



City of Lawrence

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CITY COMMISSION

MAYOR
ARON E. CROMWELL

COMMISSIONERS
ROBERT J. SCHUMM
MICHAEL DEVER
HUGH CARTER
MIKE AMYX

December 13, 2011

The Board of Commissioners of the City of Lawrence met in regular session at 6:35 p.m., in the City Commission Chambers in City Hall with Mayor Cromwell presiding and members Amyx, Carter, Dever and Schumm present.

A. RECOGNITION/PROCLAMATION/PRESENTATION

1. Presentation of plaque for Lawrence being designated as a Runner Friendly community.
2. Presentation from John Tacha concerning Lawrence Community Shelter.

B. CONSENT AGENDA

Commissioner Amyx asked that consent agenda item number 6, second reading of Ordinance No. 8687, for rezoning (Z-9-24-11), be pulled from the consent agenda for a separate vote.

Commissioner Amyx asked that consent agenda item number 10, requesting proposals for architectural services for the design and fundraising services for the Lawrence Activity and Wellness Center, be pulled from the consent agenda.

Jessica Baron asked that item number 7a, city boundary resolution, be pulled from the consent agenda.

It was moved by Schumm, seconded by Amyx to approve the consent agenda as below, with the exception of items numbers 6, 7a and 10. Motion carried unanimously.

1. Received minutes from various boards and commissions:

Bicycle Advisory Committee meeting of 11/15/11
Historic Resources Commission meeting of 09/15/11



Board of Zoning Appeals meeting of 10/06/11
Traffic Safety Commission meeting of 11/07/11

2. Approved claims to 158 vendors in the amount of \$1,540,025.01.
3. Approved licenses as recommended by the City Clerk's Office.

Drinking Establishment Licenses for Montana Mike's, 1015 Iowa, Jackpot, 943 Massachusetts, Sidewalk Dining & Hospitality Licenses for Genovese, 941 Massachusetts, Zen Zero, 811 Massachusetts and Taxicab License for GTI, 301 Maple Ste: B.

4. Approved appointments as recommended by the Mayor.

Homeless Issues Advisory Committee: Appointed Brent Hoffman (843.7070) to fill the position held by Samantha Snyder when it expires 12/31/11 and Elyse Towey (330.2244) to fill the position held by Charlotte Knoche when it expires 12/31/11. Both appointments will be for first terms and will expire 12/31/14.

5. Bid and purchase items:

- a) Approved increase to Purchase Order 004103 in the amount of \$7,000 for a total of \$18,988 for concrete specification verification testing by Geotechnology, Inc.
- b) Approved purchase of 220 handheld and 200 mobile radios from TFMCComm, Inc., in an amount not to exceed \$1,850,000, through a cooperative bid on the State of Kansas Equipment Purchase Contract.

6. THIS ITEM WAS PULLED FROM CONSENT FOR A SEPARATE VOTE. Adopted on second and final reading, Ordinance No. 8687, for rezoning (Z-9-24-11) approximately 3.3 acres from RSO (Single-Dwelling Residential-Office) & CS (Strip Commercial) to CS (Strip Commercial), located at 2600 Redbud Lane, 2620 Iowa Street, 2626 Iowa Street, and 2032 W 27th Street. (PC Item 2A; approved 8-0 on 11/14/11)

7. Adopted the following resolutions:

- a) THIS ITEM WAS PULLED FROM CONSENT FOR SEPARATE DISCUSSION. Resolution No. 6960, declaring the boundaries of the City of Lawrence, Douglas County, Kansas.
- b) Resolution No. 6962, approving conditionally an application for low income housing tax credits from the State of Kansas for a proposed senior housing development at 25th Street and O'Connell Road.

8. Received Census 2010 analysis, authorized staff to proceed with Census Count Question Resolution appeal process and authorized Mayor to execute related documents.
9. Received Geometric Improvement Funding from KDOT in the amount of \$500,000 for improvements at 23rd and Iowa, and authorized the distribution of Request for Qualifications for the design of the intersection.

10. THIS ITEM WAS PULLED FROM CONSENT FOR SEPARATE DISCUSSION. Authorized staff to request proposals for architectural services for the design and fundraising services for the Lawrence Activity and Wellness Center.
11. Approved renewal of excess workers compensation coverage with Safety national for the insurance period of 01/01/12 – 12/31/12 for an estimated premium of \$40,779.
12. Received letter from Stuart Boley requesting the City acquire a vacant lot in the 1500 Block of 21st Terrace for a pocket park; referred to staff for a recommendation.
13. Authorized the Mayor to sign a Release of Mortgage for Aaron Blosser and Bonnie Burgess, 1226 Connecticut.

Commissioner Amyx said that he was recusing himself from the discussion and vote on consent agenda item number 6, second reading of Ordinance No. 8687, for rezoning (Z-9-24-11), because the property had been owned by members of his family. He left the room at 6:46 p.m.

Moved by Schumm, seconded by Carter, to adopt on second and final reading, Ordinance No. 8687, for rezoning (Z-9-24-11) approximately 3.3 acres from RSO (Single-Dwelling Residential-Office) & CS (Strip Commercial) to CS (Strip Commercial), located at 2600 Redbud Lane, 2620 Iowa Street, 2626 Iowa Street, and 2032 W 27th Street. (PC Item 2A; approved 8-0 on 11/14/11). Aye: Carter, Cromwell, Dever and Schumm. Nay: None. Abstain: Amyx. Motion carried

Commissioner Amyx returned to the room at 6:47 p.m.

Regarding item 7a, Jessica Baron said that extending the boundaries of the City of Lawrence necessitated reevaluating the goals of the City Commission. She asked that the entire city be declared an autonomous zone. She said she supported a Model Community Bill of Rights for the entire City of Lawrence.

