was no additional. After a week of not hearing back from Struct/Restruct LLC, he called the person he had known and that person said they could work with him and to

turn in the permit. He said apparently, other people in that company disagreed and overruled that person and decided Struct/Restuct was too busy to do the project. He said he wanted to be clear and he did not submit a false building permit application.

Mayor Amyx asked if Seibel was in a position to hire a contractor and have the financial backing to finish this project.

Seibel said he was not in a position to hire a contractor to do all of the work, but was in a position to afford the materials and afford a contractor to do things he did not have the skills to do. He said it was interesting that Jimenez did not go through any of the pictures that staff took in March because if he had, the house looked significantly different. He presented pictures of his house and garage to the City Commission and compared his house to other homes in the area.

Mayor Amyx said if Seibel was planning on bringing enforcement action against other properties that was about to happen.

Seibel said he was trying to compare his house to other home he had not seen any change in several years. He said there had been progress on his home. He said his living situation was quite difficult before this year and understood the house needed to be completed, but there was significant progress shown in the last 2 ½ months, significant improvement to the appearance of the outside of the house which should be the City's main concern.

As far as the ordinance, the City Commission was being asked to find this house was dangerous and unsafe and he had not heard anything in Jimenez's presentation that would find this house dangerous and unsafe.

Mayor Amyx asked when the exterior of the house and property could be completed.

Seibel said this year.

Mayor Amyx asked if Seibel could sign an agreement that the exterior of the house and property could be completed this year.

Seibel said yes.

Commissioner Dever asked if the garage could be completed too.

Seibel said yes.

Mayor Amyx said the City Commission needed to be consistent in handling these types of problems. He said there had been a similar situation and 4th Street. He said there was no one on the City Commission that wanted to demolish a home, but preservation of housing stock was important as well as being good neighbors. He said the City Commission was asking Siebel to bring his house up to the minimum code in a timely fashion. He said the City Commission would give staff the opportunity to work with Seibel to draft an agreement between the City and Seibel that included financial ability and getting the exterior of that property (including house, garage and the property in general) completed in a timely fashion.

Seibel said that depended on staff's ability to issue him a building permit to do the front porch.

Mayor Amyx asked if Seibel needed a contractor.

Jimenez said Seibel now owned another home on East 13th Street with a yard that abutted this property. He said staff would want to know if Seibel would occupy that dwelling, now that Seibel was living at another residence. Initially, he thought Seibel's intent was to occupy that dwelling, but did not know Seibel's intent now. He said Seibel had done some framing work which probably required a building permit. The west wall of the house had some load bearing capacity, but staff did not know if there was enough horizontal support, what type of sheeting he used, the nailing pattern, or if there were wall brace panels on the corners, all those things needed to be reviewed by staff. He said it would probably concern building inspection staff that Seibel was doing work, but was told specifically that he needed a building permit.

Commissioner Dever asked if Seibel currently lived in this home.

Seibel said he did not live at 1313 Haskell Avenue, but in a house on the north side of 13th Street. He said his intent was to live at 1313 Haskell Avenue as soon as it was allowed and rent out his other home.

Commissioner Dever asked if someone was living at 1313 Haskell when the inspection was performed.

Seibel said no. He said there were a lot of things stored in that house. There was a refrigerator at that location on Haskell because he ate while he was working at that house and did not need to leave. The only thing that was plugged into an outlet was the refrigerator and the sump pump.

Commissioner Dever asked if Seibel was not living at that location, but intended to live at 1313 Haskell Avenue eventually. He asked if Seibel owned 1313 Haskell Avenue and the property on 13th Street adjacent.

Seibel said his other house was around the corner a couple of houses in between.

Commissioner Dever asked if Seibel was a neighbor to 1313 Haskell Avenue.

Seibel said yes. He said he closed on his other house in January and by doing that had greatly facilitated his ability to improve his living arrangements and his ability to make progress on 1313 Haskell.

He said he would like to address the sheathing that went up. He said he was specifically told by someone in the inspection department that sheathing, windows, repairing eaves, repairing gutters, and painting were all things that did not require a building permit. If those things needed to be inspected before the house was signed off for occupancy, that would make sense, but he was told those things could be done without a permit.

