



PLANNING COMMISSION MEETING
August 23 & 25, 2010
Meeting Minutes

August 23, 2010 – 6:30 p.m.

Commissioners present: Blaser, Burger, Carter, Dominguez, Finkeldei, Harris, Hird, Liese, Rasmussen, and Singleton

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

MINUTES

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

Minutes were not available to vote on. They will be voted on during the September meeting.

COMMITTEE REPORTS

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

Commissioner Hird said the Agri-Tourism Committee met last week to study the definition and procedural aspects of obtaining consent for agri-tourism activities. The Agri-Tourism Committee meets the first Thursday of the month from 8:30am-10:00am.

COMMUNICATIONS

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

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

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- Ex parte:
Commissioner Burger said she received an email from Mr. John Peterson representing Lowe's inviting her to meet with them to hear more about what they are proposing. She responded briefly stating she looked forward to their presentation this evening and that no additional meeting was necessary.

Commissioner Carter said he had coffee with Mr. Tom Kern to talk about item 1 but that they did not discuss anything that wasn't in the packet. He also had a brief discussion with Mr. Tom Fritzel but again, they did not discuss anything that wasn't in the packet.

Commissioner Blaser said he also received an email from Mr. Peterson and did not respond.

Commissioner Hird said he also received an email from Mr. Peterson and had a phone conversation about the procedure before the Commission. We touched on the Lowe's project briefly.

Commissioner Finkeldei said he also talked to Mr. Peterson about the proposal but mainly about what was in the packet. He had brief conversations with numerous people; Tom Kern, Hank Booth, several people he goes to church with, several people he saw at Milton's. He said he spoke with a variety of people but nothing of substance.

Commissioner Harris said she received a phone call from Mr. Hank Booth and he reiterated his position as stated in the letter sent by the Chamber of Commerce. She also received an email from Mr. Peterson and she responded that she was looking forward to the presentation.

Commissioner Liese said he received a voicemail from Mr. Hank Booth, returned the call and left a voicemail for Mr. Booth, and Mr. Booth left him another voicemail.

Commissioner Rasmussen said he spoke with Mr. Peterson on the phone back in July and told him he was interested in hearing about things such as traffic flow, screening, and how the facility would operate at that location. Also spoke with Ms. Beth Johnson and she reiterated information in the letter the Chamber sent. He spoke with his spouse about Lowe's and talked to City Commissioner Dever.

Commissioner Singleton said she spoke with Mr. Booth briefly on the phone. She has also had several friends who contacted her about Lowe's, but did not discuss anything of substance.

Commissioner Dominguez said he spoke with Mr. Booth briefly on the phone too. He also received a phone call from Mr. Bill Fleming regarding the Lawrence Housing Authority and they briefly discussed Lowe's. He also stated he received the same email from Mr. Peterson as everyone else did.

Commissioner Burger said she read the blogger comments on the Lawrence Journal World website regarding the article about Lowes.

- No abstentions.

Commissioner Blaser said the applicant submitted a letter requesting deferral of items 1 and 2. He allowed a few minutes for all the Commissioners to read it in case they had not had the opportunity to do so yet.

Mr. McCullough said the Planning Commission By-Laws speak to deferral requests made by the applicant of items after the packet posting. He read from the By-Laws: *'such requests will be permitted only in cases in severe hardship or for the purpose of making a significant change to the original application and only with the majority vote of the Commission at the meeting.'* He said their options were to either approve the request by majority vote and move the item to next month or deny the request and then proceed as they normally would.

Commissioner Blaser asked if there were any major changes in the application.

Mr. McCullough said the request was for the opportunity to meet with the Lawrence Association of Neighborhoods. He said he knew of no significant changes to the project.

Commissioner Finkeldei said he was interested in hearing from the applicant and public about this.

Commissioner Dominguez asked what next months agenda looked like.

Mr. McCullough said that depends on what was deferred tonight.

Mr. Greg Musil, Polsinelli Shughart, representing the property owner Mr. Pat Kelly, said he received letters from the Lawrence Association of Neighborhoods and the League of Women Voters expressing their concerns and they would like to have good faith discussions with them. He said he didn't know if he could clarify their concerns. He did not know if they would come back with substantial changes. He said the applicant was not in a hurry to get this project through.

Commissioner Dominguez asked Mr. Musil if he wanted to bring harmony by discussing with the Lawrence Association of Neighborhoods and the League of Women Voters but that there are no significant changes.

Mr. Musil said he did not think there would be wholesale changes in the plan. He said the League of Women Voter concerns were access and platting and that was something that could be dealt with at the next step. He said he didn't know if meeting with the neighborhood groups would solve anything or not.

Commissioner Harris asked if the request was submitted in a timely manner.

Mr. McCullough said yes it was received before 10:00am today.

Commissioner Liese wondered if there was an advantage to looking at these items, Lowes and Creekstone, on the same night since they are in the same area.

Mr. McCullough said from staffs perspective it is not an accident that there are two Comprehensive Plan Amendment requests on the same stretch of corridor on the agenda. He said there was value in looking at these things in the context of each other. He said they would be talking about comprehensive plan policies that go beyond a specific parcel. He said staff needs to get good direction about whether the policies along 6th Street are appropriate.

Commissioner Burger asked if the applicant had reviewed the August 23 letter from the Chamber of Commerce about the same corridor.

Mr. Musil said he has not seen the letter.

Commissioner Carter asked if there was anything specific in the League of Women Voter and Lawrence Association of Neighborhoods letters that he did not anticipate from neighborhoods.

Mr. Musil said he was not quite sure about what the League of Women Voters concerns were. He said the letter talked about access drives, the 34 acres being under different ownership in the future, and the Subdivision Regulations. He said they wanted the platting being done parallel with the rezoning. He said the Lawrence Association of Neighborhoods letter spoke more generally about the Northwest Plan and not stripping out 6th Street.

Commissioner Hird said he could not think of another example like this. He was curious about the publics thoughts about a continuance at this point.

Commissioner Blaser asked the audience how many people were there to speak on the subject.
(About 4-6 people raised their hands)

Commissioner Dominguez asked if deferring this would set a precedence.

Mr. McCullough said they are all unique in terms of finding the hardship that gets to the deferral. He recommended holding the public hearing to identify things the applicant could address.

Commissioner Carter said based on what he has heard it wouldn't be likely that it would be deferred and it sounded like the proposal wouldn't be significantly changed.

Commissioner Hird said he was not in favor of inconveniencing the public by having them come back to another meeting if it was deferred.

Commissioner Rasmussen said they should receive testimony from the public who do not think they can attend the next meeting.

Mr. John Miller recommended going through the public hearing process.

Commissioner Rasmussen said given the emphasis this Commission has put on getting out there and talking with neighbors and stakeholders they should allow the applicant the opportunity to do that even if they go through the public hearing process tonight.

Commissioner Harris said she was in favor of holding the public hearing and then deferring. She said the request does not meet the requirements of the By-Laws.

Commissioner Hird felt they should hear from the applicant and public and then defer to allow the applicant time to meet with neighborhoods.

Commissioner Blaser said that would also be his preference.

Motioned by Commissioner Hird, seconded by Commissioner Harris, not to defer items 1 and 2 as requested by the applicant and proceed with the applicant presentation and open public hearing and defer decision until next month to allow the applicant time to discuss with various neighborhood associations.

Commissioner Finkeldei said he would not vote for a motion and that they should not pre-judge the outcome of the item.

Commissioner Blaser felt that staff should make their presentation tonight.

Commissioner Liese agreed with Commissioner Finkeldei that this should not be pre-judged and not include deferral.

Commissioner Hird amend the motion, seconded by Commissioner Harris, to conduct the hearing and not defer the item.

Commissioner Rasmussen said he would prefer to defer it and would vote against the motion.

Commissioner Dominguez said there was no reason to defer and he did not want to set a precedence.

Amended motion carried 8-2, with Commissioners Finkeldei and Rasmussen voting in opposition.

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ITEM NO. 1 COMPREHENSIVE PLAN AMENDMENT; H2020 CHP 6; NEIGHBORHOOD COMMERCIAL CENTER (DDW)

CPA-5-7-10: Consider amending Horizon 2020 Chapter 6, Commercial Land Use, to include the NW Corner of 6th Street and Queens Road as a potential location for a new Neighborhood Commercial Center.

ITEM NO. 2A UR TO CN2; 3.158 ACRES; NW CORNER W 6TH ST & QUEENS RD (MKM)

Z-5-8-10: Consider a request to rezone approximately 3.158 acres from UR (Urban Reserve) to CN2 (Neighborhood Commercial Center), located at the Northwest corner of W. 6th Street and Queens Road. Submitted by Olsson Associates for Pear Tree Village L.P., property owner of record.

ITEM NO. 2B UR TO CO; 3.113 ACRES; NE CORNER W 6TH ST & STONERIDGE DR (MKM)

Z-5-7-10: Consider a request to rezone approximately 3.113 acres from UR (Urban Reserve) to CO (Office Commercial), located at the Northeast corner of W. 6th Street and Stoneridge Drive. Submitted by Olsson Associates for Pear Tree Village L.P., property owner of record.

ITEM NO. 2C UR TO RM24; 34.527 ACRES; BETWEEN STONERIDGE DR & QUEENS RD (MKM)

Z-5-9-10: Consider a request to rezone approximately 34.527 acres from UR (Urban Reserve) to RM24 (Multi-Dwelling Residential), located north of W. 6th Street between Stoneridge Drive and Queens Road. Submitted by Olsson Associates, for Pear Tree Village L.P., property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented items 1, 2A, 2B, 2C together.

Commissioner Hird asked what total square footage of commercial was being requested.

Ms. Miller said 14,100 square feet.

Commissioner Hird asked Ms. Miller to explain the condition for no more than 50,000 square feet.

Ms. Miller said there is a requirement for the Com Plan. If a rezoning could have more than 50,000 square feet of commercial space then a retail market study would be required.

Commissioner Burger asked if it was a non binding site plan.

Ms Miller said it is a concept plan and they can change the layout slightly, it's just their intention, not finalized.

APPLICANT PRESENTATION

Mr. Greg Musil, Polsinelli Shughart, on behalf of the property owner Mr. Pat Kelly. (he displayed a color board) He said the 3 acres of commercial does not violate the spirit or intent of H2020 or the Northwest Plan. Horizon 2020 does not consider a single use in a nodal corner of a coordinated development. He said staff was comfortable with higher density because the circumstances are different now than they were when the Northwest Plan was created. He said it would not be a high

intense use, just 14,100 square feet of retail that will go on 150,000 square feet of land. He asked the Commission to look at the 3 acres of commercial on its own because it doesn't strip out 6th Street, it is rather a node that serves a residential development that it is anchored to. He asked that neighborhood uses be allowed. He felt the project would be best done if all approved.

Commissioner Dominguez asked if commercial would drive the marketing of the development.

Mr. Musil said that is one part. It is a development that has all the amenities that would typically be found in a modern apartment complex. What will make it different is that they can walk to serve a lot of their needs.

Commissioner Finkeldei asked if Mr. Musil was okay with the staff recommendation of multi-family being limited to 20.

Mr. Musil said yes.

PUBLIC HEARING

Ms. Patricia Manning, discussed walkability for commercial. She didn't understand why residents couldn't walk to the existing CVS and nearby grocery stores.

Mr. Kirk McClure, Lawrence Association of Neighborhoods (LAN), said they wish to reiterate that the Northwest Area Plan protects this part of the city from commercial strip development. This proposal violates that promise. 6th and Wakarusa was originally a CC150, then a CC200, now a CC400 with an asterisk beside it because it's over 400. He said the Northwest Area Plan specifically says no more commercial. He said there is a lot of distrust in the planning process within the community. He said LAN supports the staff recommendation of denial.

Commissioner Finkeldei asked if it would be fruitful to defer the item to allow time for the applicant to have discussions with the Lawrence Association of Neighborhoods.

Mr. McClure said LAN was opposed to retail and had split opinions on the office. He said since the applicant has already said this was their plan so additional time would probably not result in something fruitful.

Commissioner Rasmussen asked if he saw any potential in this concept to have a traditional neighborhood design.

Mr. McClure said no. He felt that decision was made a long time ago.

Commissioner Singleton asked how he would you feel if they moved the retail space to the northern corner.

Mr. McClure said he has heard no discussion of a change in design.

Commissioner Dominguez asked how many people from the area were at the LAN meeting.

Mr. McClure said there were 2 from that area and the usual 14-15 people. He felt that interest was low due to the distrust of the planning process.

Commissioner Dominguez asked if the mile of characteristic was created in 1996.

Mr. McClure said that was not his memory of the dates.

Mr. McCullough said the boundaries of the nodes have been much more recent than the mid 1990's. The 6th & Wakarusa Area Plan was a 2004 adoption and the 6th & SLT was around the same time.

Commissioner Hird asked Mr. McClure to explain the difference of opinion with LAN about the office portion.

Mr. McClure said it was an ongoing debate on what is the definition of commercial.

Commissioner Hird asked if it would make any difference to LAN if the retail was limited. He asked if the size of proposed retail matter.

