

not here to ask for any special tax abatements of incentive money;-they plan to do the expansion on their own. She asked the Board to approve the rezoning and the preliminary plat.

Thellman commented that she visited the McFarlane Aviation site, talked with the owners, discussed her concern about losing prime farm ground, as well as, expanding industry so close to historical properties to the east of the project. However, she noted that the McFarlane's reported working closely with the immediate neighbors prior to submitting this plan and also reported that Mr. McFarlane planned to farm most of the ground as long as possible. Thellman noted that no neighbors were present to voice opposition to the plan; the State Historical Society provided correspondence to say they did not object to the plan; and the city council of Baldwin sent correspondence to offer this support.

(See motion below with preliminary plat)

PLANNING 04-13-11

Flory moved to approve Z-1-5-11 a request to rezone 41.966 acres from County A (Agricultural) to I-1 (Limited Industrial) District and PP-1-1-11 a Preliminary Plat for the Vinland 2nd Plat with the following conditions:

1. Provisions of a revised preliminary plat to show the building setback line from the runway for a building 45' high based on the allowable height of the district and;
2. Provisions of a revised preliminary plat to include a note that states buildings may be constructed within the transitional zone less than 45' in height subject to the requirements of 14 CFR Part 77.

Motion was seconded by MG and carried 3-0.

PLANNING/CHAPTER 16-ENVIRONMENTAL 04-13-11

The Board considered approval of a Comprehensive Plan Amendment, **CPA-2008-7**, amending *Horizon 2020* to include Chapter 16 – Environment, and the adoption of Joint Ordinance No. 8592/Resolution No. 11-11. Amy Miller and Mary Miller, Lawrence-Douglas County Metropolitan Planning Staff, presented the item.

A.Miller stated the Comprehensive Plans Committee (CPC) and Planning Staff have been working on this chapter since April 2008. A.Miller provided a summary of the meetings and chapter process. A draft of the chapter was posted on the City and County website in early April 2010 where staff

received comments from both the public and Planning Commissioners at the April 28, 2010 Planning Commission meeting. The chapter was revised in August 2010 based on comments received. The City Commission reviewed the document in December 2010, and there was a joint City Commission and Board of County Commissioner study session held in March 2011. A. Miller provided an overview of the chapter.

M. Miller described the data inventory maps available to help identify areas regarding wetland areas, riparian areas, woodlands, urban forests, greenhouse gas and mineral deposits discussed in Chapter 16.

Flory stated he found a number of issues he feels do not relate to land use and *Horizon 2020* in the comprehensive land use plan. Examples he cited included promotion of public transit and alternative transportation, city/county reduction of gas emissions, minimizing power usage, promotion of alternate fuel and green buildings. Flory asked was there ever any discussion by the subcommittee or the Planning Commission about making an initial finding that this policy is relevant to the *Horizon 2020* land use document and that these environmental practices relate to land use. A. Miller stated as an overall theme, the subcommittee did discuss that these issues overall related to a land use theme. The subcommittee did have specific discussions related to the food policy council policy and whether or not it was directly related to land use.

Flory asked how the Sheriff's cars being fuel efficient relates to land use. Was there an undertaking by the subcommittee or the Commission to look at each issue and then look at *Horizon 2020* and the goals and objectives and say "yes" that does tie into land use to make a clear connection. A. Miller stated "no" not as you are proposing the questions, but there was an undertone that every policy be related to land use. Flory asked if that information took place before the Planning Commission. A. Miller replied not in the framework as you are suggesting.

Flory stated this isn't the regulation, but this is the enabling legislation to pursue regulation. He asked was there any discussion in the Planning Commission or the subcommittee as to how these government regulations of private property would conform to the stated general goal of *Horizon 2020*. The goal of *Horizon 2020* clearly recognizes individual rights and freedoms, and existing property rights, quoting from the *Horizon 2020*: "It is the intent to meet and safeguard individual rights and vested interests in a manner which will create the minimum disruption in individual freedoms and life values." (*Horizon 2020* 1-3, General Goals). This is extensive regulation. He asked if there was discussion in that regards. A. Miller replied there was not a specific discussion regarding the language Flory quoted. There were general discussions along the way about balancing environmental protections against appropriate development in this county.