Mayor Amyx said he was surprised that Seibel would close on another property while working on 1313 Haskell Avenue, if it was Seibel's intent was to move into that location.

Seibel said the house that he recently closed on had been a rental for a long time and his plan was to rent that house out after moving to 1313 Haskell Avenue, as a source of income. He said the house on 13th Street was a reasonable price and made it a lot easier to make progress on 1313 Haskell as well as making a lot of other things in his life a lot easier. He said he had a roommate which helped make it financially feasible.

Commissioner Johnson asked how long it would take to take care of the exterior issues.

Seibel said he could complete all of the exterior issues by the end of the year.

Commissioner Johnson asked if those issues could be completed sooner.

Seibel said he was talking about everything, including all of the painting. He said the house needed gutter work in which he had not been able to find anyone to work on that gutter work because those were not modern style gutters, but built in gutters. The second floor gutters were relatively simple shaped and his plan was to do that on his own. He said he would love to hire someone to do the gutters, but he could not find anyone.

Mayor Amyx said Seibel stated that the outside could be completed this year. He said he suggested drafting an agreement with Seibel that took care of all the necessary outside grading and give a deadline of October 15th to get the exterior of the home and property completed. He said Seibel needed to work with City staff to come up with that agreement and staff would provide Seibel with a list of things that required permits. He said Seibel needed to hire a contractor when necessary, and have the financial ability to get through the steps to complete the exterior of the property to minimum code. He said it was time to finish this project.

Seibel asked if that meant that if it was entirely up to City staff whether, for example, let him build the front porch. The permit process for that now required detailed drawings of specifications of what type of lumber and how it was spaced to make sure it was up to code. He said building a porch was not technical work, but the code issue was making sure it was built up to standards.

Mayor Amyx asked if it was the same requirement for everyone.

Seibel said correct, but staff refused issuing him a building permit, simply on the grounds that staff did not think he could get it completed because he had not been making fast enough progress on the house.

Scott McCullough, Planning and Development Services Director, said staff reviewed the situation and based on competency issues, that staff believed were at hand with the ability to do

the technical work of the construction of the home, after a couple of the permits had lapsed without completion or calls for inspections, staff required that work that was to be completed, would be done by a general contractor, on time and on schedule. It was partly because there was no movement in those permits and the permits issued, the owner was not following up with timely inspections and completed work. He said he was not sure staff passed inspections to date. He said there was more to that than the timing issue.

Jimenez said several inspections failed and he could provide a document that staff signed for inspections. He said of the 23 inspections scheduled, 18 were failed or cancelled prior to the inspections. The electrical service that Seibel completed on his own, the City's electrical contractor indicated that Seibel had to be walked through inspections after many failed attempts to get inspections completed. Eventually, Siebel did complete the inspections, but there was a history of not being able to schedule inspections and passing those inspections.

Seibel said that was a complete mischaracterization of what happened with the electrical service. The electrical service never failed an inspection. He said he went to the Inspection Office several times, asking questions about technical things. The inspector indicated he would come out and show him what was required on certain things.

Mayor Amyx said all he wanted was to have this building and property brought up to code. He said staff was trying to come up with a way to allow time to complete this project and not to allow this to linger on forever. He said the City Commission could pass the resolution with a date of December 31, 2010, sign an agreement as to how the work would be completed in a timely manner. He said a plan was needed to complete this project.

Seibel said he had no problem.

Mayor Amyx said Seibel would work out an agreement with City staff and staff would help Seibel through this process and come up with a way to get the outside graded and completed and all of the exterior was brought up to code by this year, including the porch. He asked Seibel if everything could be done by this year.

Seibel said yes.

Mayor Amyx said an agreement was needed regarding the financial ability and the ability to hire a contractor when a contractor was required to do that type of work.

Seibel said he still did not know what Mayor Amyx last statement meant.

Mayor Amyx said staff would show Seibel in the City Code what issues needed to be addressed on the outside of the property and if by code, a contractor was needed, a contractor would be by Seibel to do that work.

Jimenez said it included any framing, electrical, plumbing, and mechanical work. Basically, anything Seibel did at this time, except for replacement of the windows if those windows were the same size or gutter installation would not require a contractor. He said one of his main concerns was the financial ability. He said would it just be an acknowledgement in writing that Seibel had the funds available to complete this work by the end of the year. He said staff and Seibel was 5 ½ year into this project and he wanted to be clear in the direction he was receiving so there was no hang up down the road.

