

**ITEM NO. 5 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE;
ENVIRONMENTALLY SENSITIVE AREAS (MKM)**

TA-12-27-07: Consider Text Amendments to various sections of the City of Lawrence Land Development Code, Chapter 20, to revise the Protection Standards for Environmentally Sensitive Areas, to provide more precise definitions, and to include incentives for protection of sensitive lands beyond that required by Code.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Commissioner Rasmussen inquired about examples of base density.

Ms. Miller said in the April Planning Commission packet there was information included about her contacting other communities that use density bonuses but most use it for affordable housing or for environmentally efficient buildings. She said one community in Oregon did use it for the same purpose as Lawrence and they did use a set percentage of 60%.

Commissioner Rasmussen asked about examples of existing development in Lawrence where a base density would have worked out better for them.

Ms. Miller said there have not been any protection standards yet in Lawrence.

Commissioner Rasmussen asked if there are any developments in Lawrence that would have needed the base density rather than the 60% and would have benefited from what is being proposed.

Ms. Miller said in the plat summary that they were given there are some that were only able to develop to 30%. Sometimes cul-de-sacs, curvy roads, or topography just won't allow it to be created.

Commissioner Rasmussen asked how a developer would determine the base density versus a percentage ahead of time.

Ms. Miller said when she talked to a gentleman from Peridian Group he said they always do a concept plan with the client before they submit an application.

Commissioner Liese asked for a definition of density and how it is calculated.

Ms. Miller said density in the RM district is calculated by the number of dwelling units per acre. In the single dwelling districts the Development Code does not say there needs to be 'x' number of dwelling units per acre, it says so many square feet per dwelling unit. The actual density depends on how the land is configured. The incentive is the number of dwelling units in addition to what can be developed on the property.

Mr. McCullough said the Code would require a certain amount of land be protected if environmentally sensitive lands are present on a site. That number would be up to 20% so if 5% of the property is environmentally sensitive lands then 5% of those lands would have to be protected. If the property contains 30% of environmentally sensitive lands then the Code caps it at 20% so there would still be development potential on the site. He said that the Planning Commission was interested in encouraging greater amounts of environmentally sensitive lands being protected and that is what staff and the development community have been working on for a few months.

Commissioner Rasmussen was concerned that the calculation of base density would be too complicated and that developers would not use the incentive.

Mr. McCullough said the challenge that staff has tried to identify is that range based on the specific site characteristics.

Commissioner Harris asked if the City Commission specifically ask for prairie to be excluded.

Ms. Miller said the City Commission wanted all lands to be readily mapped and only protect those features that could be mapped.

Commissioner Hird said he was concerned about passing something without knowing the extent of it.

Ms. Miller said mapping is available.

Commissioner Rasmussen inquired about the definition of mature trees.

Ms. Miller said the definition is not an identification, it will still involve site visits. The current definition is a 'dense stand of trees' but dense is not defined. She said there has to be some measurable way to tell someone they have dense trees.

Commissioner Hird asked if setbacks are used in the minimum requirements for open space.

Ms. Miller said for common open space setbacks were used in the previous Code. The draft language clarifies that is not.

Mr. McCullough read the definition for a stand of mature trees; *is an area of ½ acre or more covered by densely wooded growth of mature trees having a minimum height of 25'.*

Ms. Miller went over the letter that the League of Women Voters sent.

Commissioner Hird inquired about the difference between intermittent and ephemeral stream.

Ms. Miller said an ephemeral stream is only full after a heavy storm event and is more similar to a drainage way. An intermittent stream will carry water every time it rains but is not there all the time.

Commissioner Carter inquired about the 100 year regulatory floodway and floodway fringe.

Ms. Miller said she agreed the floodway is very heavily regulated and it is hard to develop in the floodway. She said the floodway fringe is less regulated and can have restricted development.

Commissioner Finkeldei arrived back at the meeting at approximately 8:40 pm.

PUBLIC HEARING

Ms. Joyce Wolf, Audubon Society, reviewed the letter they sent that was included in the packet. She said if the property includes a floodway it cannot be build on so it should not be considered part of the overall computation and open space. She said developing in the floodplain is subsidizing stupidity. She said floodplains are wonderful wildlife habitat. She said she is also involved in the Grassland Heritage Foundation. She said it is important to include prairies on the list. She said that local ordinances can be more restrictive. Floodway already has protection and should be more down on the priority list.

Mr. Hank Booth, Lawrence Chamber of Commerce, said if there is the attitude that there will be reasonableness toward protection and development then that would be the greatest effort going forward. Reasonable expectations for both protection and development.

Commissioner Carter said there is the challenge of regulating for unreasonable people.

COMMISSION DISCUSSION

Commissioner Harris said if prairies are not included on the list then someone who owns that property does not have an incentive to preserve it. She would like to see prairies added back in but with some kind of language that anticipates that prairies will be mapped.

She agreed that the regulatory floodway should be taken out of the priority list. She also agreed that the floodway fringe should stay on the list. She appreciated Mr. Booth's comments about having reasonable expectations for preserving lands as well as reasonable rules for developing.

Commissioner Blaser inquired about prairie size.

Ms. Miller said when staff talked to Kansas Biological Survey they said native prairie of any size could be valuable.

Commissioner Blaser agreed with Commissioner Harris's comments on prairies.

Commissioner Hird inquired about the distinction between grassland and prairie.

Ms. Miller said it has to do with the diversity of plant species and to determine a prairie a scientist or biologist has to visit the site.

Mr. Booth said it is very difficult to restore plowed or heavily grazed ground.