Flory stated he looked up the minutes and it seems to him that this could be a quantum leap on how we regulate the land in the unincorporated area of the county. From the minutes, he found there is hardly any input from rural property owners. Flory stated he feels this could have a significant impact on the use of their property. He stated he is at a loss for why so many property owners didn't have input in the process. Flory asked if there was no attention taken to notifying landowners. M. Miller stated several of our stakeholders were organizations that deal with rural landowners, like the Farm Bureau. A. Miller added in addition to their normal advertising in the newspaper, all the township boards were notified, website, email distribution list, stakeholders list, and Journal World did a couple of stories in the paper.

Thellman asked Scott McCullough, Planning Director, to respond to Commissioner Flory's questions. McCullough stated he would not take the Comprehensive Plan as solely a land use plan. We look at job growth, economic development and goals about air quality. Regarding the question, "Was there direct discussion?" McCullough stated there was quite a bit of discussion on certain elements of whether or not this chapter should be more or less focused on certain things like solid waste and local food policy. The issue of whether the balance is there on the property rights that are forwarded through local regulation and the protection of the environment is always with us and an underlying theme. On the notice issue, the notice is always approached by statute and legal requirements.

Flory stated he still doesn't understand how county cars and health assessments relate to land use. These may be appropriate for an environmental policy by the county or city but not necessarily part of our land use document. McCullough stated because it is such a changing world on environmental protection, a number of things have been in motion that have a strong environmental theme and there were expectations to include these themes in the environmental chapter. Flory stated he also has concerns that the chapter does not focus enough on private property rights.

Flory stated though this is a city/county plan, the significant portion of property impacted by these regulations lies outside the city limits. McCullough disagreed, that the data collection and mapping will primarily be in the unincorporated area, but historically stricter regulations occur in the City of Lawrence. Flory asked if McCullough agreed that to his knowledge there was no extensive discussion on "whether this policy is relevant to the Horizon 2020 land use document and that these environmental practices relate to land use." McCullough stated "no" there was no direct extensive discussion.

Gaughan asked if M. Miller had data on the greenhouse gas available. There was a short discussion led by Scott Zaremba, 792 E 1500 Rd, a local business owner, about fuel emission rates affecting area fuel costs due to EPA imposing requirement on gasoline mixtures.

Thellman read from *Horizon 2020*, the sentence which occurs previous to the one quoted by Flory: "It is the goal of the planning process to achieve a maximum of individual freedom, but public welfare must prevail." (*Horizon 2020* 1-3, General Goals), saying that too much of an emphasis on individual freedom neglects the second statement that public welfare must prevail according to the comprehensive plan.

Flory opened the item for public comment.

Jane Bateman, representing the Developer's Forum of the Chamber of Commerce, wants the Board to include other stakeholders in their discussions and develop a map identifying all properties affected by Chapter 16, and provide legal notice to all property owners affected.

Bobbie Flory, Lawrence Home Builders, stated she feels the body of this chapter does not support a balance obtaining community goals and the incentives are not defined. The water section in policy 1.6A, states the city and county shall maintain flood regulations that meet or exceed national and state regulations. Flory stated there are extensive regulations at the state and federal level we already abide by. She asked what the point is in exceeding those regulations.

Thellman asked Linda Finger, Planning Resource Coordinator, for clarification on whether the principles of floodplain regulations included in Chapter 16 would be more stringent than the state and federal level. Finger responded that our current county floodplain regulations today are more stringent than state or federal regulations. There may be cases where for example in the case of a new fire station facility, we may want to look at the 500-year flood plain, which falls under the higher restrictions, to assure there is no flooding during an emergency.

Luke Bell, Lawrence Board of Realtors, stated he supports the intent of the chapter but feels we need to have broad goals. He believes the chapter does not adequately address economic development. He stated that what he perceives to be too many restrictions will detour development coming to our area. He stated that he felt there needs to be wider notification to property owners.

Beth Johnson, Chamber of Commerce, stated concerns over as many as 35 potential new regulations. She stated that more regulations might be a reason for consultants and companies looking to expand to cross Lawrence off their list. She stated that a project like East Hills Business Park would no longer be possible if Chapter 16 was adopted and it also might hamper continued efforts to create a business/industrial park on the Farmland project.