Mayor Amyx said the City had a process already in place for the property on West 4th Street, and suggested following that process requirements.

Vice Mayor Cromwell said the City required escrow.

David Corliss, City Manager, said in that situation, staff came up with an estimate to get that property up to code, exterior and interior. The City required that money be deposited with the City contemporaneous with the issuance of a building permit and required the City to work with the contractor to have disbursement of those funds as work was accomplished. He said the City served as that escrow agent to hold that money and made sure that work was done sufficiently. He said it was a successful rehabilitation of that structure. He said in order for Seibel to proceed, money was needed upfront in order for the work to get done or the home would be demolished. That was one path to pursue and another path was to give Siebel a date for certain milestones. He said he would work with City staff to try and give as much information

as possible for Seibel to understand the code requirements. He said he did not think it was appropriate for staff to be the craftsmen instructor and he was not indicating that was what staff was asking for. He said it was the City Commission's job to determine the reasonableness of that timeframe and staff would work to give Seibel a good narrative explanation about some of the additional requirements. He said he thought this was a major undertaking and there were people that spend years becoming years at experts in making it a livelihood to do this work. It was not for the uninitiated.

Mayor Amyx said there were two choices. The first choice was to escrow the money after an estimate was made by City staff or the second choice was to accept a date on that property.

Seibel said he would accept a date.

Mayor Amyx suggested a date of October 15, 2010 and asked what was needed for completion of this project.

Jimenez said regarding Siebel stating the property was not unsafe or dangerous, staff discussed the anchors to the foundation had not been approved and those anchors needed to be signed off by an engineer along with a proof type that city staff was familiar with. There was a chimney chase from the pitch of the roof to the basement that was totally exposed, extensive mold growing, no stairs to the house as well as no interior staircase, there were 2x4's nailed in various angles in place of treads and risers, broken windows and numerous things that fit the criteria for code violations and wanted to state those code violations for the record.

Commissioner Dever said the number one commitment needed to be to the citizens in making sure staff was doing everything they could do to keep the neighborhoods in as good as condition as possible and to be consistent. It was reasonable for the City Commission to take into consideration, some of the setbacks Seibel's had in this process, but Seibel needed to recognize his neighbors and other citizens. He said there was a condition of property that was unacceptable and it needed to be changed. Through all efforts good, bad or indifferent between

Seibel and members of City staff, the issue had not been resolved and a date and time was needed to move forward. He said he suggested starting with the outside of that property, but he was more concerned with someone trying to live at that residence. If that was happening and wanted to get it on the record that if no one was living at that location, then the City Commission would address the outside of the building. He said if there was any intent of any type of habitation of this structure, then another course was needed.

Mayor Amyx said he suggested the outside of the property brought up to code standards which included everything on the outside of that property. He said he wanted Jimenez to provide a list for Siebel which would be part of the agreement to meet the October 15, 2010 deadline. He said the agreement should include that a contractor be hired whenever a contractor was required by code and building permits and inspections must be obtained. He said the yard would also be included.

Vice Mayor Cromwell asked if an escrow would be required.

Mayor Amyx said that was not included. He said step one was the outside of the property and step two was the inside. He said Jimenez would prepare a list and if the City Commission wanted to add additional items it could be done.

Corliss said the resolution indicated the repairs needed to be done or the structure would be demolished by a certain date. The City Commission could agree what that date was and the resolution could be adopted at this time and direct staff to work with the property owner on items indicated and staff could report back to the City Commission on the milestones. He said the City Commission could also defer the resolution and put those milestones in the resolution. The key was to have jurisdiction over the property which could be done by adopting the resolution that indicated that if the work was not done to code satisfaction, then the City had the authority to remove the structure which was the incentive to do the other work.

Commissioner Johnson said he would recommend, before the City Commission adopted the resolution, for staff to put together a plan as part of the resolution. He said the Commission

could spend a lot of time listing out items and figuring out dates. He said time needed to be spent on what needed to be done and how much time it would take. He said the structure needed to be addressed first before doing a lot of work with siding, painting or guttering. Secondly, he did not want to shirk City Commission responsibilities with policies, codes, and requirements for contractors and that needed to be followed.