Commissioner Hird said generally he was in favor of including native prairies but there needs to be notice to the average person about whether it is or isn't a feature to be protected. He said it takes a long time to develop true native prairies.

Commissioner Blaser said if it is only a city regulation then probably won't need to include prairies.

Commissioner Rasmussen said he was not sure about removing regulatory floodway if floodway is protected by other regulations, it would be requiring protection up to 20% in addition to the floodway. He wanted to avoid the situation where people destroy land before annexation. He felt most of this was not going to apply much in the city. He would like to see a map of the tree areas. He asked if property is annexed into the city then how do they incentivize land owners to not cut down trees or dig up prairie.

Mr. McCullough said the current Code requires the use of Planned Developments for properties with environmentally sensitive lands. He said the development community does not like Planned Developments for a variety of reasons, such as financing or inflexibility. One of the things staff thinks the proposal does right off the bat is open up the process to protect lands through conventional districts. Punitive language has been removed and density bonuses added. If there is continual destruction of sensitive lands then they would need to go into the Code and change it.

Commissioner Rasmussen gave the scenario of 100 acres of woods not annexed yet, which would only leave 80 acres for development once annexed into the city. He wondered how they solve the issue of a land owner cutting it all down so that they could annex all 100 acres for development.

Mr. McCullough said he was not sure this could solve that problem. He felt they needed to approve these amendments and see if they can work because the current Code does not. He said he hoped that land owners value the open process and find value in the sensitive lands for the development project and that the Code does not scare them away from development in the sensitive lands.

Commissioner Harris said her interpretation was that if there are incentives then the people who have that 100 acres can build as much as they want on what's left after preserving the required lands with the conventional code. So the incentive is to not bother with the expense of destruction because they can still build on the rest of the property at a higher density.

Mr. McCullough said the proposed Code may not be perfect but it is better than the existing Code.

Commissioner Blaser said they have spent a lot of time on this issue and felt they should move forward.

Commissioner Carter discussed floodway and felt it should not be included for a bonus because it has to be protected.

Mr. McCullough said the floodway is the only sensitive land that if it exceeds 20% it still has to be protected.

Ms. Miller said last time the density bonus was brought forward it was suggested to remove floodways. She agreed that the bonus should not be given when it has to be protected. She said the list for incentives doesn't have to be the same as protection.

Commissioner Carter said that was what he was suggesting, to remove it from the list of incentives but still have it be included in the 20% minimum.

Commissioner Finkeldei suggested striking floodway and adding the following bolded words to section 20-1101(e)(1):

*A development shall qualify for a density bonus if environmentally sensitive areas noted in this Section, **with the exception of floodways**, are committed for preservation either through designation as a tract, through a conservation or landscape easement, or dedication to the City in addition to the area required in Section 20-1101(d)(3)(a).*

Commissioner Finkeldei said he would not vote on the item since he missed the staff presentation.

Commissioner Harris said she supports what staff recommended for calculating the density.

ACTION TAKEN

Motioned by Commissioner Harris, seconded by Commissioner Singleton, to approve the Text Amendment with two changes; take regulatory floodway out of the list of sensitive features that qualify for a bonus, and to add prairie to the list that qualify for a bonus, and perhaps say that it's scientifically identified prairie.

Commissioner Finkeldei said he interpreted the section as native prairie remnants already being included.

Commissioner Harris said it is in one place but not another.

Commissioner Rasmussen said it could be included if someone met the 20% on the other list of things.

Ms. Miller said that is the current language.

Mr. McCullough said prairie is not required to be protected.

Commissioner Harris said she meant her motion to state that prairies would be in both places.

Commissioner Hird asked if prairies would be required to be preserved as part of the 20% requirement if they exist.

Mr. McCullough said that was correct.

Commissioner Rasmussen asked if they were discussing prairie or native prairie.

Commissioner Harris said native prairie.

Commissioner Hird said if this is passed he wanted City Commission aware that the Planning Commission thinks this is an issue that deserves further discussion and study. He said he wanted to take a step forward yet recognize further study and amendments may be needed once there is a better grasp on the issue.

Mr. McCullough said the discussion has expanded and contracted throughout the whole process.

Commissioner Rasmussen said by including native prairie on the list it is saying it has value. If all someone has is prairie they wouldn't need to save any of it.

Commissioner Liese said he was in favor of incentivizing to not destroy native prairie.

Commissioner Singleton asked if it would be possible to delay this item to Wednesday night in order to get a definition of prairie remnant.

Mr. McCullough read the definition of prairie remnant from a previous version of the text amendment:

Native Prairie Remnants of 1 acre or larger: *Prairie areas that have remained relatively untouched on undeveloped, untilled portions of property and containing prairie remnant of 1 acre or larger. Prairie areas will be determined by the Kansas Biological Survey, or a consulting firm with local expertise in these habitats, as areas that have remained primarily a mixture of native grasses interspersed with native flowering plants. (These areas have not been planted, but are original prairies). A list of approved consulting firms for prairie determination is available in the Planning Office.*

Commissioner Rasmussen said he would vote in favor of the motion.

Commissioner Carter said he was concerned about the cost of a survey to the developer and the unintended consequences of approving something too restrictive.

Commissioner Finkeldei suggested leaving it as an incentive but direct staff to include a way to incentivize from 1% and up.

Commissioner Harris said she would consider amending the motion to reflect what Commissioner Finkeldei suggested. Amended motion: Take regulatory floodway out of the list of sensitive features that qualify for a bonus. Add language that when prairies are considered for incentives for bonuses that any amount would qualify. She suggested staff work on the exact language.

Motion carried 8-0-1, with Commissioner Finkeldei abstaining since he was not present for all of the staff presentation.