

PLANNING COMMISSION REPORT

Regular Agenda -- Public Hearing Item

PC Staff Report
10/25/2010

ITEM NO. 2: TEXT AMENDMENT TO SUBDIVISION REGULATIONS; ENVIRONMENTALLY SENSITIVE AREAS (MKM)

TA-06-12-08: Reconsider approving Text Amendments to Section 20-810 of the Subdivision Regulations [County Code Section 11-110] to clarify the natural resources and environmentally sensitive areas that are to be protected or preserved, Section 20-812 [County Code Section 11-112] to revise the required contents of a plat to include environmentally sensitive lands provisions, and Section 20-815 [County Code Section 11-115] to provide definitions of terms related to environmentally sensitive lands. *Initiated by County Commission on 6/23/08. Previous draft approved by Planning Commission on 8/25/08.*

RECOMMENDATION: Staff recommends that the Planning Commission forward a recommendation for approval of the proposed amendment, [TA-06-12-08] clarifying the types of natural resources and environmentally sensitive areas that are to be protected, along with revisions to other sections of the Code to provide consistency, to the Board of County Commissioners and the City Commission.

Reason for Request: To maintain consistency with the recently revised City Development Code and to resolve issues which have been identified through the processing of Certificates of Surveys and plats in the unincorporated portions of the County. These issues include difficulty in identifying the types of Environmentally Sensitive Lands which require protection, and determining the amount of land which is required to be protected if environmentally sensitive lands are present.

RELEVANT GOLDEN FACTOR:

- Conformance with the Comprehensive Land Use Plan is the relevant factor that applies to this request. Amending regulatory tools, one of which is this amendment to the Subdivision Regulations, is an implementation step in Chapter 13 of *Horizon 2020*, the City/County Comprehensive Land Use Plan.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

No public comment was received.

Attachment: TA-12-27-07 Text Amendment to the City Development Code regarding protection standards for environmentally sensitive lands.

OVERVIEW OF REVISIONS PROPOSED

Section 20-810(i) [County Code Section 11-110(i)]

- Features which are considered natural resources or environmentally sensitive areas within the City of Lawrence and in the unincorporated portions of the County are currently listed in the Subdivision Regulations in Sections 20-810(i) and 20-810(j),

respectively [County Code Sections 11-110(i) and 11-110(j)]. This amendment proposes to combine these Sections as the environmentally sensitive lands to be protected are the same whether located in the City or in the unincorporated portions of the County. One of the purposes of protection of environmentally sensitive lands within the Urban Growth Area is to allow it to be protected following annexation into the City. Utilizing one set of definitions of features will allow one baseline map to be created for the City and unincorporated portions of the County and will allow protection of the environmentally sensitive lands to extend beyond annexation.

- Language is being added to provide objective criteria for the determination of environmentally sensitive lands.
- A maximum limit is set for the *required* protection of environmentally sensitive lands.
- The protection measures for plats and certificates of survey were revised to include requirements in other sections of the Code and were put in list form for clarity.

Section 20-812 [County Code Section 11-112]

- This section is being revised to include the provisions for protection of environmentally sensitive lands for platted property in both the City and the unincorporated portions of the County.

Section 20-815 [County Code Section 11-115]

- Currently, some of the features which make up environmentally sensitive lands are defined only in the City Development Code. This section is being revised to include these definitions as they apply to both the City of Lawrence and the unincorporated portions of the County.

General

Code citations which reference 20-810(j) will be changed to 20-810(i) throughout the Regulations in the City Code. Code citations which reference 11-110(j) throughout the County Code will be changed to 11-110(i).

Baseline Map

A new mapping layer is being developed with these text amendments (TA-12-27-07 and TA-06-12-08) to identify potentially environmentally sensitive lands. This is the map which is referred to in this document as the Baseline Map. Regulatory Floodway, Regulatory Floodway Fringe, Stream Corridors, Stands of Mature Trees and Listed Historical Properties will be identified on the map. It will be necessary to contact the State Historical Society for information on Archaeological sites and the Army Corps of Engineers for information on Jurisdictional Wetlands as maps for these are not currently available.

HOW TO READ THE AMENDED TEXT

The changes being proposed with this text amendment are shown below as follows: new text is identified by ***bold, italic typeface*** and deleted text is identified by ~~strike through~~. Please note, only the portions of the sections which are being modified are shown below.