Thellman asked McCullough to address the issues of the business park brought up by Beth Johnson. McCullough said it is a balance of the issues.

He feels Farmland and East Hills is possible under the new policies. We need to trust the City/County and Planning Commissions to make good decisions about land use. Thellman stated the adoption of this chapter may raise a red flag for a project already in the pipeline but adopting the environmental chapter doesn't change anything in regards to current regulations. McCullough replied not according to current regulations but it can be a factor in any type of land use request for zoning, conditional use permit or special use permit. It does have a weighing factor.

Gaughan asked if each of the bullet points outlined become a new regulation. McCullough replied "not necessarily." Gaughan clarified it just gives the opportunity to be acted upon. McCullough stated that is correct. The points give a good basis for going for grants, and other department support they need to take initiatives

Mary Ross, local farmer, stated she feels we are already highly regulated by government agencies and that property rights would be eroded by this chapter. She doesn't want our tax dollars implementing these features.

At 8:20 p.m. Flory called a five-minute recess.

The meeting reconvened at 8:25 p.m.

Lisa Harris, Comprehensive Plans Committee, stated she supports the wording of the chapter and feels it will be an asset to the community. It was written presuming development and growth of the community. In it we say we want to continue to enjoy and wisely use our natural resources as we develop. The chapter will help the city and county save money by encouraging careful planning around environmental features like floodplains and watersheds, and by making the community more desirable for some companies to locate because of its good environment. She asked the Board to approve the chapter. The Subcommittee felt this chapter balanced the other chapters in the comprehensive plan that deal with development. The Commercial and Industrial Chapters don't really address the environment very much. Through the process there were stakeholders and rural residents in attendance at the meetings. Anyone who wanted to be in the mailing list could be sent more information. It's not cost effective to send notice to all households in Douglas County. Regarding the question, if the Planning Commission and the subcommittee considered land use as part of the plan, it was inferred. She stated she sees this chapter as planning quality of life.

Jeff Morrison, Director of Operations & Client Development for Lawrence Regional Technology Center, stated he has concerns regarding the impacts of this chapter on companies that incubate here and want to expand. As a landowner, he asked how the changes will impact him. As president of the

Endowment Board for LMH, he is concerned the chapter will affect the hospital expanding on its property. With 35 new potential regulations, we need an open understanding of the rules and regulations.

Thellman asked McCullough to address Mr. Morrison's hospital expansion concern. McCullough stated he doesn't know the impact as he has not analyzed the situation. Thellman asked if the chapter will impact individual homes and back yards. McCullough stated he cannot address any particular parcel in the city or county because there is nothing to analyze it against at this time.

Flory stated we don't have regulations but the intent of the chapter is to inventory and identify items and develop regulations and incentives for protection. McCullough stated that is correct, it is the intent of the chapter to do the inventory and understand if we have to propose regulations and then with that information work with Planning Commission to understand if a regulation needs to be implemented or revised, or whether it is already addressed through other regulations. Flory replied that nothing in the chapter says "identify and then determine" whether to impose regulations. It says "identify and then develop" regulations.

Gaughan asked when staff began to look at the final product, are they tasked with achieving the individual goals in the chapter only by implementing the specific recommendations in this chapter, or does staff have discretion in how to achieve that goal? McCullough replied staff uses the Comprehensive Plan to guide land use decisions and to guide our regulations. Really it helps apply regulations to a land use request and helps establish a policy to make a decision on a land use request.

Gary Price, 763 N 1750 Rd, stated the chapter needs more definition regarding slopes, permit requirements for dams and native prairie parks. He is in favor of preserving the environment, but has concerns on regulating farm life and development.

Frank Male, 861 E 2100th Road, stated he has served on many committees in Douglas County. He was not invited to participate in the development of this chapter. He doesn't feel the development process was balanced with enough input from the more unincorporated stakeholders. Rural landowners aren't aware of how this chapter will affect them. He would also like a land map identifying properties affected by the chapter. Male suggested using "conservation" as opposed to "protection" when referencing agricultural ground in the chapter.

