

League of Women Voters of Lawrence-Douglas County
P.O. Box 1072, Lawrence, Kansas 66044

August 18, 2011

RECEIVED

AUG 18 2011

City County Planning Office
Lawrence, Kansas

Mr. Richard Hird, Chairman
Members
Lawrence-Douglas County Metropolitan Planning Commission
City Hall
Lawrence, Kansas 66044

**RE: Staff Report for ITEM NO. 4 COMPREHENSIVE PLAN AMENDMENT TO H2020 - CHP14;
INVERNESS PARK DISTRICT PLAN (DDW); CPA-3-1-11: Clarify approval.**

Dear Chairman Hird and Planning Commissioners:

Regarding the Staff Report in reply to our letter of August 15, which is included in the current packet on the Inverness Park District Plan, we believe that there is some misunderstanding of the important points that we were expressing, or trying to express, in this letter.

In order to clarify this letter of August 15, we are including an outline of the points that we were attempting to make. We hope this clarifies our suggestions.

We thank you for your patience and understanding.

Sincerely yours,

Alan Black

Alan Black, Chairman
Land Use Committee

Attachment

ATTACHMENT

SUMMARY OF LWV-L/DC THOUGHTS ON THE STAFF RECOMMENDATIONS TO CHANGE THE INVERNESS PARK DISTRICT PLAN FOR REMINGTON SQUARE.

August 18, 2011

Our Reasons for Objection to Staff recommended changes to the Inverness Pk Plan to include Option #2:

Option #2, apparently would allow the developer, having maxed the density of the RM15 District, to choose his development method—a PD or conditioned conventional zoning. The second option to develop under a conditioned conventional district of RM24 would limit the density and building type. We objected to Option #2 in our letter dated August 15, which is included in the Staff Report. Staff sent a rebuttal to our August 15 objections and in it gave arguments for the legal validity of conditioning conventional zoning.

Our letter did not question the legal validity of conditioning conventional zoning per se. Rather, we pointed out the unsolved problems with the process: its arbitrary nature, unpredictability, and the need for securing the future of the development outcomes. In other words, the need for incorporating the practice of conditioning conventional zoning in a formal way into the Land Development Code.

A. Staff (and presumably the developer) objected to the PD because it requires creating a mandatory membership in a homeowners association. Our letter pointed out that with both situations, property maintenance would be mandatory if there are multiple owners.

1. A mandatory-membership homeowner's association to own and maintain the open space applies for both options—Option#1 and Option#2. Why?
 - a. If there are multiple owners with common property or ground, State law requires provision for maintenance of common ownership in both land and property through State apartment and condominium law in both PDs and conventional zoning.
 - b. If there is no multiple ownership of common property or land, the owner has maintenance responsibility.
2. If there is land subdivision with individuals owning multiple tracts, the Subdivision Regulations govern. We assume that currently the Remington Square Apartments land is one 15-acre lot under one ownership. If not, it is in violation of the Subdivision Regulations, and this is a whole new situation.

B. Rezoning to RM24 requires conditioning of conventional zoning in order to control the development.

1. Our objections to current methods for conditioning of conventional zoning:
 - a. No formal regulations govern it. The two other methods of zoning for conditioning uses and sites are Special Use Permits and Planned Developments. Provisions and procedures for conditioning are written into these two articles.
 - b. There is no consistent method for insuring that the conditions applied to a specific tract will be permanent or that changes will be subject to public review.
 - 1) Plans are presented as Site Plans and are not legally recorded in the same way as Final Development Plans.

- 2) The legal cases cited in the Staff Report; i.e., McQuillin: *The Law of Municipal Corporations*, 8 McQuillin Mun. Corp. § 25.93.10 (3rd ed.) mention the need for a development agreement with the developer. Development agreements may not be permanent unless they run with the land or at least are always legally recorded with the rezoning ordinance for the conditioned land.
 - c. There is a need for distinguishing the conditioned conventional districts from non-conditioned conventional districts on the Zoning District Map. Is it being done now?
2. Remedies for the problems listed above include two suggestions.
 - a. Provide an ordinance specifically permitting conditioning of conventional districts, outlining what can be conditioned, the process, public input, methods of insuring compliance and recordation to guarantee permanence.
 - b. Require a distinguishing notation on the Zoning District Map for conditioned conventional districts so that prospective buyers are aware that the zoning on the site has conditions on it.
- C. To repeat: the purpose of our letter to you of August 15, 2011, and this letter is to (1) request that you do not include Option #2 in the Inverness Park District Plan for Remington Square Apartments and (2) as described above, remedy the uncertainties of conditioning conventional zoning districts by incorporating the process formally into the Land Development Code.