20-810 Subdivision Design Standards

(County Code Section 11-110)

(i) ~~Resource Preservation~~—City of Lawrence Protection of Environmentally Sensitive Lands

(1) *Definition of Environmentally Sensitive Lands*

~~Residential Developments and non-residential~~ ***Certificates of Survey land divisions and platted*** Subdivisions shall be designed to ~~preserve~~ ***protect environmentally sensitive lands which contain*** natural resources and environmentally sensitive areas ~~such as streams, wetlands, prominent natural geographic features, and stands of mature trees.~~ ***Environmentally sensitive lands are listed below in a priority order for protection:***

- i. Regulatory floodway, designated on the FEMA Flood Insurance Rate Map for Douglas County and identified on the GIS Baseline Environmentally Sensitive Lands Map;***
- ii. Regulatory floodway fringe, designated on the FEMA Flood Insurance Rate Map for Douglas County based on the 100 year storm and identified on the GIS Baseline Environmentally Sensitive Lands Map;***
- iii. Jurisdictional wetlands, as determined by the Army Corps of Engineers;***
- iv. Stream corridors as defined in these regulations and identified on the GIS Baseline Environmentally Sensitive Lands Map;***
- v. Stands of mature trees, as defined in these Regulations and identified on the GIS Baseline Environmentally Sensitive Lands Map; and***
- vi. Archaeological or historic sites listed on local, state, or federal registers and identified on the GIS Baseline Environmentally Sensitive Lands Map.***

(2) *Determination of environmentally sensitive lands.*

The presence of environmentally sensitive lands shall be determined from an examination of the site and the following resources:

- i. FEMA Flood Insurance Rate Map for Douglas County, most current adopted map;***
- ii. US Fish and Wildlife Service National Wetland Inventory Maps;***
- iii. GIS Baseline Environmentally Sensitive Lands Map.***
- iv. Kansas State Historical Society Archeological and Historic Resources Inventory; and.***
- v. Other resources which may be appropriate.***

(3) ~~Resource Preservation~~ *Protection Standards for Environmentally Sensitive Lands. – City of Lawrence*****

~~See Section 20-1101(c)(2)(iii)(b), which requires that development of lands containing more than 5% defined sensitive lands can be developed only through a Cluster Development or a Planned Development. Section 1101(c)(3) requires that certain sensitive lands be dedicated, included in private open~~

~~space or otherwise preserved through development design. Note also that Section 1101(c)(4) may limit the achievable density of developments containing specified sensitive lands.~~

- i. ***Section 20-1101(d)(2)(i) of the Development Code limits the required protection of environmentally sensitive lands to a maximum protection area of 20% of the total land area.***
- ii. ***Section 20-1101(d)(2)(ii)(b) requires that when platting, environmentally sensitive lands to be protected shall be placed within tracts or easements and information regarding ownership and maintenance responsibility of the tract or easement, as well as protection measures, shall be included on the preliminary and final plat.***
- iii. ***Section 20-1101(e) contains information on density bonuses which may be possible when environmentally sensitive lands are protected in greater amounts than required.***
- iv. ***Section 20-1101(d)(2)(ii)(a) requires that a Sensitive Areas Site Plan be submitted prior to, or concurrent with, all subdivision applications for properties containing environmentally sensitive lands. The requirements of a Sensitive Areas Site Plan are found in Section 20-1101(f).***

~~(2)Subdivisions shall be designed to preserve archaeological and historical sites. See Section 20-1101(c)(2)(iii)b, which requires that development of lands containing more than 5% defined lands, which include archaeological and historic sites, can be developed only through a Cluster Development or a Planned Development. Section 20-1101(c)(3) requires that certain archaeological and historic lands be included in private open space or otherwise preserved through development design. Note also that Section 20-1101(c)(4) may limit the achievable density of developments containing archaeological and historic sites.~~

(4) ~~Resource Conservation~~ Protection Standards for Environmentally Sensitive Lands. – Unincorporated Area of the County

~~Residential Developments and non-residential Subdivisions in the unincorporated area of the County shall be designed in a way that protects and conserves the natural resources and environmentally sensitive areas: through the filing of a Temporary Set Aside Agreement or the filing of a permanent Conservation Easement, with the Register of Deeds. These natural areas and environmentally sensitive areas shall include Floodways, based on the FEMA's one-hundred year storm; Floodplains, based on the FEMA's one-hundred year storm; jurisdictional wetlands; stream corridors; prominent natural geographic features with rocky outcroppings; and, stands of mature trees or individually significant mature trees.~~

- i. ***Per Sections 20-804(c)(2)(ii) and 20-805(c)(2)(ii) [County Code Sections 11-104(c)(2)(ii) and 11-105(c)(2)(ii)], Certificates of Survey land divisions within the UGA shall protect environmentally sensitive lands*** through the filing of a Temporary Set

Aside Agreement or a permanent Conservation Easement with the Register of Deeds.