Clint Hornberger, 440 E 900th Road, stated he has concerns on almost every page of the chapter. The main issue is not enough parties were involved. His ultimate hope would be to start the process over with more public input. His township trustee also didn't understand the notice he received or how it affects

the township. Douglas County agriculture makes up about \$30 million of our local economy. He is concerned future commissioners may use this document to set regulations that are detrimental to his children's future in farming.

Barbara Clark, Grant Township resident, stated she was in this courthouse when the Industrial Chapter 7 was adopted. She was advised at that meeting that Chapter 16 would be the voice for preservation of soils. She was present remembers when a Farm Bureau member gave his endorsement of this chapter at a Planning Commission meeting. There has been speculation made how this would impact future development in the County. She remarked had we had some of these ideas from the Environmental Chapter years ago the county would not be looking at a multi million dollar brown site situation now.

Tom Kern, Chamber of Commerce President, stated he is excited we are discussing this issue because he wants an environmental chapter that he can show existing and potential businesses how Lawrence/Douglas County is a better place to develop and grow. To accomplish that objective, he feels the chapter needs to be incentive based and encourages businesses and developers to operate at a higher level than what is normally done. He stated the document needs more work. Flory asked Kern if he feels the chapter is a basis to work from. Kern replied "yes." There are groups of stakeholders that need to have input. He feels we have an obligation to honor that.

Ted Boyle, president of North Lawrence Improvement Association commented that this process has been going on for 2-3 years. Some are making excuses why we should table this because people didn't know. Boyle said he attended every meeting and people shouldn't have to get a personal invite. He feels this will be a guide, just like the *Horizon 2020*.

Flory responded that there has been a lot of activity in North Lawrence and Grant Township with the Northeast Sector Plan and other activities that are inter-related. Other townships aren't aware of how this chapter may impact them.

Flory stated he would like to study this chapter and not make a motion tonight.

There was discussion between Flory and Scott McCullough regarding the process options and changes in the chapter. Thellman wanted clarification from McCullough that this chapter is not creating regulations. McCullough stated by adopting the chapter the Board is directing staff to prioritize the policies in their yearly work programs so staff can bring forth a proposal on a particular regulation if needed. Any proposed regulation by the City or County Commission will go through the process and come to the Board with public notification. Thellman asked for confirmation that regulations will not be created behind closed doors. McCullough agreed that will not happen.

Gaughan stated he is supportive of this concept. He thanked staff for their work on this chapter. He stated he is ready to move forward. Not everyone will be happy with every word of this chapter. He is struck by the middle ground nature of the chapter. Everyone is settling. He rejects the notion that we will never get another business inquiry if this chapter is adopted. This chapter strikes him as indicative of our community's values and what we talk about on a regular basis and we are finally putting it into our comprehensive plan. Gaughan stated we've moved a step further in making this a part of our vision for the future. He stated he understands the concerns made and appreciated the comments. He believes the Environmental Chapter is something the public wants and he is willing to move this chapter forward to the City and let them begin the process.

Flory made the following statements. "I'm certainly not inclined to vote on this tonight and of course if I did have to vote, it would be 'no' because I think it needs more study. I think we've heard, I don't know how many people say I don't think people understand this yet. This is a major piece of legislation that this body is either getting ready to pass or deal with. We've been here three hours and we're ready just to kick it on in this form, and I mentioned some things that I still totally disagree should be in the chapter, I think are not related to land use. I know Ms. Harris talked about quality of life. Quite frankly I don't read *Horizon 2020* that broadly. If it is I don't know what couldn't be in there. It's hard to imagine what could not be in there. I think it's a significant issue. And I don't think when we're talking a significant issue with respect to people's rights and property and individual liberties, it is nit picking. And I think it needs more time. I think it deserves more time. I'm not saying that it won't go in exactly this fashion eventually, but I certainly think it needs more study then comments... and three hours and just kick it on down the road. That's my view."