Mr. McClure said LAN was aware of the 14,100 square footage when they held discussions.

COMMISSION DISCUSSION

Commissioner Finkeldei felt they should move ahead.

Commissioner Carter agreed with Commissioner Finkeldei.

Mr. Musil said he spoke with Mr. McClure and his position was clear. The Commission hearing the item tonight would probably save everybody time.

APPLICANT CLOSING COMMENTS

Mr. Musil said nobody said this kind of development was considered in the Northwest Plan.

COMMISSION DISCUSSION continued

Commissioner Finkeldei asked if they could deny the Comprehensive Plan Amendment and pass the rezoning.

Mr. McCullough said the Comprehensive Plan is a policy guide in the state of Kansas. He said it isn't required but good policy and practice.

Commissioner Dominguez asked if the rezoning for retail is passed could they ensure that it is tied to building of the residential.

Mr. McCullough said that would be a condition placed on the rezoning. He said it is not a condition he was familiar with so he would have to think about.

Commissioner Dominguez said Mr. Musil said that nobody thought about this type of development being there.

Mr. McClure said there was not supposed to be any retail development there.

Commissioner Carter wondered about precedence.

Mr. John Miller said each circumstance was unique and the decision would be based on the specific rezoning. The Comprehensive Plan would be a city wide change and would be addressed throughout the city. Otherwise each rezoning would be considered a unique situation.

Mr. McCullough agreed with Mr. Miller.

Commissioner Blaser asked if they do not approve the Comprehensive Plan Amendment what would be the next step for the applicant and what could the applicant do if rezonings are approved.

Mr. McCullough said Planning Commission would have a Comprehensive Plan that would not support rezoning. Rezonings do not have to comply with Comprehensive Plan. They would end up with a Comprehensive Plan that does not support the commercial rezoning.

Commissioner Blaser asked if it would limit it to this intersection, not any other place in the city.

Mr. McCullough said that was correct, just rezoning this property.

Commissioner Harris asked for clarification that item 1 was to change the Comprehensive Plan to identify that location for commercial development, not city wide ramifications.

Mr. McCullough said that was correct.

Commissioner Harris asked for an example of another commercial building in town that would be equivalent in size.

Mr. McCullough said CVS or Walgreens pharmacy.

Commissioner Dominguez said it is 1 mile to go to CVS and he wondered if that was really considered walkability.

Mr. McCullough said it was based on a sort of suburban based auto oriented development pattern that maintained some walkability surrounding the immediate node. Staff does not consider it walkable in terms of traditional neighborhood design. It is the development pattern that was chosen for western expansion of Lawrence and it does become difficult to mix once committed to a certain development pattern.

Commissioner Dominguez inquired about development on the other side of Mercato.

Mr. McCullough said the fate of that parcel is unknown right.

Commissioner Rasmussen said that Mr. McCullough stated the Comprehensive Plan clearly sets forth where commercial development was supposed to take place but the Comprehensive Plan are guidelines, not firm and hard. He asked for clarification.

Mr. McCullough said it is a guide. A rezoning request does not have to comply with the Comprehensive Plan. Different elements of Comprehensive Plan are more recent than others so the concepts of nodal development is a relatively newer concept. It should be flexible enough for us to view departures from Comprehensive Plan, whether those are slight or large.

Commissioner Rasmussen inquired about when they do something that is not in conformance with the Comprehensive Plan.

Mr. McCullough said Comprehensive Plan policies can conflict amongst themselves. When we do that we are left to weight the issues and policies to see which one holds a higher public interest. The Northwest Area Plan holds a 15 unit per acre density for multi-family. Staff believes a 20 unit per acre does not specifically comply with the Northwest Area Plan but isn't doing harm to public policy.

Commissioner Rasmussen inquired about the staff report language that says *'Staff agrees that development policy is shifting towards Traditional Neighborhood Design (TND) that creates neighborhoods that are compact, walkable, transit-oriented, and that provide more mixed land uses. However, these policies are best addressed by development that provides all of the elements of a traditional neighborhood or mixed use district. Such developments integrate residential uses with non-residential uses such as commercial, office, civic, educational, and recreational.'*

Mr. McCullough said there can be elements of most of those. Staff does not think this is commercial neighborhood design.

Commissioner Carter wanted to address Mr. McClure's comments about neighborhoods not trusting the planning process. He said it is not a perfect process but it is important for people to participate. He felt the Comprehensive Plan was just as firm as their resolve to stick to it. One of the main goals of the Comprehensive Plan was to avoid commercial strip. He did believe this would be setting a precedence and could result in future requests and possibly lawsuits.

Commissioner Hird asked if CN zoning allows for a Kwik Trip.

Mr. McCullough said he would need a few minutes to look that up.

Commissioner Hird asked if conditional zoning could be used.

Mr. McCullough said yes.

Commissioner Harris agreed with Commissioner Carter and had nothing to add.

Commissioner Liese also agreed with Commissioner Carter.

Commissioner Dominguez said for all intensive purposes that area was meant for development.

Commissioner Singleton said she liked the plan for a variety of reasons. She felt the reliance on vehicles was decreasing. She felt they needed communities and neighborhoods to use pedestrian traffic. She said it is a completely comprehensive neighborhood that is supposed to keep people within the neighborhood and decrease traffic. When she looks at that area she thinks it is a good fit for that strip on 6th Street. She liked the fact that to get to the retail space and commercial space the access is not off of 6th Street.

Commissioner Carter said this store isn't going to survive off the development, they would also want business off of 6th Street.

Commissioner Burger said as far as a traditional neighborhood she did not feel it had gone far enough. She felt it was a good start and improvement on what was done previously based on what people have said. She agreed with Commissioner Carter's comments.

Commissioner Rasmussen said he leans more toward Commissioner Singleton's opinions. He said he does not see this creating strip malls along 6th Street. He said he would be willing to support items 2A, 2B, 2C. He did not think they needed to go as far on item 1 to change the entire Comprehensive Plan to say this parcel is a neighborhood commercial center.

Commissioner Finkeldei said when they saw this previously it had CN2 along the entire front. At that time he did not support CN2 and still does not this evening. In July 2008 Walgreens on 23rd Street came before the Commission and he supported it. He said he would not vote for this. One major difference is that when they voted for Walgreens they voted for conditions and limited it to a neighborhood pharmacy with specific size and design. This is CN2 and could be a pharmacy but it wouldn't be limited to that. He said the second difference to an extent goes to Mr. McClure's point of there being a major difference between this area and the 23rd Street corridor. This strip of 6th Street still has a lot of building out to do. The risk on 6th Street being strip is higher with the amount of open and unzoned space. He said he would not support the CN2 rezoning. He might be able to support this plan knowing it would be a pharmacy. I thought they could support CO. He said he would not support the Comprehensive Plan Amendment and CN2 rezoning but would support the other two rezonings.

Commissioner Liese said he was concerned about Mr. McClure's comments about distrust in the planning process and he would like to hear more in the future. He said the two retail properties may be more for the purposes of marketing a really good residential area. He said he would be very reluctant to mess with the Comprehensive Plan just so an apartment complex can be more marketable.

Commissioner Hird asked Mr. McCullough if he had an answer to his earlier question about CN2.

Mr. McCullough said CN1 and CN2 are neighborhood compatible districts. CN2 introduces more of the auto related uses, for example drive-thru restaurants are not permitted in CN1 but are permitted with Special Use Permits in CN2. He said it was the same with gas and fuel sales.

Commissioner Hird asked if the applicant wanted to put something more auto intensive could the Planning Commission pass on that.

Mr. McCullough said yes.

Commissioner Hird did not feel this was traditional neighborhood design but that it was a step in that direction. He was concerned if retail was allowed in this portion then what other uses would be allowed other than what is depicted here. He said everyone was concerned about 6th Street being stripped out. He thought they should be consistent with Horizon 2020 and stay true to their values on nodal development. He said given the size and nature of what they are suggesting, if developed consistent with that plan he would not have a problem with it. He felt they should consider using their tool of conditional zoning and require the access to the retail spot be only through the development, limit the retail to 14,100 square feet, and limit the retail use to drug store or other personal convenience services. He felt they could end up with something that could benefit the residents of the area. He expressed concerns about screening and felt it was critical. He felt they should intensify the buffer between 6th Street and any use there. He was not interested in attracting a convenience store/gas station, although he did not think that was what the applicant was proposing. He felt they should allow something reasonable for residents to walk to. He said he would support with conditions. He did not think they needed an amendment to Horizon 2020 and was not substantial enough to do that.

Mr. Musil said they would be interested in doing conditional zoning.

Commissioner Blaser did not feel they needed to change Horizon 2020. He said he would not support item 1. He said strip malls were a thing of the 1970's and created blight. He said without the retail it would still be walkable.

Commissioner Harris said she could not support commercial development on the corner of 6th Street.

ACTION TAKEN on Item 1

Motioned by Commissioner Harris, seconded by Commissioner Liese, to deny the Comprehensive Plan Amendment (CPA-5-7-10) to *Horizon 2020* to amend Chapter 6 to include the northwest corner (approximately 3 acres) of W. 6th Street and Queens Road as a potential location for a new Neighborhood Commercial Center and recommend forwarding to the Lawrence City Commission with a recommendation for denial.

Commissioner Singleton said she would prefer to defer to allow the applicant time to change instead of voting to deny.

Commissioner Hird said to his understanding they could deny the Comprehensive Plan Amendment and still approve the rezoning of residential and office portions and then defer the CN2 zoning.

Mr. McCullough said that was an option.

Commissioner Hird said he would support the motion to deny the Comprehensive Plan Amendment.

Commissioner Harris said the intent of the motion was to deny the request for having that be a commercial center at that location. The staff report supports denial based on the Comprehensive Plan not recommending strip development on 6th Street.

Commissioner Finkeldei agreed. He said he was going to vote in favor of the motion because he did not think Horizon 2020 should be amended. He said he would be in favor of deferring item 2A.

Commissioner Singleton said if they defer item 2A there should be as many options to the applicant as possible.

Commissioner Hird said by supporting the motion his intent was that if Horizon 2020 was amended and designated this as a commercial center they would be opening the door to a variety of uses.

Motion carried 9-1, with Commissioner Singleton voting in opposition.

ACTION TAKEN on Item 2A

Motioned by Commissioner Rasmussen, seconded by Commissioner Dominguez, to defer the rezoning (Z-5-8-10) of 3.158 acres from UR (Urban Reserve) to CN2 (Neighborhood Shopping Center) as requested by the applicant.

Commissioner Blaser asked if that was a one month deferral.

Mr. McCullough said they will work with the applicant. He said it would help if the motion provided direction of what should be worked on.

Commissioner Singleton said she thought what Commissioner Hird proposed earlier was what they intended.

Commissioner Hird repeated what he said earlier: require the access to the retail spot be only through the development, limit the retail to 14,100 square feet, limit the retail use to drug store or

other personal convenience services, and be a requirement to build out the residential concurrently with the retail.

Commissioner Carter said even with all those conditions, he would not be supportive of that because it would be opening a door. He was not sure a compromise served the community well.

Commissioner Liese agreed with Commissioner Carter.

Commissioner Blaser said he would feel better if they could move it somewhere other than 6th Street.

Commissioner Rasmussen said they should also put screening along 6th Street on the list.

Motion carried 8-2 to defer with Commissioners Burger and Harris voting in opposition.

ACTION TAKEN on Item 2B

Motioned by Commissioner Rasmussen, seconded by Commissioner Hird, to approve the rezoning request (Z-5-7-10) for approximately 3.113 acres from UR (Urban Reserve) to CO (Office Commercial), located at the northeast corner of the intersection of W 6th Street and Stoneridge Drive, and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 10-0.

ACTION TAKEN on Item 2C

Motioned by Commissioner Rasmussen, seconded by Commissioner Hird, to approve the rezoning request (Z-5-9-10) for 34.527 acres from UR (Urban Reserve) to RM24 (Multi-Dwelling Residential) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report and with the following condition:

1. The net density shall not exceed 20 dwelling units per acre.

Unanimously approved 10-0.

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ITEM NO. 3 COMPREHENSIVE PLAN AMENDMENT; H2020; 6TH & WAKARUSA AREA PLAN (AAM)

CPA-5-6-10: Consider Comprehensive Plan Amendment to Horizon 2020, including the 6th and Wakarusa Area Plan, to change the designated land use from residential/office to commercial for a portion of the Bauer Farm Development located along 6th Street between Folks Road and Champion Lane.

STAFF PRESENTATION

Ms. Amy Miller presented the item.

Commissioner Rasmussen asked what her point was by saying it would be unlikely that a home improvement store would be built in Mercato.

Ms. Miller said because of the close proximity she was not sure that three large home improvements could be supported in Lawrence.

Commissioner Carter inquired about the user.

Ms. Miller said a specific user was not identified, but the category was home improvement.

APPLICANT PRESENTATION

Mr. John Peterson, Polsinelli Shughart, attorney representing Lowe's, displayed plans on the overhead and reviewed them. He discussed the issue of leakage, where residents of Lawrence drive to Topeka or Kansas City to shop at Lowes. He stated this location was the only one that Lowe's would be interested in. He said he did not understand the vacancy rates because the store would not be vacant.