He said the City had been very lenient regarding 1313 Haskell Avenue in the last 5 ½ years to finish this project and the City was allowing more time, but with the rules that were in place.

Mayor Amyx opened a public hearing on the dilapidated structures located at 1313 Haskell Avenue.

Steve Unruh said Siebel was offered a building plan and then Siebel was not allowed to carry out that plan anymore because it was not done in a timely way. He said he wondered if Siebel could be offered some of those permits, given the time restrictions.

Mayor Amyx asked if Unruh was asking that the permit that were already expired for Siebel, be opened back up.

Unruh said possibly, if the permit could be reinstated such as for the porch and Siebel could do the work himself according to code.

Mayor Amyx said no, it would probably require new permits, but staff could find out that answer.

Moved by Dever, seconded by Cromwell, to close the public hearing. Motion carried unanimously.

Mayor Amyx suggested directing staff to prepare the document to meet the minimum code requirements for the exterior which included a plan to level and cleanup the yard.

Commissioner Dever said it might not be feasible after all the discussion.

Mayor Amyx said Seibel needed to understand that it might not be feasible.

Vice Mayor Cromwell said the other option as to issue a demolition order with a sufficient amount of time that would provide a stick.

Mayor Amyx said if the goal was to protect this housing stock, the City Commission not only owed it to the property owners in the neighborhood, but to the City Commission and staff. He said once staff had the information, this resolution would be placed on the consent agenda with the requirements of bringing the exterior of this property, up to code along with the yard with an October 15, 2010 deadline. He asked if Jimenez could bring back the resolution in two weeks.

Jimenez said yes. He said around mid October, staff would talk about phase 2 for the interior.

Mayor Amyx said that the outside needed to be secured and then worry about the inside. He said it had to be understood that this property could not be lived in.

Jimenez said that understanding was very clear.

Moved by Johnson, seconded by Cromwell, to defer adoption of Resolution No. 6885 and direct staff to add a scope of work and milestones that must be met regarding exterior conditions of the property and structures with an October 15, 2010, and bring said resolution back for City Commission consideration. Motion carried unanimously. (14)

Receive staff report regarding a sidewalk dining and hospitality license for Louise's Downtown

Toni Wheeler, Director of Legal Services, said Louise's Downtown, a bar located at 1009 Massachusetts Street, desired to have a Sidewalk Dining and Hospitality License. Under the current code provisions, Louise's Downtown did not qualify for a license because it had a patio area located in the rear of the establishment that provided an outdoor hospitality area, greater than 50 square feet in size.

In order to give Louise's Downtown a license, an amendment to the City Code would be required.

The Commission had previously directed staff to prepare an ordinance (1) lowering the sidewalk dining food sales requirement for new establishments from 70% to 55%; (2) to remove the 55% food sales requirement for existing drinking establishments that had legal nonconforming use status from the 55% food sales requirement for downtown drinking establishments; and (3) to prohibit the issuance of a sidewalk dining and hospitality license to establishments that had a reasonable alternative location for an outdoor hospitality area.

Louise's Downtown has a legal non-conforming use status from the 55% foods sales requirement for downtown drinking establishments. It was the requirement, in the current code, that only businesses that had no alternative location for an outdoor hospitality area that poses a problem for Louise's Downtown and staff was asking for City Commission direction.

Mayor Amyx said if Louise's had a Sidewalk Dining area in front, then Louise's would need this amendment.

Wheeler said that was a policy discussion the City Commission had a couple of years ago. The City Commission wanted to allow businesses to have sidewalk dining in front, if there were no other option. Louise's did not currently qualify to have a Sidewalk Dining area in the front area.

David Corliss, City Manager, said this was the genesis of Lawrence's smoking ban. He said when that ban was enacted there was interest in moving to sidewalks which was allowed in a number of different circumstances. Staff then had a follow on to that inquiry where the City would allow for Drinking Establishments that did not meet the food sales requirements, but if a Drinking Establishment had an alternative to being on the sidewalk, then the City would not allow for the sidewalk hospitality area because there was an alternative in order for their patrons to smoke and still be viewed as part of the establishment.