Thellman stated she thinks some of the difficulty we are having with this is we are coming at it from different philosophical viewpoints. She added though that this is just one chapter of a comprehensive plan that is, in general, weighted toward development. This chapter brings some balance to the whole document. It's not a document that has been created lightly. It's been three years in the making. Many stakeholders did participate. Many meetings were held and many people were invited. The process was legal and open. At what point do you finally have to say it's not a perfect product but a good product and will evolve over time. Thellman stated she made a point of asking the Director of Planning to keep coming up to try to bring a realistic planning perspective in terms of what the actual impact this chapter's going to be and how it will be shaped over time and how the public will shape it over time. The best opportunity for the public to shape it is as it is applied and as development comes along. Environmental principles either will or won't come into play through some regulatory process which the public will have ample opportunity to speak about and shape it. This chapter has been a long time coming. It speaks to quality of life issues which Thellman stated she thinks are things we have to plan for. Quality of life doesn't just happen. The comprehensive plan is more than a development plan; it's a plan for the

whole community. Thellman said people in the community will be pleased to know that there is an environmental focus in a part of the Comprehensive Plan. Thellman said, I came here tonight prepared to send this on to the City to see what they make of it. For the people who sense this will shut down job creation and all the progress we've made on economic development, I can assure you then that concern is not consistent with how this commission behaves. Twice today we've made decisions in favor of industrial expansion at the Vinland Airport and a tax incentive for a major project downtown. In general, promoting new industry and business has been our pattern. Thellman said I don't see this as a step backwards. We weigh issues as they come about in our community. We have a Planning Commission who passed this with only one dissenting vote, and a Planning Staff recommending approval, a subcommittee who has been three years creating it. Sending it back and starting over is the road we don't want to choose. Thellman said I didn't hear anything here tonight that makes me feel it's not appropriate to take it on to the City and see what they have to say about it.

Flory stated "three years in the making, we give it three hours, I think that's a travesty but you have the votes if you want to make the motion make it. Every person we heard from tonight practically said we'd like to see you spend more time on this. We'd like to see more study, we'd like more input."

Thellman replied, "I guess what I'm saying is I'm sure that input is still going to happen but it would happen in a way that actually will apply to proposals for development, to proposed incentives, what kind they would be, whether they're monetary, whether they're development-based tools for incentive."

Flory stated part of his frustration is we haven't had a chance to discuss it. We had the meeting tonight with public comments but he said my anticipation is that as important as this is that we would set it on the agenda again and go through it section by section and talk about it, discuss it. But make a legislative decision on something that's going to impact every parcel of property in Douglas County. And if I hear correctly we're ready to make a motion, second it and vote it through tonight without any opportunity to sit down and go over it. "After three years in the making, it's a quantum leap for potential regulation, I'm amazed but that's all I have to say."

Gaughan stated this passed in August. We had our first public meeting about it 7 or 8 weeks ago but we've had the document for months. This was not a first reading for any of us or a second, third or fourth reading. This is a process that has had a number of public meetings and a number of opportunities for various makeups of the Planning Commission to debate it and it passed on an 8-1 vote.

Flory stated but we haven't debated it here. This is a legislative body. I haven't had a chance to go through and say this is my concern in this section. Now if your position is you want to pass it regardless of what I have to say then make the motion.

Scott Zaremba added comments regarding a recent project he was involved in that had 19 variances on a site. The engineering costs were just horrendous and he was only trying to improve the site.

Flory moved to defer the item to a future agenda for further study, keeping the public hearing open to have a discussion and to make recommendations and then place on the consent agenda for approval. Motion died for lack of a second.

Gaughan moved to approve the Planning Commission version of the Comprehensive Plan amendment adding Chapter 16, Environmental Chapter to *Horizon 2020* and forwarding it to the City Commission and to adopt Joint Ordinance No. 8592/Resolution No. 11-11 amending the Comprehensive Land Use Plan "Horizon 2020" to add Chapter 16-Environmental; adopting and incorporating by reference "Chapter 16 – Environment, August 2010 Edition" prepared by the Lawrence-Douglas County Metropolitan Planning Office. Motion was seconded by Thellman and carried 2-1 with Flory in opposition.

Flory moved to adjourn the meeting; Gaughan seconded and the motion carried 3-0.

Jim Flory, Chair

Mike Gaughan, Vice-Chair

ATTEST:

Jamie Shew, County Clerk

Nancy Thellman, Member