Mr. Tim Herndon, Landplan Engineering, said the existing infrastructure was in place. He said they would not be promoting leapfrog development.

Commissioner Harris said Mr. Peterson mentioned he was confident he would get approval from KDOT to get access to 6th Street.

Mr. Peterson said based on preliminary discussions, he was confident they could gain access.

Commissioner Harris asked if he had met with any of the neighbors or neighborhood associations.

Mr. Peterson said he met with a few neighbors but not the neighborhood association.

Commissioner Dominguez inquired about the percentage of what the draw to the area would be.

Mr. Peterson said they have looked at other stores but that it was hard to guess.

Commissioner Liese inquired about 'Horizon 2020 versus Lowes 2011' and why this was the only location Lowe's would locate to, and not the Mercato location.

Mr. Peterson said he said some would suggest that this has to be Horizon 2020 versus Lowe's 2011 and it's a fight to the death. He said he does not believe that but it is the perception. He said that Lowe's would only locate in Bauer Farm, not Mercato.

Commissioner Hird asked if this meant that the concept of new urbanism was dead at Bauer Farm.

Mr. Peterson said he did not think so.

Commissioner Hird said Mr. Peterson mentioned leakage. He said Lowe's was a very high quality store and he was excited. He said his wife drives to Topeka to Lowe's so if she drives there she would drive to Mercato.

Mr. Peterson said on the percentage of leakage, it is a factor that is not going to drive the viability of a store. He said it gets down to where someone is in terms of outboard/inboard, in terms of current development, and in terms of shopping in their own community. He said leakage was incremental development as roof tops are built.

Commissioner Dominguez asked Mr. Peterson if he was saying that Lowe's does not go out to new sites without other stores around.

Mr. Peterson said it is a combination of established commercial area and rooftops in close proximity.

Commissioner Liese said his home was in Lecompton and his business was in North Lawrence. He said he was not convinced with the argument that 'studies have been done' about Lowe's not working in Mercato.

Mr. Peterson said Lowe's would not develop on the Mercato site.

Commissioner Harris asked if he said Lowe's could possibly locate there but not for 5-10 years.

Mr. Peterson said as they look at the picture today that was his estimate.

PUBLIC HEARING

Mr. Jonathan Becker, Briarwood Community Association, was opposed to Lowe's at that location. He said it was contrary to Horizon 2020 and was too big and would lose the buffer to the neighborhood. He expressed traffic and safety concerns such as 18 wheelers turning at Overland and Folks. He said it was not compatible with infill.

Commissioner Dominguez asked how many auto accidents there have been.

Mr. Becker said 2 accidents in 10 years.

Commissioner Dominguez asked what type of infill he wanted.

Mr. Becker said they were happy with the previous proposal of new urbanism. He said Champion lane should be the dividing line of commercial development.

Commissioner Dominguez asked how many members are in the neighborhood association.

Mr. Becker said 49.

Commissioner Hird asked Mr. Becker to respond to Lowe's traffic numbers.

Mr. Becker said he looked at the numbers and he has seen the traffic studies before. He found the City's traffic counts to be unhinged from reality because they did not take into account the fact that 1,300 cars are at Free State High coming and going throughout the day. He was skeptical of the factual basis of the traffic counts.

Commissioner Hird asked if he had seen the traffic study that Lowe's did.

Mr. Becker said no, but he saw the City's traffic study on Folks Road from January 2010.

Ms. Patricia Manning was concerned about the noise produced by Lowe's that would be heard at Free State High. She was also concerned about increased traffic noise and deliveries being scheduled around the school day and activities.

Mr. Jonathan Perkins, resident of Briarwood, said that Mr. Peterson said there wouldn't be less traffic, he said there would be less traffic between the key periods of when school starts and ends. He said there has been a lot of talk about the impact of Lowe's on Home Depot, but it will also affect other hardware stores such as Westlake Hardware.

Mr. Kirk McClure, Lawrence Association of Neighborhoods, discussed the promises made about the pace of growth and about the economic impact. He said they were promised new urbanism and so far they have a drive-thru Taco Bell and drive-thru CVS, and now they are being asked to swallow a 100,000 square foot home improvement center. He said they were promised no commercial space east of Champion Drive and less intensive commercial use in this development. He said they were also told the node would be 150,000 square feet, then 200,000 square feet, then 400,000 square feet, and now 600,000 square feet. He said it would create a crisis in confidence of the planning process. He said regarding pace of growth, commercial space has outpaced income and property. He felt there was a 1.5 million square foot of retail surplus space in Lawrence. He said Lawrence was at least a decade away from having any capacity to absorb it. He felt Lowe's was coming to Lawrence for predatory retailing. He said there would be no new retail sales tax. He said the buyer pays the sales tax so it would only be as much as spending. He said it would also not create new jobs because retail jobs are a function of the retail spending, not the number of stores. He said property values in the market place would equilibrate and the aggregate value of retail space in the market would be a function of spending, not the number of stores.

Ms. Mary Doveton, Executive Director of Lawrence Community Theatre, said they had no objection to being next door to Lowe's.

Mr. Charlie Crabtree said he has lived for 40 years within 2 blocks of 6th Street near Kasold. He expressed concern about increased traffic. He felt this would set a second precedence, with Walmart being the first. He felt that the traffic on 6th Street has increased tremendously, especially in the past 3 years since Walmart was built there. He wondered how many more stop lights would be installed in that area. He thought Lowe's needed to be built on 10th Street or South Iowa.

Mr. Rick Renfro, owner of Johnny's Tavern and Marisco's, said he loves getting new development in his backyard. He was in support of Lowe's.

Mr. Travis Hicks supported the proposal and thought it was a good use of property. He felt it created jobs for Lawrence and a tax base of commercial property as opposed to a residential property.

Mr. Bob Dannevik said he has lived in the area for 17 years and would really like to see a Lowe's in the area.

Mr. Dick Meininger, lives in Westwood, and moved from Topeka to that part of Lawrence based on the mixed use Bauer Farm proposal. He said about 20% of the vehicles he has seen at the Lowe's in Topeka are contractor trucks with trailers. He said the problem with the entry from the west, with the roundabout, would be torn apart quickly by the contractor trailer trucks. He supported Lowe's but was not sure that this was the right location for it.

Ms. Paula Dupigny, lives in Briarwood, said she preferred Lowe's over other choices but felt that it was a quality of life issue as opposed to a financial issue.

Ms. Beth Johnson, Lawrence Chamber of Commerce, said adding jobs and a tax base was a top goal of City Commission. In order to add to that tax base and increase jobs there needs to be projects. She said this project adds to the tax base, both in property and sales tax. She said this project also gives the ability to capture some of those consumer dollars that currently end up in other communities.

Commissioner Carter said when she talked about new sales and property taxes, it is not incremental unless it's additional sales to what would be elsewhere.

Ms. Johnson said there would probably be some that is not leakage. She said Lawrence does have the rooftops to support another home improvement store.

Mr. Glen Westerveldt said they needed another lumber yard in town. He said he shops at Lowe's out of town and he would rather support one in town. He said residential development was tough right now so it will be tough to develop that site for residential. He thanked Planning Commission for their time.

Mr. Hank Booth, Chamber of Commerce, said there is a very different economic climate for the development of the western edge of Lawrence than expected 5-6 years ago. He did not believe that Lawrence would see the kind of growth over the next few years as seen in the past 10 years. He said there was opportunity for infill.

Commissioner Hird asked Mr. Booth to comment on Mr. McClure's statement about promises being made for that area.

Mr. Booth said he appreciated professor McClure's statements, but those who go to his classes, unless they continue to work within the college, will have to go out and work in the world of business, and in order to do that they will have to make a profit and make chances, create jobs, and create a place for people to shop. They aren't teaching it, they are doing it.

Commissioner Liese asked Mr. Booth to comment on Mr. Peterson's statement that Lowe's would go in no other location.

Mr. Booth hoped that if this site was not approved by City Commission that Lowe's would continue to look at other possible sites.

Commissioner Liese said that he and Mr. Booth agreed that they both want Lowe's and would be disappointed if Lowe's walked away if suggested they be somewhere else in Lawrence.

Mr. Booth said he agreed.

Mr. Bill Fleming said he has been working on Bauer Farm for years and that when Lowe's first came to town they said they were only looking at this location. He felt Lowe's was a great opportunity for the community. He felt they needed to find retailers that will bring shoppers to Lawrence.

APPLICANT CLOSING COMMENTS

Mr. Peterson said Lowe's wants to be at this location and this is the only location they will look at. He said Lowe's would only build 25 stores next year and senior management has approved Lawrence as one of those. He said they would work on issues of road alignment and buffers to make a high quality project.

COMMISSION DISCUSSION

Commissioner Dominguez said his biggest reason for supporting were the financial benefits. Lawrence needs the tax revenue. He did not think Horizon 2020 was the rule of the law, it was just a guideline. He did not see this as predatory just good business and economics.

Commissioner Harris said she supported staff and their opinion about it. She felt this proposal would take away residences from the area that would support stores and schools. She said it was mentioned that human behavior should shape what is done in an area but planning aims to shape human behavior with a concept about an environment. She said the planning for that area is for nodal development with a lot of space that's not developed with commercial in between. She said there were earlier comments about whether Horizon 2020 was relevant or not. She said staff thinks it is relevant and so does she. She said Home Depot went into an area that didn't have much residential development. People do drive long distances to get there and they could to Lowe's as well. She said the issue for Lowe's seems to be the cost of development. If they move out to some place like Mercato it would cost more to develop than Bauer Farm and it's reasonable for them to consider that. She said she was not sure this was the time to have another large store in the area and did not want to deviate from the nodal plan for the area.

Commissioner Singleton was concerned about promises made to homeowners in the area and felt it was important to be consistent. She did not want that gateway to end up looking like the southern edge of Lawrence. She did not see Lowe's fitting into that area of town. She did not support the Comprehensive Plan Amendment.

Commissioner Carter said he did not see this as strip development. He said the 6th & Wakarusa plan was more specific than the Northwest plan. He said things will change again through economic cycles. He said the nodal plan is sound and is the right plan for the area. This proposal would triple the 50,000 square foot maximum footprint that was previously conditioned and would greatly alter the look, feel, and operation of the existing development in that area. He said he wanted Lowe's in Lawrence but in a place that is in the community's best interest and Lowe's best interest. He said he would support staff's finding.

Commissioner Hird said when he read the staff report he had a hard time bringing himself to support the request. He was concerned that Bauer Farm would remain empty and this could be an opportunity for infill. He said the new urbanism concept was dead there and it was a shame. He wished it had worked but unfortunately the economy affected it. He would like to have the economic development of Lowe's but was concerned about having it adjacent to the high school and the traffic issues it could create in that location. He thought it would create a nightmare situation in terms of the traffic pressure in the area. He did not think he could support it at this location. He hoped Lowe's would not consider Planning Commission the last stop if this was voted down because City Commission was the governing body. He said reluctantly he could not support Lowe's at this location and he hoped they could find another location.

Commissioner Finkeldei said he does not like taking up Comprehensive Plan Amendments without the rezoning requests. He said the golden factors talk about conformance with the Comprehensive Plan. To vote on that issue alone does not give the complete picture of what should be considered. He said he could vote in support of amending Horizon 2020 but could not vote to change the 6th and Wakarusa Plan and the commitment he voted on to limit it to 40,000 square feet in Bauer Farm.

Commissioner Liese said he was concerned about traffic issues and promises made to the area about how it would be developed. He felt that Lowe's was being inflexible. He could not support the Comprehensive Plan Amendment. He hoped Lowe's would continue looking for a different site in Lawrence.

Commissioner Blaser expressed concerns about promises made to the area and did not feel it was the right location for Lowe's for the many reasons stated by others. He said he could not support this huge change. He felt the tax increases would be short term and eventually even out.

ACTION TAKEN

Motioned by Commissioner Harris, seconded by Commissioner Liese, to deny the comprehensive plan amendment, CPA-5-6-10, to *Horizon 2020*, including the 6th and Wakarusa Area Plan, to change the designated land use from residential/office to commercial for a portion of the Bauer Farm Development located along 6th Street between Folks Road and Champion Lane and forward this comprehensive plan amendment to the Lawrence City Commission with a recommendation of denial.

Motion carried 8-2, with Commissioners Dominguez and Rasmussen voting in opposition.

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**ITEM NO. 4 COMPREHENSIVE PLAN AMENDMENT; H2020; CHP 16; ENVIRONMENT
(AAM/MKM)**

CPA-2008-7: Consider adoption of the Comprehensive Plan Amendment to Horizon 2020 to include Chapter 16 – Environment.

STAFF PRESENTATION

Ms. Amy Miller presented the item.

Commissioner Harris inquired about comments from others who suggesting changes to the plan and whether staff agreed with those suggestions or not.

Ms. A. Miller said she had a lengthy discussion with the League of Women Voters regarding the agricultural soils and the League has included that comment in previous correspondence to the Planning Commission. She said it was the feeling of the Comprehensive Plans Committee that it still should be restricted to the class 1 and 2 soils. She said she has not gone through the rest of the comments point by point. She said some of the comments were redundant and had been submitted with previous correspondence.