Commissioner Johnson said this would open up a precedent for 3 or 4 more bars downtown.

Wheeler said correct. She said there were 6 additional non-conforming drinking establishments that had space available, including Louise's Downtown, to seek this use.

Commissioner Johnson said if the City Commissioner were to allow for this area, he asked if those other businesses had to come before the City Commission for permission.

Wheeler said correct. Those establishments would need to seek a permit that involved several requirements along with a fee.

Corliss said the law would not need to be changed to initially allow it which was the current request.

Mayor Amyx called for public comment.

Paul Werner, Paul Werner Architects, said this request arises from the owner's desire to have a hospitality area on Massachusetts Street. Currently, there was no mechanism for the City Commission to allow this hospitality area. He said this could be done on a case by case basis. He said it was not their intention to opening this up.

Mayor Amyx asked about the area.

Werner said it was a large patio which was built before the smoking ban and was one of the first patios built on Massachusetts Street. He said this was not about smoking, but the smoking ban was where the outdoor dining started.

Brad Ziegler, owner of Louise's Downtown, said when sidewalk dining came into place, he thought the City was trying to help some of the businesses downtown that did not have a place for people to smoke. In doing so, it created an unlevel playing field for businesses that had a patio out back. He said he was just asking to have the same opportunity, his neighbors had with sidewalk dining area in front. When the new smoking ban went into affect for the state, a lot of those new patios that were allowed could not have smoking because those areas overlapped the 10 foot space from the doorway. He asked if the City would retract those patios because those patios would not serve the purpose of smoking and were an added attraction for that business provided by the City Commission, but not for other businesses.

He said the Bourgeois Pig had two patios one patio in the back and another in the front area. He said there were always people in the front patio and very rarely people in the back patio.

He said people liked to be around other people and Massachusetts Street was a great environment. He said his business had been at its location for 55 years. He said it was a tough economy and was always looking for ways to try and strengthen his businesses. The patio that they built for Louise's in the back was built a year before the smoking ban in anticipation that the smoking ban would pass. He said being a downtown business owner, he had dealt with a lot of issues and changes and he was just trying to improve his business.

Commissioner Dever asked if the storefront could be recessed.

Ziegler said no, because the Historic Resources Commission would not allow recess.

Corliss said the correct articulation in his view, was the HRC would recommend against it, but the City Commission had the authority to overturn that recommendation.

Commissioner Johnson said he thought it was a good idea. He said he thought it did start out as a smoking issue, but had gone past that issue. He said it was about people wanting to be social and wanting to be out with other people. He said it was also beyond food. He said Free State was a good example because he never saw anyone eating outside of that establishment and most people in those outdoor dining areas downtown were doing that much eating. He said to say if an establishment had a dining area in the back, an establishment could not have a dining area in the front was irrelevant. He said he liked the patio atmosphere and had not heard of any problems through the years that patios were established out front. He said he did not have a big distinction whether a business served food inside with a certain percentage for food sales, but yet the business could not let someone have a drink outside on the patio. He said for the low amount of establishments that would be affected, he did not think the Commission would be opening up a pandora's box. He said he was in favor of allowing this sidewalk dining area for Louise's.

Mayor Amyx asked about the process on a case by case basis and if the establishment needed a Special Use Permit or a Sidewalk Dining License, or rewriting all of the requirements for patio areas.

Commissioner Johnson said this patio issue only involved 4 or 5 establishments at this point and those patio areas would come before the City Commission.

Mayor Amyx asked about the difference between Louise's and a restaurant being on the right-of-way.

Commissioner Johnson said there would still be a site plan and all of the details. He said he was not looking at a difference between Louise's versus a restaurant use of that space.

Mayor Amyx said he was just questioning the different requirements because of the nature of the business.

Commissioner Johnson said the bigger areas opened up some other issues where he would start to differentiate between having dinner on the patio.

Corliss said the City Commission was acting both as a land use regulator in the sense that the Commission would approve a site plan, but also acting as a landlord because the City owned the right-of-way and there was a requirement for a rental fee. He said if there were public safety problems, the City Commission could revoke that license to use the public right-of-way. He said the City had been very fortunate in the number of good establishments, downtown using the hospitality and sidewalk dining. He said every once in a while, they had someone complain about trash, but over the years, there had not been very many problems. He said he did not think a special land use regulation was needed because the best stick was the ability to not let someone use the public right-of-way anymore and take it back. He said staff had a few conversations with establishment overtime concerning trash, but it really had not been an issue.