LWV-L/DC Land Use Committee

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RE: ITEM NO. 4 COMPREHENSIVE PLAN AMENDMENT TO H2020 - CHP14; INVERNESS PARK DISTRICT
PLAN (DDW); CPA-3-1-11: Clarify approval

Dear Chairman Hird and Planning Commissioners:

For the properties fronting on Clinton Parkway the planning staff is recommending a change different from what was approved by the Planning Commission on the Inverness Park District Plan at your July, 2011 meeting. We are writing this letter to register our objection to Option # 2, the second option recommended in the Staff Memo. This Option #2 provides that of “rezoning with conditions that require site plan approval from the City Commission...” This would mean that the second option would be to rezone the Remington Square 15-acre tract to RM24 with conditions.

The specific objection mentioned in the Staff Memo to the use of the Planned Development Overlay District, the option adopted by the Planning Commission last July, is to the “establishment of a mandatory-membership homeowner’s association to own and maintain the open space...”

The PD Overlay District was intended to be used with any of our conventional zoning districts, not just single family or cluster development. The staff (or developer’s) objection to using the PD Overlay District in Inverness Park is based on the development requiring a formal owner’s maintenance agreement. Actually, such an agreement, regardless of how the land is used, depends on how the buildings and land surrounding each building is owned. If the total tract is a single lot and owned by a single entity—the developer or property owner—and will continue to be, there isn’t a problem, since the owner of the land is responsible for its maintenance. In the case of the subdivision of apartments as condominiums, which would involve the buildings or parts of buildings and any other commonly-owned land by multiple owners, State law governs with 2010 HB 2472 - a bill enacting the Kansas Uniform Common Interest Owners Bill of Rights Act and previous legislation governing apartment ownership and condominiums.

Even in conventional zoning districts, Kansas State law requires maintenance agreements where there is property ownership by separate multiple owners, under provisions such as that listed above. If the land, or any portion of it, is subdivided and sold to separate owners, the land must be legally subdivided according to our Subdivision Regulations. Therefore, any problems with or objections to creating a maintenance agreement would apply to both circumstances: to a conventional apartment development or to a planned development. Therefore, we do not believe that this is a valid argument against utilizing a Planned Development Overlay District.

We object to regulating the development of the Remington Square Apartments by rezoning the property to RM24 that has been conditioned to essentially function in the same way that the PD Overlay District would. We object for the following reasons.

1. A conventional district, especially in the case of this property fronting on Clinton Parkway, in order to be conditioned, must be modified beyond the existing provisions of the Land Development Code and essentially treated like planned developments. One important

difference in the case of a conditioned conventional district is that the Site Plan will not be legally recorded unless it is made a provision of the zoning ordinance recorded for that specific development. Recordation of the Final Development Plan in a Planned Development is routine, and is a protection for the neighborhood and investors.

2. Conditioning of conventional zoning is not sanctioned by any existing ordinance; therefore it is essentially arbitrary, and establishes a precedence and unpredictability to those not familiar with Lawrence development practices. In order for these conditioned conventional districts to be distinguished from other conventional districts, they should (and we hope are) being given special notation on the Zoning District Map.

Regarding the need for increased density in Remington Square, the PD Overlay District has been changed by Ordinance 8641 which allows density values to be recalculated on the basis of number of bedrooms in an apartment. The PD Overlay District also allows a 25% increase in density if approved by the City Commission. Therefore, by utilizing the PD Overlay District with the existing RM15 zoning for the Remington Square Apartments, there should be no problem in developing the remaining vacant 4-acre tract as one-bedroom apartments.

We suggest that if this practice of conditioning conventional zoning is to be continued, that it be given official verification by modifying the Land Development Code to specifically allow it, including the requirement for a special notation on the Lawrence Zoning District Map.


We hope that you will seriously consider our concerns and suggestions and not change your recommendations for the Inverness Park District Plan that you adopted this past July. In other words, please do not include Option #2 in the Inverness Park District Plan.

Thank you.

Sincerely yours,



Milton Scott
Vice President



Alan Black, Chairman
Land Use Committee