Commissioner Harris inquired about the agricultural and related development comment.

Ms. A. Miller said that it would greatly change and limit the intent of that strategy.

Commissioner Harris asked staff to comment on the letter from Ms. Joyce Wolf.

Ms. A. Miller said the Comprehensive Plans Committee changed their mind twice on the term groundwater and went back to the term subsurface water. She said the Committee had information from the Kansas Biological Survey and also discussed a couple other references during meetings and went back to the term subsurface water. She said as far as the other comments, adding timber to resource management was a conscience decision by the Committee.

Commissioner Harris asked for staff's comments on Ms. Wolf's recommendation of adding the following sentence at the end of the water quality paragraph:

a. Minimizing soil erosion helps protect water supply reservoirs from premature siltation, thereby protecting water quantity as well.

Ms. A. Miller said she did not necessarily see a problem with adding that sentence.

Commissioner Harris asked for staff's thoughts on Ms. Wolf's comment about adding mercury to the list of pollutants sometimes present in the air.

Ms. Mary Miller said that could be looked into. She said staff took the information from the Environmental Protection Agency. She said staff could research it.

Commissioner Rasmussen asked if Policy 2.7(a) '*The protection of High Quality Agricultural Land ~~should~~ shall be used as a key assumption in the sector planning process.*' would mean it gives high quality agricultural land a priority over other considerations.

Ms. Miller said it adds it as one of the assumptions.

Commissioner Finkeldei asked if Chapter 7 says the importance of economic development shall be used as a key assumption in sector planning or if this is a unique provision.

Mr. McCullough said no, he did not know that it was listed anywhere else. He said this was a new chapter and new policy for consideration. He said the consideration was the protection of the land shall be used as a key assumption.

Ms. A. Miller said Chapter 14 Specific Plans was added after Chapter 7 was revised.

PUBLIC HEARING

Ms. Barbara Clark said the only thing that might possibly be an addition was to add a quantitative mechanism and take inventory to keep track of diminishing class 1 and 2 soils in Douglas County.

Ms. Beth Johnson, Chamber of Commerce, felt that economic development should be considered in other chapters, not just Chapter 7.

COMMISSION DISCUSSION

Commissioner Hird said he met with Ms. Clark to talk about conservation/preservation of high quality soils. He referred to Policy 2.7 where the phrase '*as a key assumption in the sector planning process*' is used. He inquired about the meaning of 'key assumption' and if that meant it was more important than others.

Mr. McCullough said it is a key assumption but one of many to find ways to protect and preserve that land and use it for its quality.

Commissioner Hird thought it was odd to use the phrase for this policy but not others.

Mr. McCullough said it was probably relevant to what was being done with the Northeast Sector Plan. He said it hasn't historically been a strongly worded assumption to protect high quality agricultural land.

Commissioner Hird felt it pits one valid environmental issue against others.

Commissioner Rasmussen suggested striking the words '*used as a key assumption*' and replaced with the word '*considered*':

Policy 2.7(a) '*The protection of High Quality Agricultural Land ~~should~~ shall be **considered** ~~used as a key assumption~~ in the sector planning process.*'

Commissioner Hird said he would agree with the language change suggested by Commissioner Rasmussen.

Commissioner Harris said the word '*consider*' had a different spirit.

Mr. McCullough said there was a great deal of discussion with the sub-committee about the degree of importance to give high quality ag-land on several occasions.

Commissioner Rasmussen disagreed that the committee as a whole thought that it should have a priority. He stated that the items the committee was split on would be brought to the full Planning Commission.

Commissioner Liese said it would make more sense for it to say '*...High Quality Agricultural Land should or shall be protected in the sector planning process.*'

Commissioner Hird said he would have a hard time with that because it is a directive with no options.

Commissioner Singleton said the sub-committee looked at every policy to determine if it should be a 'shall' or 'should' statement.

Commissioner Rasmussen felt it was a huge change to Horizon 2020 and there was not agreement with the committee to the 'shall' and 'should' statements. He pointed out that there were 95 mandatory statements in the policies and only 40 voluntary ones. He said there was a cost associated with many of the 'shall' statements. He felt most of the 'shall' statements should be changed to 'should' statements and leave it to the County and City Commission to decide the 'shall' statements.

Commissioner Singleton said she argued pretty hard in the committee about the 'shall' statements because she wanted to send the strongest document as possible to the County and City Commissioners to protect the environment. She felt the policies were important to the community.

Commissioner Dominguez said the argument was not about cost, it was going to be if they believe in the 'shall' and 'should' statements.

Commissioner Singleton said City and County Commissioners will go through each statement.

Commissioner Harris said it was Planning Commissions job to go through the statements. She said when looking at the goals of the chapter if a statement was important she felt it should be a 'shall' statement and if it was optional then she thought it should be 'should' statement.

Commissioner Rasmussen said the committee did not come to consensus.

Commissioner Dominguez suggested sending it back to the committee. He did not think County or City Commission should have to go through all the statements.

Ms. A. Miller said one of the last things the sub-committee did was go through and specifically look at 'should' and 'shall' statements. Any statements the committee could not be agree upon each of the four committee members was polled on. She said a lot of the items only had three votes.

Commissioner Finkeldei said he respects what the committee did but does not necessarily agree with them. He said if it is sent back to the committee then they need to be provided direction.

Commissioner Rasmussen said he thought the statements should be 'shall' statements instead of 'should' statements so that the elected governing bodies could determine which ones were a priority.

Commissioner Harris said she thought a majority of the committee was comfortable with the language.

Mr. McCullough said staff thought they had a process that got to the point of the committee as a whole.

Commissioner Burger asked what the County and City Commission was expecting Planning Commission to provide them.

Mr. McCullough said the governing bodies are used to 'should' and 'shall' statements in chapters.

Commissioner Liese asked Commissioner Rasmussen if he would vote in favor of passing this tonight given he was the dissenting vote on the committee.

Commissioner Rasmussen said probably. He said he was not a dissenting vote on the plan. He thought they should not be using 'shall' statements and instead use the wording that the city and county should consider. He said this was a very strong document and he was proud of the work the committee did. He thought they needed to strongly consider what they were saying. He said there were a lot of dollars and resources being committed in the wording. He said it would affect every development project going forward.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Dominguez, to approve this comprehensive plan amendment adding Chapter 16: Environment to Horizon 2020 and recommend forwarding to the Lawrence City Commission and the Douglas County Board of County Commissioners with the following changes:

- Change to roman numerals for Class I and II soils.
- Include Ms. Joyce Wolf's suggestion on page 16-5 of the document under "Summary of Issues" 1) Water quality: The following sentence should be added at the end of the paragraph: *a. Minimizing soil erosion helps protect water supply reservoirs from premature siltation, thereby protecting water quantity as well.*

Commissioner Hird inquired about page 16-17 Policy 2.2 b.b.1 that says 'shall' and b.b.2 & 3 says 'adopt.'

Ms. A. Miller said the action statements were the same as 'shall' statements.

Commissioner Harris suggested adding two additional changes to the motion; to add Ms. Barbara Clark's comment about tracking soils and to have staff consider adding mercury to the Air Quality section as a pollutant if appropriate.

Commissioner Liese amended the motion, seconded by Commissioner Harris, to approve this comprehensive plan amendment adding Chapter 16: Environment to Horizon 2020 and recommend forwarding to the Lawrence City Commission and the Douglas County Board of County Commissioners with the following four changes:

- Change to roman numerals for Class I and II soils.
- Include Ms. Joyce Wolf's suggestion on page 16-5 of the document under "Summary of Issues" 1) Water quality: The following sentence should be added at the end of the paragraph: *a. Minimizing soil erosion helps protect water supply reservoirs from premature siltation, thereby protecting water quantity as well.*
- Include Ms. Joyce Wolf's suggestion on Policy 2.7 Encourage the protection of High Quality Agricultural Land in Douglas County for current and future agricultural use.
 - d. Inventory Capability Class I and II soils acreage. Track loss of these soils to urbanization
- Consider adding mercury to the Air Quality section as a pollutant, if appropriate.

Motion carried 8-1-1, with Commissioner Finkeldei voting in opposition. Commissioner Carter abstained.

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve and sign Planning Commission Resolution 8-6-10.

Approved 8-1-1, with Commissioner Finkeldei voting in opposition and Commissioner Carter abstaining.

MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

Recess at 1:00am until 6:30pm on August 25, 2010.

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Reconvene August 25, 2010 – 6:30 p.m.

Commissioners present: Blaser, Burger, Carter, Dominguez, Finkeldei, Harris, Hird, Liese, Rasmussen, and Singleton

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

BEGIN PUBLIC HEARING (AUGUST 25, 2010):

COMMUNICATIONS

Mr. Scott McCullough said there were PowerPoint presentations added to the packet.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- No ex parte.
- No abstentions.

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**ITEM NO. 5 PRELIMINARY PLAT; RIVERSIDE BUSINESS PARK; 30.527 ACRES; 2030
PACKER COURT (MKM)**

PP-6-5-10: Consider a Preliminary Plat for Riverside Business Park, a two lot subdivision containing approximately 30.527 acres, located at 2030 Packer Court and variances from Section 20-810(d)(2)(ii) requiring more than one access to the collector/arterial street network and from Section 20-810(d)(4)(i) requiring additional right-of-way for a principal arterial. Submitted by Bartlett and West for Riverside Development, Inc. and Riverside Business Park LLC, property owners of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

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

PUBLIC HEARING ON VARIANCE

No public comment.

ACTION TAKEN

Motioned by Commissioner Hird, seconded by Commissioner Singleton, to approve:

Requested variance from the requirement in Section 20-810(d)(2)(iii) for more than one access point to the collector/arterial street system for more than 25,000 sq ft of nonresidential space subject to the following condition of approval:

1. The following note shall be added to the plat: "The property will be developed in compliance with the requirements of the International Fire Code (IFC) which may include sprinklering of buildings or provision of a fire access based on the size of development proposed."

Requested variance from the requirement in Section 20-810(d)(4)(i) to allow the right-of-way for N Iowa Street to remain at 100 ft in this location. The plat shall be revised to indicate that this variance was approved.

Preliminary Plat of the Riverside Business Park-Addition No 2 and forwarding the plat to the City Commission for acceptance of dedications of easements and rights-of-way subject to the following conditions of approval:

1. Provision of a revised plat with the following changes:
 - a. Show the access restriction graphically and add the following note: "No direct access shall be permitted to N Iowa Street".
 - b. Add the following note: *"The drainage, landscape, and utility easements along the south property line will be maintained as 'greenspace' to serve as a buffer for the residential properties to the south."*
 - c. Show the existing and proposed water main per approval of the City Utility Engineer.

Unanimously approved 10-0.

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**ITEM NO. 6 PRELIMINARY PLAT; HALLMARK ADDITION; 5.252 ACRES; 151
MCDONALD DR (MKM)**

PP-6-6-10: Consider a Preliminary Plat for Hallmark Addition 3rd Plat, a three lot subdivision containing approximately 5.252 acres, located at 151 McDonald Drive and a waiver request from the requirement in Section 20-811 to provide sidewalks along all street frontages. Submitted by Paul Werner Architects for Downtown Equities II, LC, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Commissioner Dominguez asked why the applicant wanted the waiver for the sidewalk.

Ms. Miller said they felt it was not needed because there was no destination on the north side of the street and there was also a large drainage easement.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, said he agreed with most of the staff report but did not really like with conditions 2 and 3. He suggested rewording condition 1i to say something along the lines of '...sidewalks to be constructed with the structures of each lot.' 'Or within a year of filing the Final Plat.' He said it was not about the money, it was about timing. He would prefer to build the sidewalks with the structures on each lot. He said the only thing north of the site is Hallmark and the KTA tollbooths and does not go anywhere. He also stated there is a drainage easement under McDonald Drive.

Commissioner Carter asked if he anticipated all three lots being developed within a year.

Mr. Werner said he would think so and that is his hope.

Commissioner Carter said it sounded reasonable to do the sidewalks as each lot is built. He was concerned that the applicant might be back in year though asking to extend the request due to the economy and not being able to build.

Mr. Werner said he would commit to building the sidewalks within a year or as the property is developed.

Mr. McCullough said the sidewalks are part of the public improvements and it is easiest to think about it in terms of a residential subdivision. He said he was not sure the Planning Commission has the authority tonight to depart from the Code. Staff interprets the Code to require public improvement plans prior to the Final Plat being recording which has financial guarantees that all the public improvements will be made and that there are plans for those public improvements before building permits are issued. He said those are the triggers that staff uses to guarantee the public improvements. Staff can and do work with developments in terms of timing issues, like Mr. Werner was discussing, so staff often allow building to begin before complete improvements are made because the assurance is there that they will be completed. There is also the last trigger of a Certificate of Occupancy.

Commissioner Finkeldei inquired about striking condition 10 all together.

Ms. Miller said typically staff asks sidewalks to be shown on plats and Mr. Werner said he would rather a note that says they would be installed with the Site Plan. Staff then requested a note that says they will be shown and constructed with the public improvement plans.