Corliss said there were a few establishments, in the past, that were transitioning with businesses and did not pay their fees and staff had to remind the businesses.

Commissioner Cromwell said the intention of only allowing the front or the back for sidewalk dining was to limit the amount of front porches on Massachusetts Street. He said there did not seem to be many problems.

Corliss said correct. He said he did not receive complaints from the Police Department, citizens or other individuals. He said staff reviewed the railings to make sure they were compatible and not hazardous. He said at one time an establishment wanted to bring out a grill, but the sidewalk dining use was for tables, chairs, and not everything in the kitchen sink. Again, the City Commission had the ability to not allow a continuation of a sidewalk dining area if problems arise.

Vice Mayor Cromwell asked if he could be reminded of the number of drinking establishments with sidewalk dining and hospitality areas that had a non-conforming use status.

Corliss said there were a few drinking establishments with a non-conforming status.

Vice Mayor Cromwell said as the City Commission looked at those issues in a greater context of downtown while they might be going from one or two to six sidewalk/dining hospitality areas because there were currently spaces that were retail that might be changing to a restaurant and they could have even more of those areas. He said it could potentially change the feel of downtown. He said he was thinking of the larger picture. He said the question he had was if the City of Lawrence was marching toward Aggieville and was it something on the path the City wanted to try and avoid or it might not be a huge concern.

Mayor Amyx asked if this ordinance could be written to only take into consideration the current businesses downtown.

Corliss said the downtown area had a food sales requirement for any establishment in the CD district that wanted to sell alcohol for on-premises consumption which required 55% food sales or greater. He said there would not be any more bars downtown as long as the City had the food sales requirement in the CD district. Existing restaurants that were grandfathered in

could transition from a restaurant to a bar, but the City was not going to get any new establishments downtown that were not selling alcohol now, transitioning to a bar.

Vice Mayor Cromwell asked about Vermont Street BBQ.

Corliss said Vermont Street BBQ was an example of where they had a drinking establishment license at the time the food sales requirement was made and part of the compromise of enactment, was to not require 55% food sales and could continue to sell alcohol into the future.

Vice Mayor Cromwell said any existing restaurant on Massachusetts that went out of business or change the nature of their business did not need to conform with the 55% food sales requirement.

Corliss said it depended on when they received their liquor license. He said if a business had a drinking establishment license in 1993, the establishment did not need to sell 55% food sales. He said for example, Dos Hombres, on New Hampshire, transitioned to another drinking establishment. He said they were closed down for a while, but had to meet a certain deadline in order to continue to not lose their non-conforming status.

Mayor Amyx said if this ordinance could be written in a way that the places with current licenses could fall under this ordinance, but all other businesses had to do something different.

Corliss said staff could write the ordinance in a way where it was recognized the specific establishments that qualified.

Mayor Amyx said the downtown right-of-way that the City controlled would be a safe environment for shoppers. He said in looking at the future, he asked how much of this area did the City want to take up for outdoor dining areas.

Corliss said staff could provide a list of all the restaurants in the CD district and their location along with restaurants with drinking establishments and their status whether they were legal non-conforming uses or not.

Commissioner Dever said the City Commission decided a couple of years ago to change the direction and gambled slightly with the aesthetics of downtown. He said they could all agree, after a couple years, it worked out well and thought they made the right decision at that time. He said the Commission added that stipulation about having other accommodations that could limit the use of the sidewalk, but he did not think everyone understood how valuable that resource was going to be. He said with the new state wide regulations regarding smoking, the city would have an interesting balancing act and who knew what would happen to some of those places that could not allow their patrons to smoke. He said they might see some rebalancing of where people went to drink and eat and have fun. If people could not smoke in those places, those people would find some place to smoke and that would be the end result. He said there would be other restaurants that would change to drinking establishments. He said he wanted a list from staff on the following:

- a) Name of bar or restaurant;
- b) Are they eligible for downgrading or being grandfathered in
- c) The total number