- ii. ***Per Section 20-806(d)(2)(vii) [County Code Section 11-106(d)(2)(vii)] Certificates of Survey outside the UGA for properties which contain environmentally sensitive lands shall designate building envelopes which exclude the protected environmentally sensitive lands.***
- iii. All plats which include environmentally sensitive lands shall protect them through ***one of the following methods:***
 - a. The filing of a Temporary Set Aside Agreement or permanent Conservation Easement with the Register of Deeds.
 - b. ***Placement of the environmentally sensitive lands within tracts or easements. Information regarding ownership and maintenance responsibility of the tract or easement, as well as protection measures shall be included on the preliminary and final plat.***
- iv. ***Protection of environmentally sensitive lands is encouraged to the maximum amount possible, but required protection is limited to 40% of the site included in the Certificate of Survey and 20% of the total site for platted properties.***

J Soils and Soil Testing – City of Lawrence

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20-812 Contents of Plats

(County Code Section 11-112)

(a) **Preliminary Plat** *(no change)*

(1) Materials to be Included *(no change)*

(2) Existing Conditions

The Preliminary Plat shall also show the following existing conditions:

- (i) Location of any area designated as Floodplain or Regulatory Floodplain, location and direction of the flow of existing water courses; and the surface elevation of the Regulatory Flood.
- (ii) Location of any area zoned "Floodplain", location and direction of flow of all water courses; and Base Flood Elevation at water course entrances to and exits from the proposed Subdivision;
- (iii) Location of section lines, private or public Streets, Alleys, Easements, and city boundaries within and immediately adjacent to the proposed Subdivision;
- (iv) **Natural features and environmentally sensitive lands within the unincorporated portions of the County:**
 - (a) Location of natural features such as rock outcroppings, unique topographic features, lakes, individually significant mature trees, ***and water bodies***, and insofar as can reasonably be shown, natural features to be removed;
- ~~(v) Boundaries of significant stands of mature trees, Jurisdictional Wetlands, historic sites~~

- (b) *Location of features which are listed in Section 20-810(i) [County Code Section 11-110(i)] as environmentally sensitive lands.*
- (c) *The plat shall delineate the environmentally sensitive lands which are to be protected and provide for protection in one of the following ways: note that they will be protected with a temporary set aside agreement or permanent conservation easement which will be recorded prior to the final plat; or place the protected areas within tracts or easements and note the ownership, maintenance responsibility and protection measures on the plat.*
- (d) *Designation of a building envelope which excludes the environmentally sensitive lands.*

(v) *Natural features and environmentally sensitive lands within the City:*

- (a) Location of natural features such as rock outcroppings, unique topographic features, lakes, ~~individually significant mature trees,~~ **and water bodies**, and insofar as can reasonably be shown, natural features to be removed;
- (b) *Location of environmentally sensitive lands including those which were identified on a Sensitive Areas Site Plan for protection and those which will be altered with the development.*
- (c) *Article 11 of the Development Code requires that a Sensitive Area Site Plan be submitted with, or prior to, any development proposal for lands containing environmentally sensitive lands. The Sensitive Area Site Plan is to be incorporated into the plats and other plans.*
- (d) *Protected Environmentally Sensitive Lands are to be located within a tract or easement.*
- (e) *Information regarding ownership and maintenance of the tract or easement as well as the protection measures for the environmentally sensitive lands.*

(b) Final Plats

(1) Format *(no change)*

(2) Material to be Included

The Final Plat shall show:

- (i) Name under which the Subdivision is to be recorded;
- (ii) Descriptive information, which shall:

- (a) State the name of the proposed Subdivision;
 - (b) Show date of preparation, north arrow and graphic scale;
 - (c) Give a legal description of the proposed Subdivision complete with section, township, range, principal meridian, county, and acreage. Show the location of the nearest section and/or quarter-section corner on the Plat, with a description tying it to the point of beginning for the Subdivision. A replat shall not be required to be referenced to a section and/or quarter-section corner, provided the original Plat for the subject replat is tied to at least one of these corner monuments;
 - (d) Show names of adjoining Subdivisions or, in the case of unplatted land, the names of the Owner or Owners of adjoining property;
 - (e) Easements, showing width and general purpose;
 - (f) Sites proposed for Dedication as drainageway, park, school, or other public purposes;
- (iii) In addition, the following information is required which is similarly required on the Preliminary Plat:
- (a) Location of any area zoned Floodplain or within a Floodplain Overlay District zoning district;
 - (b) ~~Boundaries of significant stands of mature trees, Jurisdictional Wetlands, historic sites and Archaeological sites on the property proposed for subdivision~~ ***protected environmentally sensitive lands as shown on the preliminary plat.***
 - (c) **For properties within the City, the environmentally sensitive lands shall be located within a tract or easement and the plat shall contain information regarding ownership and maintenance of the tract or easement as well as the protection measures for the environmentally sensitive lands.**
 - (d) **For properties within the unincorporated portions of the County, the plat shall include a building envelope which excludes the environmentally sensitive lands and one of the following: a note that a Temporary Set Aside Agreement or permanent Conservation Easement which contains use restrictions and maintenance and protection measures has been recorded for the environmentally sensitive lands and the Book and Page Number for the recorded Temporary Set Aside Agreement or permanent Conservation Easement; or the protected environmentally sensitive lands shall be placed within easements or tracts and the plat shall note the ownership, maintenance responsibility and protection measures of the protected lands.**
 - (e) Proposed Streets (including location and proposed names), and their relation to Platted Streets or to proposed Streets as shown on any adopted general Development plan of adjacent property; and,
 - (f) Block and Lot numbers and dimensions of Blocks and Lots.

- (iv) Accurate dimensions for all lines, angles, and curves used to describe boundaries, Streets. Easements and areas to be reserved for public use. Data for all curves shall include radius, arc length, chord length, and central angle;
- (v) For land located in a Floodplain, as defined and regulated under Chapter 20, Article 12 of the City Code and the comparable provisions adopted by resolution in Douglas County, the following:
 - (a) The total area of each Lot located in the designated Floodplain;
 - (b) The Minimum Building Elevation and Minimum Elevation of Building Opening, as determined from Chapter 20, Article 12 or the applicable County Floodplain regulations.
- (vi) For any Lot including or adjacent to a lot including **environmentally sensitive lands** (~~See Section 20-1101(e)(iii)~~) as defined in Section 20-810(i) **[County Code Section 11-110(i)]** designation of a Building Envelope within which a building may be built after compliance with all applicable setback, floodplain and sensitive land standards;

The following definitions shall be added to Section 20-815(b) [County Code Section 11-115(b)]:

20-815 Interpretations, Rules of Construction and Definitions

(11-115 County Code)

(b) Definitions

Easement, Conservation:

A non-possessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open-space values of real property, assuring its availability for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property. In case of any conflict between this definition and K.S.A. 58-3810, as it may be amended from time to time, the amended statute shall control and shall be used in the construction and interpretation of ~~this Development Code~~ **these regulations.**

Building Envelope:

The buildable area of a Lot or a Residential Development Parcel defined by the minimum required setbacks of the applicable Zoning Regulations and lands identified in ~~to be~~ **protected per** Section 20-810(~~j~~) **(i)[County Code Section 11-110(i)]**

Caliper: The American Association of Nurserymen standard for trunk measurement of nursery stock, as measured at 6 inches above the ground for trees up to and including 4 inch Caliper size, and as measured at 12 inches above the ground for larger sizes.

Jurisdictional Wetland:

Wetlands which are regulated by Section 404 of the Clean Water Act and are under the regulatory jurisdiction of the Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA).

Floodway Fringe *or Regulatory Floodway Fringe:*

The area outside the Floodway Encroachment Lines, but still subject to inundation by the Regulatory Flood.

Stand of Mature Trees:

An area of ½ acre (21,780 sq ft) or more located on the 'development land area' or on other contiguous properties containing trees that are 25 feet or more in height, or are greater than 8" caliper, in an amount adequate to form a continuous or nearly continuous canopy. (Canopy may be determined from resources such as, but not limited to, NAIP, National Agricultural Imaging Program; City/County GIS aeriels; and field surveys.)

Stream Corridor:

A strip of land 100 feet wide, of which the centerline shall be the centerline of a stream that is not an ephemeral stream: a stream where flow occurs for only a short time after extreme storms and does not have a well-defined channel, similar to a drainage way.