Mr. McCullough said if it is a matter of timing staff will issue building permits while they are working on the public improvements, so that they can be constructed together, versus completing the street, sidewalks, and utilities and then get a building permit. It can happen concurrently.

Mr. Werner said the sidewalk plans are done anyway so he can turn them in with the other public improvements. He said the sidewalks will just have to be installed by the time the first building is done or they will not get their Certificate of Occupancy.

Commissioner Finkeldei asked Mr. Werner if he was okay with the existing wording of conditions in the staff report.

Mr. Werner said he was okay with the conditions as is.

PUBLIC HEARING ON VARIANCE

No public comment.

ACTION TAKEN

Motioned by Commissioner Harris, seconded by Commissioner Dominguez, to approve:

Forwarding of the waiver from the requirement to provide sidewalks along McDonald Drive to the City Commission with a recommendation for approval subject to the following condition:

1. Execution of an Agreement Not to Protest the Formation of a Benefit District for future installation of sidewalk.

Preliminary Plat of the Hallmark Addition 3rd Plat and forwarding the plat to the City Commission for acceptance of dedications of easements subject to the following conditions:

1. Provision of a revised plat with the following changes:
 - a. Relocation of the waterline within the access/utility easement with a connection at North Iowa Street and Princeton Boulevard.
 - b. Re-labeling of 'access easement' as 'access/utility easement'.
 - c. Provision of the following notes regarding the access easement and the joint use driveway: "*The access easement and joint use driveway will be privately-owned and maintained.*" and "*The access easement is provided for the purpose of establishing onsite multi-modal circulation. The easement shall not be gated and shall remain unobstructed for vehicles, pedestrians and bicycles.*"
 - d. Revision of General Note 8 to indicate that the drainage easement will be privately maintained *unless* the City accepts ownership.
 - e. Show Fire Hydrants located no further than 500 ft apart as required in the International Fire Code.
 - f. Revision of legal description to identify the property as Hallmark Addition 3rd Plat.
 - g. Provision of a note which states that access to McDonald Drive, Princeton Boulevard, and N Iowa Street is restricted as shown on the plat.
 - h. Revision of the sanitary sewer to extend straight to the west across N Iowa Street.
 - i. Revision of General Note 10 to indicate that the 6 ft wide sidewalks will be installed with the public improvements.
2. Submittal of Public Improvement Plans to the Public Works Department for acceptance prior to the recording of the final plat.

3. Provision of certification that the public improvements have been completed or one of the means listed in 20-811(h)(2) for ensuring completion of required public improvements prior to the recording of the final plat.
4. Execution of an Agreement Not to Protest the Formation of a Benefit District for sidewalk, stormsewer or street improvements prior to the recording of the final plat.

Unanimously approved 10-0.

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ITEM NO. 7A PRELIMINARY PLAT; GEORGE SUBDIVISION NO. 4 (NORTHWINDS APARTMENTS); 1.31 ACRES; 200 NORTH MICHIGAN ST (SLD)

PP-6-4-10: Consider a Preliminary Plat for George Subdivision No. 4 (Northwinds Apartments), a one lot residential subdivision containing approximately 1.31 acres, located at 200 North Michigan Street. Submitted by Bartlett & West, Inc., for Northwinds L.L.C., property owner of record.

ITEM NO. 7B RS10 TO RM12; 1.31 ACRES; 200 NORTH MICHIGAN ST (SLD)

Z-6-10-10: Consider a request to rezone approximately 1.31 acres from RS10 (Single-Dwelling Residential) to RM12 (Multi-Dwelling Residential), located at 200 North Michigan Street for Northwind Apartments. Submitted by Bartlett & West for Northwinds L.L.C., property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented items 7A and 7B together.

Commissioner Dominguez wondered how 'cutting sparingly' would be enforced.

Ms. Day said this is a new process but that hopefully there is enough understanding built in of what the expectation is. The area in the Site Plan would show where those activities are. She said she would not expect a lot of activity with the exception of maybe the applicant creating walking trails.

Commissioner Rasmussen inquired about the definition of conservation values.

Ms. Day said it is not a defined term at this time.

Mr. McCullough said staff is looking at a tract on the Plat versus the ability to develop on that in the future. He said language is being used in the Plat to try and show intent as much as possible to give staff the tools to enforce if needed. It is not air tight but enough to show intent. He said this is the first Environmentally Sensitivity Land Site Plan associated with the development project.

Commissioner Hird inquired about trees being cut for authorized purposes. He asked why they should care if it is used for personal use or sold.

Ms. Day said the draft language received from the County was intended for not selling timber or have a commercial market for this product.

Mr. McCullough said so profit isn't a motive to cutting trees.

Commissioner Hird said if a corporation or limited liability company cuts trees they couldn't have a personal use. He said he would rather the timber go to some use rather than waste.

APPLICANT PRESENTATION

Mr. Darron Ammann, Bartlett and West, said the applicant agrees with the conditions in the staff report. He said the owner is an limited liability company and agrees with Commissioner Hird that the language is a little odd when dealing with personal use of the timber.

Commissioner Dominguez asked what he would foresee as limitations on cutting of trees.

Mr. Ammann said the applicant does not want to take out any trees he doesn't have to but there are a few large trees outside of the environmentally sensitive area that will need to come down. He felt that private property owners should have some right to decide what they want to do with the trees but that he was not here to debate the language.

Mr. McCullough said the language was geared toward single-family lots with several acres of timber, not necessarily guided by multi-family development.

Commissioner Hird said Mr. Ammann talked about cutting trees on the non-protected area. He asked if any trees would be cut in the environmentally sensitive area.

Mr. Ammann said the only trees being cut would be in the non-sensitive area.

Commissioner Hird asked for clarification that the limitation of cutting and selling of timber was only for environmentally sensitive areas.

Mr. McCullough said that was correct.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Harris suggested adding the word 'only' in condition 1e1 and striking the following language:

*"Timber. Cutting of trees and woody shrubs may be accomplished **only** to maintain the character of the protected property, to maintain fences, and to prevent invasion of woody plants on the native vegetation.; ~~as long as the same does not adversely affect the conservation values of the protected property.~~ Trees cut for authorized purposes may be utilized for personal use and shall not be sold commercially."*

Commissioner Finkeldei agreed with the changes Commissioner Harris suggested.

Commissioner Rasmussen asked if they also wanted to eliminate the same wording in condition 1e2:
Recreational Use. Property Owner, and its licensees and invitees, may make normal and customary non-commercial recreational uses of the of the Protected Property, such as hiking or unimproved walking trails, ~~as long as the same does not adversely affect the conservation values of the Protected Property.~~

Commissioner Hird agreed with Commissioner Harris that the phrase invites issues and an invitation to lawsuits at some point on other projects. He felt the removal of that phrase in condition 1e1 maintains the intent and gives clear direction. He also felt it was not necessary to have it included in condition 1e2. He suggested removing the last sentence of condition 1e1:

"Timber. Cutting of trees and woody shrubs may be accomplished only to maintain the character of the protected property, to maintain fences, and to prevent invasion of woody plants on the native vegetation.; ~~as long as the same does not adversely affect the conservation values of the protected property. Trees cut for authorized purposes may be utilized for personal use and shall not be sold commercially.~~"

ACTION TAKEN on Item 7A

Motioned by Commissioner Hird, seconded by Commissioner Finkeldei, to approve a Preliminary Plat for George Subdivision No. 4 (Northwinds Apartments) and forwarding it to the City Commission for consideration of acceptance of easements and rights-of-way, subject to the following conditions:

- 1) Provision of a revised Preliminary Plat to show the following details of the Environmentally Sensitive Lands to be protected:
 - a. Label area as Tract A and show boundaries with dimensions,
 - b. Specify that the ownership shall be private,
 - c. Specify that the maintenance responsibility for the tract is that of the property owner,
 - d. List specific protection measures to be implemented during construction such as fencing and signage,
 - e. List specific protection measures to be implemented for long term uses and improvements such as walking trails to include the following specific notes:
 1. Timber. Cutting of trees and woody shrubs may be accomplished **only** to maintain the character of the protected property, to maintain fences, and to prevent invasion of woody plants on the native vegetation; ~~as long as the same does not adversely affect the conservation values of the protected property. Trees cut for authorized purposes may be utilized for personal use and shall not be sold commercially.~~
 2. Recreational Use. Property Owner, and its licensees and invitees, may make normal and customary non-commercial recreational uses of the of the Protected Property, such as hiking or unimproved walking trails, ~~as long as the same does not adversely affect the conservation values of the Protected Property.~~
 3. Fences. Property Owner may construct, repair, replace maintain, improve or remove any additional fencing as deemed necessary to secure the Protected Property, as long as done so in compliance with state and local laws including site planning.
 4. Structures. Structures are prohibited within the sensitive lands area. A structure is defined as: A building or anything constructed that requires permanent location on the ground or attachment to something having a permanent location on the ground, including but not limited to fences, signs, billboards, and Mobile Homes per section 20-1701 of the Development Code. Except, fences may be provided as stated in Note. 3.
- 2) Update note 7 regarding floodplain to reference August 5, 2010 date and include the FEMA panel number.

Commissioner Harris wondered if the Recreational Use language would make it possible for motorized vehicles to be used on the trails.

Mr. McCullough said it would not be addressed in the Land Development Code. He said it may be a larger issue in a rural area versus within the City limits.

Commissioner Harris asked if it would be subject to the noise ordinance.

Mr. McCullough said it would.

Unanimously approved 10-0.

ACTION TAKEN on Item 7B

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve the rezoning request for approximately 1.31 acres from RS10 (Single-Dwelling Residential) District to RM12 (Multi-Dwelling Residential) District, located at 200 N. Michigan Street and forwarding it to the City

Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 10-0.

PC Minutes 8/25/10

ITEM NO. 8 CS & RM12 TO RM12; 3.92 ACRES; 2130 SILICON AVE (DDW)

Z-6-11-10: Consider a request to rezone approximately 3.92 acres from CS (Commercial Strip) and RM12 (Multi-Dwelling Residential) to RM12 (Multi-Dwelling Residential), located at 2130 Silicon Avenue for Crosswinds East. Submitted by Bartlett & West, Inc., for Crosswinds L.L.C., property owner of record.

STAFF PRESENTATION

Mr. Dan Warner presented the item.

APPLICANT PRESENTATION

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

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Carter, to approve the rezoning request for approximately 3.92 acres from CS (Commercial Strip) District & RM12 (Multi-Dwelling Residential) District to RM12 (Multi-Dwelling Residential) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 10-0.

PC Minutes 8/25/10

ITEM NO. 9A RM32 TO MU; .13 ACRES; 502 W 14TH ST (MJL)

Z-11-21-09: Consider a request to rezone approximately .13 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), located at 502 West 14th Street. Submitted by Paul Werner Architects, for Oread Villas, LLC, property owner of record.

ITEM NO. 9B RM32 TO MU; .05 ACRES; 414 W 14TH ST (MJL)

Z-11-22-09: Consider a request to rezone approximately .05 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), located at 414 West 14th Street. Submitted by Paul Werner Architects, for D & D Rentals of Lawrence, LLC, property owner of record.

ITEM NO. 9C RM32 TO MU; .09 ACRES; 1346 OHIO ST (MJL)

Z-11-23-09: Consider a request to rezone approximately .09 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), located at 1346 Ohio Street. Submitted by Paul Werner Architects, for D & D Rentals of Lawrence, LLC, property owner of record.

ITEM NO. 9D RM32 TO MU; .13 ACRES; 1340-1342 OHIO ST (MJL)

Z-11-24-09: Consider a request to rezone approximately .13 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), including establishing a Bar or Lounge use as an automatic Special Use Permit for The Hawk, located at 1340-1342 Ohio Street. Submitted by Paul Werner Architects, for HDD of Lawrence, LLC, property owner of record.

ITEM NO. 9G RM32 TO MU; .13 ACRES; 507 W 14TH ST (MJL)

Z-11-27-09: Consider a request to rezone approximately .13 acres from RM32 (Multi-Dwelling Residential) to MU (Mixed Use), including establishing a Bar or Lounge use as an automatic Special Use Permit for The Wheel, located at 507 West 14th Street. Submitted by Paul Werner Architects, for John C. Wooden, property owner of record.

STAFF PRESENTATION

Ms. Michelle Leininger presented items 9A-9D and 9G together.

Commissioner Harris had questions about using the tool of Mixed Use zoning. She said if it is a tertiary zone it should be the same height and general size of the buildings, secondary is a little larger than that, and primary is larger. In the Code it says to use building form to provide buffers from adjacent uses. She asked why it was being recommended as primary instead of secondary.

Ms. Leininger said there are some larger structures in the area (pointed on map) and it was going up a hill. It would have less impact on adjacent historic areas. The four corners being the size they are the primary development zone would be less of an impact than what you could potentially see redevelop in the area.

Commissioner Harris asked if the primary, even though designated as most intense, would have less impact than secondary.

Ms. Leininger said based on the available lot area. She said currently the density was the same and the height was comparable. She said it boils down to looking at the potential developable area of the

lot and the size of the building that could be built on that lot in relation to the surrounding properties. Those three areas would not have the potential for as large of a building as would the southern area.