He said having that information would help the City Commission decide what to do. He said in general it was only fair the Commission evaluate why they made that decision a couple of years ago and could not remember why that 3rd condition was placed in the ordinance in trying to minimize the issuance of agreements to businesses that had alternate accommodations. If they were limited in this application in that they had success with the concept in the past, he did not have a problem legalizing what would be a front patio for a few more establishments and leveling the playing field. He said there would be a readjustment of who went where eventually because of the smoking ban. He said Louise's might have an unfair advantage in the future because they had a huge space where people could smoke that was legal and other did not. He said on face value, he was initially in favor of allowing people to dine

and drink in the sidewalk dining areas, as long as the City was the landlord and had control, but he would like to see some numbers before he made a decision.

Vice Mayor Cromwell said he already voiced his concerns, but also had a concern about discriminating against a business just because they put a patio in the back. He said he had concerns about the changing the nature of downtown and how many more of those areas they were talking about. He said he would like additional information before making a decision.

Mayor Amyx said he would like staff to provide additional information, but he still had concerns. He said he did not know how he would vote on this matter. He said he appreciated that these were long-term businesses and felt an obligation to help those business owners, but when looking in the future, he wanted to be careful on the number of sidewalk dining areas allowed in the downtown area.

Corliss said the level of concern led to the compromise of an incremental approach. He said there was an issue of allowing smoking outside for those bars and some places that had the physical ability to do something out back. He said staff had good direction on the staff report and staff would provide ordinance options for City Commission consideration on proceeding.

(15)

PUBLIC COMMENT: None.

FUTURE AGENDA ITEMS:

- 05/24/10 · City Commission Meeting to start at 5:30 p.m. for an executive session on employer/employee negotiations.

- May/June · Upon conclusion of 2010 Kansas Legislature, review and consider possible changes to City primary election law.
- Discussion of city and state smoking regulations.

- 06/15/10 · Receive status update on the property at 331 Johnson Avenue on violation of City Code Sections 9-6011 (A) and (C). Receive additional code enforcement information as directed by the City Commission. Authorize staff to proceed with enforcement actions if appropriate.

- November · Receive status report on LCS relocation efforts.

TBD

- Receive staff memo regarding possible annexation of Westar Energy Center and adjacent properties. Additionally, staff is working on a memorandum discussing possible annexation of the Miller/Wells acres area.
- Receive Lawrence Human Relations Commission gender identity report.

COMMISSION ITEMS:

Moved by Dever, seconded by Johnson to adjourn at 8:35 p.m. Motion carried unanimously.

APPROVED:

Mike Amyx, Mayor

ATTEST:

Jonathan M. Douglass, City Clerk

CITY COMMISSION MEETING OF MAY 18, 2010

1. Ord. 8524 – 2nd Read, Temp Alcohol consumption, S Park Gazebo on June 26th
2. Ord. 8521 – 2nd Read, Rezone (Z-3-3-10) 22.63 acres from PUD to OS – SE of W 27th & Crossgate Dr.
3. Ord. 8525 – 2nd Read, Temp Alcohol consumption, S Park & 1200 Blk of Vt. St. June 25 & 26th.
4. Ord. 8522 – 2nd Read, Update tax abatement criteria.
5. Ord. 8523 – 2nd Read, Update City's Industrial Revenue Bond Policy
6. Ord. 8519 – 2nd Read, Amend City Code, licensing and operation of oversized pedicab
7. Bowersock Dam Maintenance - change order for \$40,297.61 - L.G. Barcus & Sons.
8. Lawrence Arts Ctr – Special Event (SE-05-18-10) Street Party 940 New Hamp.
9. Lawrence Arts Ctr - Use of ROW-Close portion of New Hampshire St. June 12, 9am - 3pm.
10. Lawrence Public Library – close portion of 700 Blk of Vermont – Summer Reading Event Festival.
11. Ord. 8527 – 1st & 2nd Read, Alcohol Consumption, Clinton Park May 22, 7pm - 10pm
12. Community Improvement District- 23rd & Ousdahl
13. City Manager's Report
14. Res. 6885 –Public Hearing - unsafe & dangerous –repair or removal 1313 Haskell Ave.
15. Sidewalk dining & hospitality License – Louise's Downtown