Mr. McCullough said part of the application process was an exhibit based on height and it is comparable. Then staff also looked along 14th Street, where secondary was recommended, and there was a half block area that could be a continuous building frontage that would not be compatible. He said the stand alone lots would stand alone and there was no need to impart secondary there because it was comparable height and they will stand by themselves. When staff analyzed the two adjacent properties they did not think there was enough contiguous properties there to warrant breaking them up. Staff feels they are compatible in terms of form and height.

Ms. Leininger said the diagram Mr. McCullough was referring to was part of the application packet.

Commissioner Harris asked what guides the mix of uses.

Ms. Leininger said the descriptions of the development zones do and the Code specifies.

Commissioner Harris said the section on what uses were supposed to go in a Mixed Use area says there is governmental and service. She wondered if the people who own the properties want to have all bars in that area or bars and restaurants and no mix of governmental or services. She wondered who makes that decision.

Ms. Leininger said they would have to go through the Site Plan process and identify the potential uses and that would be when staff would say they need to have a mix of residential and non-residential uses.

Mr. McCullough said the Code requires mixing of uses and pays particular attention to the ground level. In the primary zone it prohibits residential uses but also requires a mix of uses but does not provide a specific ratio.

Commissioner Dominguez inquired about residential on the first floor.

Ms. Leininger said if it is a primary district it cannot have residential on the first floor, it would need to be on second floor and up.

Commissioner Dominguez inquired about the chart that shows eligibility. He wondered about a weighted percentage.

Ms. Leininger said they have to meet the first one and at least one of the next ones. They have to be within ¼ mile of a designated transit route.

Commissioner Dominguez asked if The Wheel and The Hawk would automatically be granted a Special Use Permit with these rezoning.

Ms. Leininger said that was correct.

Commissioner Burger asked if commercial uses would be allowed without a public hearing.

Ms. Leininger said they would have to follow what was permitted in the district and would have to go through a Site Plan process which includes public notification, but that the Site Plan process was not a public hearing process, it's an administrative process.

Commissioner Burger inquired about what the footprint of a 50,000 square foot single-story building would look like.

Mr. McCullough gave the example of Best Buy which was approximately 40,000 square feet.

Commissioner Hird said his understanding was that the 50,000 square foot limit applied to the entire district, not just one building.

Ms. Leininger said that was correct.

Commissioner Hird said if there are multi-story buildings with commercial on the first floor the square footage would be based on the commercial areas on all the buildings and is a first come first serve on how it is filled up. He asked if one building took a bunch of that square footage it wouldn't be there for the other buildings.

Ms. Leininger said potentially. She said there was also the potential to have retail on more than one story.

Commissioner Rasmussen asked what the Mixed Use District was. He asked if it is just these properties that they are considering tonight or all the Mixed Use identified properties in the Draft Oread Plan.

Mr. McCullough said it includes the requested items before them tonight.

Commissioner Rasmussen asked if it would include the rezonings that were deferred.

Mr. McCullough said the primary zones could stand on their own if the others were withdrawn. He said they may have to look at the commercial limit when they look at the deferred lots. He said in staff's opinion the lots being looked at tonight can stand alone as primary Mixed Use District zones.

Commissioner Finkeldei asked if staff would be okay with 50,000 square feet for the items being looked at tonight and then an additional 50,000 square feet for the deferred items.

Mr. McCullough said no, it would be 50,000 square feet for the entire area, including the deferred lots.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, agreed with the staff report. He said this came about to provide protection for The Hawk and The Wheel because they are non-conforming uses and if something happens they cannot rebuild.

Commissioner Finkeldei asked if the 50,000 square feet would apply to all properties.

Mr. Werner said yes, all eight. He said there were no plans to add more bars to the area. He said if they add anything to these properties it would be a Site Plan process.

Commissioner Carter said as far as moving it on there may or may not be an issue with RM15 versus RM32.

Mr. Werner said he did not foresee an issue. He said he would like to see some of the bonuses in primary added to secondary.

PUBLIC HEARING

Ms. Carolyn Crawford, Vice President for Sunset Hills Neighborhood Association, was very scared about a Mixed Use district. She said the Mixed Use District was loose and juicy. She said the neighborhood does not want a gas station, liquor store, or bar. She discussed a memo from Scott Miller from last year that discussed violations of bars. She was concerned about crime from bars. She wanted assurance about what would happen in their neighborhood. She asked them to tighten up the Mixed Use District.

Commissioner Liese asked Ms. Crawford to define the term juicy.

Ms. Crawford said poorly defined.

Mr. Dennis Brown, Lawrence Preservation Alliance, was fine with The Hawk and The Wheel needing to be rezoned to protect their property. He felt the rest of the agenda item was quite large, a change from RM32 to Mixed Use primary development for all of the requested properties. Primary development was the most intense development use in the MU Districts. He said the applicant was being vague about the development plans and pretty much saying nothing was going to happen anytime soon. He felt the neighbors deserved to know. He wondered why change the zoning without more information. He was concerned about the staff report citing "consistency with the Oread Draft Plan." He suggested deferring until the plan is adopted.

Commissioner Carter agreed the Oread Plan needed to be moved forward.

Commissioner Dominguez asked if Mr. Brown understood that other bars would need to come back for a Special Use Permit.

Mr. Brown said he was concerned about the lack of detail in the remainder of the district.

Commissioner Harris asked if these rezoning were approved does it automatically approve Special Use Permits.

Mr. McCullough said that was correct. Certain future uses could be required to get a Special Use Permit and Site Plan.

Mr. John Davis, owns the northeast corner, and he initiated the rezoning. He wants to protect his non-conforming properties. He said they have no intentions or thoughts about redeveloping them whatsoever. He said it would not be a strip of bars because they cannot meet parking requirements.

Commissioner Liese asked if there were any other alternatives to Mixed Use.

Mr. McCullough said not necessarily for the minimum area or to resolve their issue of wanting to legalize the use.

Commissioner Liese inquired about the validity of community concerns versus owner claims that numerous bars cannot happen.

Mr. McCullough said it is possible that there could be an application for a third bar in the area. It would require a Special Use Permit, Site Plan, parking regulations and all the other standards of the district. It could be possible if they did underground parking or a parking variance. He said it would be a high hurdle to get a third bar in that area.

Ms. Carol von Tersch said the letter she submitted for the packet summarized her feelings on the subject. She felt the Oread Plan should be in place first. She felt they should find other ways to protect The Hawk and The Wheel. She requested a deferral.

Commissioner Dominguez asked why it should be deferred.

Ms. von Tersch said it should be deferred because the Draft Oread Plan does not include any other Mixed Use areas in the Oread Neighborhood.

Commissioner Carter asked if there was no other way to protect The Hawk and The Wheel under the current Code.

Mr. McCullough said not in the Code today. He stated for clarification there is one other area in the Oread Neighborhood designated as Mixed Use, it's by the Oread Hotel.

Commissioner Finkeldei asked what the holdup was with the Oread Plan.

Mr. McCullough said after Planning Commission forwarded the Oread Plan to City Commission and a study session was held to introduce the plan. He said there has been movement on it but it has not been placed on an agenda yet.

Commissioner Carter asked if staff had a sense if City Commission would be putting it back on the agenda soon.

Mr. McCullough said he did not have a sense either way.

Ms. Marci Francisco, 1101 Ohio St, said she wanted to make sure there was a plan to protect the neighborhood. She felt it would be better if there were criteria for the Mixed Use District. She summarized the letter she sent. She would rather that other ways to protect The Hawk and The Wheel be explored to protect their non-conforming uses. She was also concerned about the size of the lots with redevelopment. She said if the parcels were not large enough to provide for parking then there would not be underground parking in a very limited lot because there would need to be more circulation space. If the other alternative was parking offsite then obviously the lots aren't large enough. She was concerned about them considering a proposal that could not be used. She said if it is simply protection then there needs to be another way to protect properties that should have protection. She felt there should be restrictions about emptying glass in bins at 3:00am and she would like to see that included in a Special Use Permit.

Commissioner Finkeldei said it sounded like she was saying that the area, as small as it is, could never be created as a Mixed Use District. He asked if she thought it should be bigger in the Oread Plan to allow for bigger lots and redevelopment.

Ms. Francisco said she was saying that they should do something with the non-conforming uses to allow The Hawk and The Wheel to rebuild if something happens. She said they were not talking about developing the whole district, just allowing each of those individual lots to be redeveloped.

Commissioner Finkeldei said they were passing a whole district of Mixed Use.

Ms. Francisco said they are separate lots and cannot go over the lot lines.

Mr. McCullough said it could be replatted, or depending on the setbacks, may be able to build over the lot lines. It would be a minor subdivision to replat into one lot.

Ms. Francisco said they are on opposite sides of the street so they would not be platted into one large lot. She inquired about a sketch of the size of the commercial building with residential above that could be built on 507 W 14th Street, for example.

Commissioner Finkeldei said he was surprised at what she was saying because when they went through the entire Oread Plan, to his knowledge, she always supported 507 W 14th Street being in the plan as Mixed Use and now she was saying she did not want it to be Mixed Use.

Ms. Francisco said her job as a neighbor and property owner was to identify their interests in the Oread Plan and listen to what other people felt would work for them. She thought the property owners should be there to say what possibility they would have for construction in the primary zone.

Commissioner Finkeldei said he thought the Oread Plan was ready to go to City Commission but now she was saying she wanted the plan to change. All along she has supported the plan and now she was saying she wanted the plan to pass but as soon as it passes she would object to what the plan says.

Ms. Francisco said she supports protection for The Hawk and The Wheel. Planning Staff suggested the Mixed Use zoning was what would protect The Hawk and The Wheel. Now that it was before us as a zoning issue there was a situation. She said she sent a note to the Planning Director to ask if it could be developed and she was surprised to hear that it would take underground parking or parking offsite. She said she was assuming that if someone proposed it that they would have some information about how they could actually use this zoning to redevelop their property. She said she was not sure it protected The Hawk and The Wheel in the way they wanted to be protected. If the property burns down now they would have zoning where they could rebuild a commercial use but would still have to meet the requirements. All they can rebuild is what they have.

Commissioner Singleton said The Hawk and The Wheel would be protected under the Special Use Permit but the other locations would have to go through the process.

Ms. Francisco said the protection that was being given to The Hawk and The Wheel was to rebuild what they have, not to redevelop.

Mr. McCullough said if approved, The Hawk and The Wheel would have an automatic Special Use Permit because any bar in the Mixed Use district requires a Special Use Permit. The language states any structure in use existing in the time of rezoning is allowed to exist in a non-conforming way and be rebuilt so any use could be rebuilt. He said parking is one of the driving forces for using it to its highest use and that is going to be a limitation no matter what the zoning is there.

Commissioner Liese inquired about deferring until the Oread Plan was adopted.

Ms. Francisco said they are doing this for protection of the existing structures and they need to understand the limits on redevelopment. She said she states that from the neighborhood point of

view because they do not want the area to expand. They will need additional space beyond the limits of the district to be able to actually develop it as was intended. These are very tight limits for a Mixed Use District.

Commissioner Burger said if the rezonings were passed it could perhaps give City Commission confidence that the Oread Plan might be ready to be approved.

Ms. Francisco said it would give them confidence that these five parcels are ready to approve, not the overall plan.

Ms. Serina Hearn said 93% of the Oread Neighborhood is student/landlord owned/occupied. The Wheel and The Hawk are trying to cooperate with the zoning laws that have been superimposed on the neighborhood. She thought it would be great if there was a little store in the area for people to walk to and buy milk, food items, coffee, etc. She did not feel the Draft Oread Plan was ready and said the Oread Neighborhood was having a meeting to discuss it.

Mr. Kirk McClure, Lawrence Association of Neighborhoods, felt there were too many loose ends to this proposal and should be deferred to tighten up. He said in regard to The Hawk and The Wheel, the bars are seen as institutions and he did not have a problem with them being protected. Procedurally they should not be granted automatic Special Use Permits. He said they were concerned about the Mixed Use details. Form based codes will not protect neighborhoods. He expressed concern about uses allowed that could be nuisances.

Mr. Rob Farha said he would take spot zoning if allowed for The Wheel and The Hawk. He said they worked hours with staff and this was the best avenue. He said whether the plan is or is not in place he would have hired Mr. Werner for this process.

Commissioner Liese asked if there was any downside to deferring this decision.

Mr. Farha said it has been a long process and they have exhausted every avenue.

Ms. Candice Davis said the Draft Oread Plan was worked on for almost two years and was a good plan. She said Ms. Francisco was speaking about tweaking the plan. She said if this was deferred it would put pressure on City Commission to hear the Oread Plan.

Commissioner Hird asked if the plan was adopted as is it provides for Mixed Use in this area. He asked if she would object to Mixed Use in this area.

Ms. Davis said she would support the Oread Plan as is today.

Ms. Beth Reiber said 14th Street has changed over the past year due to change to the KU entrance. She felt that a Mixed Use would create more traffic.

APPLICANT PRESENTATION

Mr. Werner said he would rather not have it deferred. He said there was a positive recommendation from Historic Resources and Planning Staff. He felt the best way to get something in front of City Commission was to move it forward. He said a bar would not be granted by right, it would have to go through the Special Use Permit process and would be a big hurdle.

COMMISSION DISCUSSION

Commissioner Rasmussen said if the rezonings are approved it goes to City Commission for ultimate approval so whether or not the Oread Plan is approved or not is a moot point. If City Commission approves this that is a pretty good indication that they will approve that portion of the Oread Neighborhood Plan. If they don't approve the rezoning then that might be an indication that they have some heartburn over that portion of the plan. Either way he said he did not see that the Oread Neighborhood Plan needs to be completed for this application to move forward. Planning Commission did approve the Draft Oread Neighborhood Plan unanimously and during the discussions we talked about this area potentially having coffee shops, delicatessens, bakeries, or other uses allowed. He said the reason this area was designated as Mixed Use was to provide options in the future. He reminded them that the Mixed Use definition in the Development Code specifically refers to businesses that generate foot traffic. He did not care if someone says that they supported the Oread Plan but not Mixed Use in this area. He would like to see this move forward tonight and would support and follow recommendations from staff.

Commissioner Carter agreed that Mixed Use District has largely been brought up to protect The Hawk and The Wheel but there are other things that could fit in the Mixed Use District, such as a coffee shop. He said there seems to be a separation of urgency of getting the Oread Neighborhood Plan done.

Commissioner Liese said he would like to hear more opinions from the Commission about deferral versus not deferring and the issue about whether there was urgency or not.

Commissioner Hird said the comments he heard this evening were questions whether the right tool was being used to protect The Hawk and The Wheel and that by establishing a Mixed Use District with small practically undevelopable lots, we're inviting in the future for developers to come in and ask for exceptions for parking and other requirements for Site Plan approval. He felt that was based upon an assumption that the intent of the Mixed Use District would be abused and that this would become something it wasn't intended to be. He said he did not want to base a decision on that fear. The failure to move the Oread Plan to City Commission needs to be addressed to City Commission. One way to do that is to pass these rezonings up to them. This will allow City Commission to vote on this item and the Oread Plan together. He said when he voted for the Oread Plan he voted for Mixed Use in this district.

Commissioner Finkeldei said it is an appropriate area for Mixed Use and did not feel this should be deferred. He felt it was a good plan. He reminded the Commissioners about what Mr. Farha said about how this was not put in the Oread Plan just to protect the Hawk and The Wheel, but The Hawk and The Wheel have been asking for over two years how they could be protected. There are other ways; changing the non-conforming use rules or using a CN District, but staff does not really support either of those. He wanted City Commission to put the Oread Neighborhood Plan on the agenda and he agreed the best way to do that was to forward these rezonings on to City Commission.

Commissioner Burger said she liked that it did not just protect The Hawk and The Wheel but also protected the other existing property owners in the area. She thanked staff for looking toward the future. She expressed concern about this potentially allowing a sexually oriented business in the area.

Commissioner Rasmussen inquired about restrictions on sexually oriented businesses that would prohibit it from being in the area.

Mr. McCullough said a Sexually Oriented Media Store is permitted with use standards. (He looked it up in the Development Code) He said there were standards that address the theaters. No sexually oriented business may be located within 1,500 feet of another such business. No business may be located on the same block as property in a Residential Zoning District, Religious Assembly, School, Daycare, etc.

Commissioner Rasmussen said there was the same concern with the Jayhawk Bookstore but it was a false concern because it could not be put there due to it not meeting the criteria. He said the Commission did put some restrictions on the Jayhawk Bookstore rezoning such as excluding light manufacturing and recycling center.

Commissioner Singleton asked if buildings like the ones at 14th & Massachusetts could be built at this location without having to build underground parking.

Mr. McCullough said it was possible and there are options for parking such as shared parking. There may be uses that the Board of Zoning Appeals might grant a variance for. In the Primary zone parking can be reduced by meeting certain bonus requirements.

Commissioner Singleton said Ms. Francisco's comment about this being the wrong tool was interesting.

Mr. McCullough said a recent Text Amendment was created that benefited The Hawk and The Wheel after the Draft Oread Plan was created, so it has been evolving where they could benefit from the Mixed Use District. But it's only been evolving because it is appropriate for Mixed Use in this area.

Commissioner Singleton said the best way to get the Oread Plan in front of the City Commission was to bring up an issue that relates to the Oread Plan and not holding this back. She said she would support the item.

Commissioner Harris said some Mixed Use in that area would be appropriate and would be an amenity to the area. She was concerned about there not being guidelines for how to determine uses allowed. She said she was leaning toward approving the rezonings. If approved she would like to see two conditions added to the Special Use Permits for The Hawk and The Wheel. She would like glass and trash cleared from the exterior of the property, including the public right of way, at the end of each business day. She said she would also welcome some language about emptying trash bins at 3:00am.

Commissioner Burger asked staff to confirm that due to the residential nature of the surrounding area that her concern about sexually oriented businesses was not a concern.

Mr. McCullough said he would look it up in the Development Code.

Commissioner Dominguez said the concerns of the neighbors are valid. He felt they should look at the positives instead of the negatives and felt that Mixed Use would be a good asset to the area.

Mr. McCullough answered Commissioner Burger's question. He said the short answer was yes. He said there is a prohibition for sexually oriented businesses on these blocks because of the residentially zoned property. They would need to be at least 600' from Residential zoned property for the one permitted use of Sexually Oriented Media store that is allowed in the Mixed Use District.

Commissioner Carter wanted to talk about Commissioner Harris' suggested additional conditions to the Special Use Permits. He said the condition of having them clean up the glass sounds good but the challenge is the noise created from cleaning up the glass.

Mr. Farha said from the audience that he sells beer cans, not glass.

Commissioner Liese said he would support moving this forward. He felt the glass issue would be more of a noise ordinance issue.

Commissioner Blaser said he would support moving it forward and felt that the Mixed Use was appropriate for the area.

ACTION TAKEN on Item 9A

Motioned by Commissioner Carter, seconded by Commissioner Finkeldei, to approve the rezoning request Z-11-21-09 for 502 W. 14th Street, from the RM32 (Multi-Dwelling Residential) District to MU (Mixed Use) District as a Primary Development Zone based on the findings presented in the staff report with the following condition and forwarding it to the City Commission with a recommendation for approval:

The entire MU District shall not contain over 50,000 square feet of retail space.

Motion carried 9-1, with Commissioner Harris voting in opposition.

ACTION TAKEN on Item 9B

Motioned by Commissioner Carter, seconded by Commissioner Finkeldei, to approve the rezoning request Z-11-22-09 for 414 W. 14th Street, from the RM32 (Multi-Dwelling Residential) District to MU (Mixed Use) District as a Primary Development Zone based on the findings presented in the staff report with the following condition and forwarding it to the City Commission with a recommendation for approval:

The entire MU District shall not contain over 50,000 square feet of retail space.

Motion carried 9-1, with Commissioner Harris voting in opposition.

ACTION TAKEN on Item 9C

Motioned by Commissioner Carter, seconded by Commissioner Finkeldei, to approve the rezoning request Z-11-23-09 for 1346 Ohio Street, from the RM32 (Multi-Dwelling Residential) District to MU (Mixed Use) District as a Primary Development Zone based on the findings presented in the staff report with the following condition and forwarding it to the City Commission with a recommendation for approval:

The entire MU District shall not contain over 50,000 square feet of retail space.

Motion carried 9-1, with Commissioner Harris voting in opposition.

ACTION TAKEN on Item 9D

Motioned by Commissioner Carter, seconded by Commissioner Finkeldei, to approve the rezoning request Z-11-24-09 for 1340-1342 Ohio Street, including a Special Use Permit for the Bar or Lounge Use, from the RM32 (Multi-Dwelling Residential) District to MU (Mixed Use) District as a Primary Development Zone based on the findings presented in the staff report with the following condition and forwarding it to the City Commission with a recommendation for approval:

The entire MU District shall not contain over 50,000 square feet of retail space.

Motion carried 9-1, with Commissioner Harris voting in opposition.

Commissioner Harris said she was voting against these for lack of guidelines in the MU district.

ACTION TAKEN on Item 9G

Motioned by Commissioner Carter, seconded by Commissioner Finkeldei, to approve the rezoning request Z-11-27-09 for 507 W. 14th Street, including a Special Use Permit for the Bar or Lounge Use, from the RM32 (Multi-Dwelling Residential) District to MU (Mixed Use) District as a Primary Development Zone based on the findings presented in the staff report with the following condition and forwarding it to the City Commission with a recommendation for approval:

The entire MU District shall not contain over 50,000 square feet of retail space.

Motion carried 9-1, with Commissioner Harris voting in opposition.

PC Minutes 8/25/10

**ITEM NO. 10 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE; CHP
20 ARTICLE 6; RM32 DISTRICT (MJL)**

TA-6-8-10: Consider Text Amendments to the City of Lawrence Land Development Code, Chapter 20, Article 6, Section 20-601 to increase the maximum dwelling units per acre limit in the RM32 (Multi-Dwelling Residential) District. *Initiated by City Commission on 7/13/10.*

STAFF PRESENTATION

Ms. Michelle Leininger presented the item.

Commissioner Dominguez asked why the zoning of RM54 was done away with.

Ms. Stogsdill said the Development Code was rewritten to implement Horizon 2020. Horizon 2020 actually defines high density as over 21 or 22 so two districts, RM3 and RMD, were eliminated into the RM32 as a way to get closer to what Horizon 2020 indicated.

APPLICANT PRESENTATION

Mr. Paul Werner, Paul Werner Architects, said what he was really asking with this application was for the density to be looked at in a different way.

PUBLIC HEARING

Mr. Kirk McClure, Lawrence Association of Neighborhoods, expressed concern about unintended consequences. He said there was a market trend away from larger units and towards smaller units because students are richer and prefer to live alone. He said the problem was that with this adjustment we are saying the only controls we have now on the total score is the existing setbacks, height, and massing requirements. He was concerned that if that happens there would be economic pressures for the redevelopment of older properties so they could be changed into the max building possible. He would like to see further analysis done to make sure that adoption of such rule would not have deleterious effects on older properties.

Commissioner Burger asked Mr. McClure if his concern was the demolition of historic properties or just properties in general.

Mr. McClure said the concern was largely with historic properties but that older properties define the fabric of any neighborhood.

Ms. Marci Francisco, 1101 Ohio Street, referred to the letter she submitted to Planning Commission that was included in the packet. She said she was told by City Commission that if they wanted to have a change in zoning they would need to submit that with a petition with a certain percentage of people in the area in support. She said she has talked for 30 years now how the Subdivision Regulations for new developing properties does not fit the Original Townsite Standards. Alley's aren't accommodated or allowed for. There are properties that are developed on narrower and deeper lots and for years couldn't build on an adjoining 50' lot. She felt they should establish a set of setbacks, rules for parking off the alley, what should the backyard be to accommodate that parking, and also have some kind of a yard. The last time this was brought up was when the City was talking about adopting the new zoning ordinance. They talked about it at several sessions and decided it was complicated and decided to allow for it by providing for the opportunity for Overlay Districts. She was concerned that they were talking about this kind of a change without putting any limits or designations for areas.

Mr. Dennis Brown, Lawrence Preservation Alliance, felt there should be a limit on the total number of bedrooms. He felt there needed to be a maximum density. He felt that redevelopment should be used for inappropriate 4-plexes or vacant lot infill but not for the removal of historic homes.

APPLICANT CLOSING COMMENTS

Mr. Werner said that is why they specifically wrote they saw it as an option of removing older apartments. He said a lot of his clients would prefer to build four 2 bedrooms. He said these two buildings were the same. Same size and same number of cars.

Commissioner Carter inquired about the comments about an Overlay District.

Mr. Werner said it was an option with a big time frame.

Commissioner Carter asked his thoughts on the maximum density.

Mr. Werner said he was frustrated about the continued discussions about numbers. He said it would still be 104 bedrooms by swapping out some 1's and 2's for some 3's.

COMMISSION DISCUSSION

Commissioner Dominguez asked if it could be restricted to just infill.

Mr. McCullough said with the current tools the Overlay District is one tool. Use Standards and footnotes could also be used. He said people have different meanings for infill.

Commissioner Burger asked if the Draft Oread Plan identifies historic, but not listed, properties.

Mr. McCullough said no, but there is a process for considering demolition permits for historic structures.

Commissioner Finkeldei said it was something to spend time on and look at. He agreed with Mr. McClure about the unintended consequences. He liked using incentives. He did not think it should be within ¼ mile of campus.

Commissioner Harris agreed with Commissioner Finkeldei about taking a closer look at unintended consequences. She said regarding the options she was mostly in favor of the first one and the last one.

Commissioner Singleton agreed with Commissioners Finkeldei and Harris that it needs to be looked at. She suggested discussing housing, density, and housing direction at a Mid-Month meeting.

Commissioner Rasmussen said the notion of an unrestricted density cap was unsettling. He was in favor of incentives.

Commissioner Carter agreed with Commissioner Rasmussen. He said as far as maximum density he would be fine with coming up with a number of what that actually was.

NO ACTION TAKEN

PC Minutes 8/25/10

ITEM NO. 11 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT; 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.* (PC Item 12; approved 6-3 on 5/26/10)

STAFF PRESENTATION

Mr. Scott McCullough presented the item.

Commissioner Dominguez inquired about evidence that shows that investment has taken place in properties.

Mr. McCullough said there is investment any time uses change over.

PUBLIC HEARING

Mr. Kirk McClure, Lawrence Association of Neighborhoods (LAN), supports the Text Amendment. He said numerous LAN members spoke about enforcement issues that are still a problem. He expressed concern about those who are openly running congregate facilities that are not in compliance. He felt the City would have to confront that issue at some point. He felt this Text Amendment should be send forward to City Commission.

Ms. Candice Davis, lives in the Oread Neighborhood and is also landlord, stated she supports the plan and was pleased it was simplified. It makes sense to have one parking spot per bedroom. She said if the Oread Neighborhood Plan goes through an Overlay District could address other specific issues. She said boarding houses violates the 4 persons per dwelling unit. She said the goals in the Draft Oread Neighborhood Plan is to maintain a variety of housing types.

Commissioner Finkeldei said he was surprised to hear she was okay with doing away with the requirement about building on to houses.

Ms. Davis felt it could be addressed better with an Overlay District that fits the original Townsite Plan.

Mr. Dennis Brown, Lawrence Preservation Alliance, said he was still in favor of having an onsite contact person with the ability to quickly contact the property owner. He felt the contact person should be designated and listed on file with Development Services. He suggested the following expansion language: *If the proposed expansion utilizes more stories than the original structure, the square footage of the expansion shall not be greater than the square footage derived from calculating 20% of the existing building footprint, measured at grade.*

Commissioner Dominguez felt they should look at the expansion language. He asked why the onsite contact person would be needed.

Mr. Brown said in a group living situation someone needs some authority to contact the property owner regarding neighborhood concerns.

Commissioner Hird he wondered if an onsite contact person would really do any good in controlling behavior. He said property owners were public information anyway.

Mr. Brown felt there needed to be some mechanism for neighbors to contact property owners.

Mr. Dan Dannenberg, lives on University Drive, said the Sunset Hills Neighborhood was nervous about Boarding Houses and did not want additional problems. He felt this needed to be given careful consideration and that nuisance, trash, and misbehavior needed to be given serious consideration as well.

Commissioner Liese asked Mr. Dannenberg if he had any specific comments about the staff presentation.

Mr. Dannenberg said there was an effort to reach a reasonable compromise between property owners and residents. He said he was on the side of the property owners and they should receive protection.

Ms. Debbie Milks showed pictures on the overhead of many cars parked along Ohio Street on a Sunday morning. She said the streets were old and narrow and the traffic was going to be an issue.

Commissioner Dominguez asked how old she thought the homes were.

Ms. Milks said her home was built in 1915.

Commissioner Dominguez said increased traffic and parking was just a part of living downtown. He asked if she was okay with one car per bedroom.

Ms. Milks said assuming there was one kid per bedroom. She said often there is more than one kid per bedroom.

Mr. Paul Werner displayed on the overhead before and after pictures of boarding houses. He said in many cases the bedroom count went down of what existed before. He did not feel it was fair for recently renovated structures to become legal non-conforming. He felt there should be language to protect legal boarding houses that can rebuild. He was in favor of a Special Use Permit for larger structures instead of a variance.

Commissioner Singleton asked if a property owner could sell a legal non-conforming property.

Mr. Werner said a savvy banker might red flag it. He said insurance and financing can be an issue. He said if a microburst took it out then it could not be rebuilt. He would like to see some language that says all legal boarding houses prior to this adoption should be allowed to be reconstructed if damaged more than 60%.

Mr. Rob Farha, Crimson Properties, said he went through the right process to do boarding houses and now they will be legal non-conforming.

Commissioner Singleton asked Mr. Farha for his thoughts about having a designated contact person in the property.

Mr. Farha said he is pretty well known and that many people have his phone number. He said he already has a designated lead person in his rental properties.

Commissioner Dominguez asked if the neighbors of his rentals have his contact information.

Mr. Farha said no.

Mr. John Davis said he did not want his boarding houses to be legal non-conforming. He said he would prefer to be the contact person for the neighbors, not one of the renters.

Ms. Serina Hearn, owner of 1121 Ohio that she turned into a boarding house, said she did not add onto it, she restored it. She said the houses were already there and the intended use was for multiple people. She felt a time period should be given to allow people to add sprinkler systems to boarding houses in order to afford.

Ms. Beth Reiber felt that Alabama Street was destroyed by four-plexes and houses divided into apartments. She said there was a reason people refer to it as the 'student ghetto.' She felt that boarding houses were the worst thing to come to the neighborhood since the four-plexes and apartment houses. She said the advantages to boarding houses were large rundown structures being rehabilitated and the money that is made from turning structures into boarding houses. She said the disadvantages are that they are party houses and nobody wants to live next to a boarding house. She said the Oread Neighborhood was becoming a nightlight district. Boarding houses are raising the price of the land and it is pricing out single families from buying there. She said renters were having cup parties where they sell cups for \$5 and have hundreds of party goers. She felt that 20% was too much. She felt that more work needed to be done on the Text Amendment.

COMMISSION DISCUSSION

Mr. McCullough said if the standards are adopted the use does not become non-conforming. It's the other code standard that becomes non-compliant.

Commissioner Carter asked what would happen if a boarding house was compliant in all ways other than parking and was hit by a tornado.

Mr. McCullough said if it meets the 60% their options would be to seek a variance through the Board of Zoning Appeals or reduce the number of bedrooms. He said the use does not go away. He said Planning Commission could add a Board of Zoning Appeal criteria to grant a variance on standard based on natural disasters.

Commissioner Finkeldei said it would still be a non-conforming structure. He said Insurance companies will only insure for what can be built back.

Mr. McCullough said there are elements of development that cannot be controlled.

Commissioner Finkeldei asked what staffs position was and the policy issue against passing a rule that says the 25 boarding houses that are legally non-conforming can be rebuilt.

Mr. McCullough said it is one use in a table of an entire use table. Those exist for more than just boarding houses. Apartment complexes are a big one where parking standards have changed but the use is still permitted but the parking setback is no longer. The bank will request a zoning compliance letter and staff explains exactly what the situation is. It is a valid permitted use that does not meet parking setbacks.

Commissioner Singleton felt it was a public policy issue and she was concerned about the grandfather issue. These are historical structures in our community different than apartment

buildings. She said these are people who participated in the process and did the right thing and they deserve a reward.

Commissioner Finkeldei said he preferred the May language of 20% and tiered option. He preferred language that saved historic structures. He felt the use should be permitted rather than a Special Use Permit. If they went back to the one to one language the 20% wouldn't be needed.

Commissioner Singleton felt the problems of enforcement needed to be addressed by City Commission. She liked the one parking space per bedroom. She said the only change specifically to the language she would make would be adding language that the 25 known boarding houses should be granted a variance.

Commissioner Dominguez agreed with Commissioner Singleton.

Commissioner Carter agreed with grandfathering the existing legal non-conforming properties, including the parking. He said he was for the one to one parking going forward.

Commissioner Harris felt they should protect the 25 existing boarding houses and also felt enforcement needed to be beefed up. She felt the property owner needs to have email on record with the City. She also felt that boarding houses should be limited to the Oread neighborhood.

Commissioner Rasmussen said he supported the staff recommendation about not putting the 20% addition restriction on there. Also supported the staff recommendation that it be a permitted use and not require a Special Use Permit. He thought that if it goes to one to one parking it will either shut down any future development of boarding houses or there will be multiple reoccurring requests to the Board of Zoning Appeals for variances on parking restrictions.

Commissioner Hird thought the emphasis should be on preservation of large historic structures, not simply allowing investment to avoid the apartment complex rules. He said beefing up enforcement was important and adding a contact person was a good idea. Doing away with the 20% rule and having the one to one parking was workable. He was concerned about the larger structures creating a situation where there's a lot of uncertainty in getting the right variance in parking restriction. He said he could live with the one to one but thought it could create a problem. He was not sure about special rewards for doing what was required by law.

Commissioner Harris said she liked the one to one parking language and that it would help discourage the proliferation of boarding houses.

Commissioner Rasmussen said he likes boarding houses so he was not opposed to the proliferation of them.

ACTION TAKEN

Motioned by Commissioner Harris, seconded by Commissioner Singleton, to approve Text Amendment TA-6-17-09 with an additional condition that owners name, phone number, and email be on record with the city. And direct staff to provide language to City Commission that would protect the investment of the 25 properties already developed.

Commissioner Finkeldei said he would vote against the motion and said if it failed he would offer alternative language that would strike a balance between not proliferating boarding houses but encouraging older large historic homes to be renovated. He was in favor of the proposed language by staff regarding parking:

Parking shall be provided at the following rates.

- For new construction: 1 parking space per bedroom*
- For conversion of an existing Structure:*
 - 6 or less bedrooms – 4 spaces required*
 - 7 or greater bedrooms – 4 plus .5 spaces per bedroom over 6 bedrooms*

Commissioner Hird said he agreed with Commissioner Harris position but agreed with Commissioner Finkeldei on the parking issue. He said he would vote against the motion.

Commissioner Dominguez inquired about Board of Zoning Appeal requests.

Commissioner Singleton said even with the limitation they can go to the Board of Zoning Appeals and ask for a variance. She said she was comfortable with one parking space per bedroom because it gives the appropriate level of review for a large structure. She said there have only been 25 boarding houses in the last 30 years.

Commissioner Carter felt it was a pretty low threshold to say 4 parking spaces for 6 bedrooms.

Mr. McCullough said in listening to the Commissions comments he would prefer to get away from language about a variance. He said if their will was to grandfather existing boarding houses then he would prefer to add them to the list of uses that get to be rebuilt without a variance in the non-conforming article.

Commissioner Blaser said he would vote in favor of the motion because he felt parking should be one to one and hoped there were other ways to preserve the older structures.

Commissioner Burger said she had a hard time with the one to one ratio because in older neighborhoods there isn't one to one ratio for single-family households.

Commissioner Liese said in order to preserve older homes it was optimal for them to become boarding houses but having 12 cars in the back of homes was not realistic. He said he would probably vote against the motion. He said in theory he was in favor of the one to one parking but did not see it as being practical.

Motion failed 4-6, with Commissioners Burger, Carter, Finkeldei, Hird, Liese, and Rasmussen voting in opposition. Commissioners Blaser, Dominguez, Harris, and Singleton, Blaser voted in favor of the motion.

Commissioner Finkeldei said there was a different set of language regarding parking in the May Planning Commission packet:

A Congregate Living use shall provide one (1) parking space per bedroom. In cases where a structure greater than 4,000 square feet exists on a lot too narrow to accommodate the code-required parking, the Planning Director may reduce the parking amount required by code to no less than five (5) spaces.

Commissioner Hird said the language from the May agenda seemed easier to administer. He felt it also addressed the concern of preserving larger structures.

Commissioner Rasmussen asked how many of the 25 boarding houses were greater than 4,000 square feet.

Ms. Francisco said if a size is set then there is the issue of adding on. It would be possible for anyone to put an addition and then reach the threshold which would then get back to parking issue. If there was not some limitation on expansion then it wouldn't make sense. The idea was to present equity between boarding houses and apartments and let the market decide.

Mr. McCullough said 6 of the boarding houses were 4,000 or greater square feet.

Commissioner Singleton inquired about an Overlay District and how that would work with one parking.

Mr. McCullough said it allows all the code standards that are city wide to be very specific for an area about lot coverage, setbacks, character defining issues, number of bedrooms, parking ratios, etc.

Commissioner Rasmussen said his preference for parking was:

Parking shall be provided at the following rates.

– For new construction: 1 parking space per bedroom

– For conversion of an existing Structure:

• 6 or less bedrooms – 4 spaces required

• 7 or greater bedrooms – 4 plus .5 spaces per bedroom over 6 bedrooms

Commissioner Hird suggested deferring the Text Amendment.

Commissioner Dominguez said anything less than one to one ratio parking encourages boarding houses. He said he was against boarding houses.

Motioned by Commissioner Hird, seconded by Commissioner Liese, to defer the Text Amendment to the September Planning Commission.

Motion carried 9-1, with Commissioner Dominguez voting in opposition.

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**ITEM NO. 12 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE &
COUNTY SUBDIVISION REGULATIONS; MINOR & MAJOR
SUBDIVISIONS (SMS)**

TA-3-3-10: Consider Text Amendments to the joint city/county subdivision regulations in the City of Lawrence Land Development Code, Chapter 20, Article 8 and the Douglas County Code, Chapter 11, Article 1 to revise requirements and standards related to the processing of Minor and Major Subdivisions, including minor housekeeping changes. *Initiated by City Commission on 2/16/10.*

STAFF PRESENTATION

Ms. Sheila Stogsdill advised them the update was for their information.

NO ACTION TAKEN

MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

PUBLIC COMMENT SECTION

Adjourn at 1:00am