Moved by Schumm, seconded by Amyx, to approve Resolution No. 6960, declaring the boundaries of the City of Lawrence, Douglas County, Kansas. Motion carried unanimously.

Regarding consent agenda item number 10, Amyx said he had not supported moving forward with the project at this time before and still questioned whether it was the right time to do this project.

Schumm said the funding would be leveraged and would depend on private fundraising. There were assurances in place that if the funding did not fall into place the project did not have to move forward. He could support the agenda item tonight and take the next step with the knowledge that we could put the project on hold if the private fundraising did not come through.

Moved by Carter, seconded by Dever, to authorize staff to request proposals for architectural services for the design and fundraising services for the Lawrence Activity and Wellness Center. Aye: Carter, Cromwell, Dever and Schumm. Nay: Amyx. Motion carried 4-1.

C. CITY MANAGER'S REPORT:

David Corliss, City Manager, presented the City Manager's Report.

Cromwell said regarding the VRAD issue, the citizen who came forward had a pretty reasonable reason for complaint and as technology changes we need to consider what powers we had as a city to address them.

D. REGULAR AGENDA ITEMS:

1. Consider the following items related to 4100 W. 24th Street:

- a) Consider rezoning, Z-8-12-10, approximately 15 acres from RM15 (Multi-Dwelling Residential) to RM24 (Multi-Dwelling Residential), located at 4100 W 24th Place. Submitted by BG Consultants, Inc., for Remington Square LC, property owner of record. Adopt on first reading, Ordinance No. 8683, for rezoning (Z-8-12-10) of approximately 15 acres from RM15 (Multi-Dwelling Residential) to RM24 (Multi-Dwelling Residential), located at 4100 W 24th Place. (PC Item 6A; approved 7-2 on 10/26/11) Because a valid protest petition has been received, a super-majority vote (at least 4 votes) is required for approval.
- b) Consider a site plan, SP-9-56-11, for Remington Square Apartments, located at 4100 West 24th Place. Submitted by BG Consultants, Inc., for Remington Square LC, property owner of record. (PC Item 6B; approved 8-1 on 10/26/11)

Sandy Day, Planner, presented the staff report.

Randy Larkin, Assistant City Attorney, advised Commissioners to disclose ex parte communications regarding the agenda item.

Commissioner Carter said most of his contacts regarding this issue were people that came to the City Commission; and, an individual meeting with Steve Hertzog, a neighbor, and no new information had been discussed.

Commissioner Amyx said he as well as the other Commissioners received many correspondences by email; he had a meeting with Tim Stultz and Matthew Gough; and, had personal discussions with Larry Northrop which was reflected in the Planning Commission minutes.

Mayor Cromwell said he had no information presented to him that was above and beyond the scope already within the public record.

Commissioner Schumm said he received numerous emails from property owners in the area with the theme centering on the number of apartments in the area and the up-zoning; a meeting with Tim Stultz, the developer, for thirty minutes with no discussion of anything with substance regarding this issue; and with staff regarding information and background of this issue.

Commissioner Dever said he had received multiple emails that were “on” and “off” the record; correspondence with the spokesperson for the neighborhood, Jamie Hulse; he received a phone call from the developer’s attorney months ago; and, discussion with the City Manager about the process.

Mayor Cromwell said they had received presentations and public comment regarding this item previously and had reached the point of Commission discussion, where they would be picking up tonight.

Amyx said he appreciated staff’s additional information. He said at the time of the rezoning, the RM15 in 2008, the request that was brought forward was to be the max density of the entire 15 acres of the property.

McCullough said the entire 15 acres had been rezoned to RM15.

Amyx asked if there was concern, at any time, leaving part of the property vacant for future development.

McCullough said that was not discussed because it had not been presented to the City Commission or Planning Commission. A code compliant site plan had been presented to staff for administrative approval. There was no challenge to leaving a portion of the property vacant because it was code compliant. There was no requirement to meet the max density.

Amyx said the last time they met on this item the developer brought up that the density could be increased by changing doorways, etc. in the existing structures.

McCullough said that keeping the same number of units with more bedrooms could increase the intensity, but not the density.

Amyx said it was developed to the maximum number of units for the current zoning. He asked Matt Gough to explain the developer's comments regarding this matter.

Gough said there were 224 one bedroom units, with at least one party wall. If you open up the space with a doorway and reconfigure the space to meet the definition of a dwelling unit by removing kitchens, and this was not the developers intent, but if they were converted to 112 two bedroom units, it would be possible to add 112 more units in term of front doors. As part of an administrative process it could be possible to build more units as long as other code requirements were met. The RM24 being requested was conditioned on the number of units and took care of that potential.

Dever asked why someone would do that.

Gough said a future owner could put more bedrooms on the site in order to rent to more people and make more income.

Dever said that if conditions changed in the future, a future land owner could retrofit those bedrooms to make it work financially.

Gough said yes.

Schumm said he was troubled by the entire planning process that was approved with the lack of communication and knowledge of the proposed changes at Remington Square Apartments; and, that this matter came to the City Commission without a peep from anyone. Generally, when something was wrong, the Commission would hear about the matter. There were too many possibilities to foresee. Usually, the neighbors and public could point out the possibilities and ramifications. He said he liked to see good strong plans. He had a problem voting on this item, even after voting for the plan. The commentary he was receiving was that the plan was not a good healthy plan.

Amyx said he was beating himself up over it because he voted for RM15 and he assumed the development would come under the rules of RM15. The property was developed to the maximum under that zoning unless the reconfigurations discussed took place. Now, conditions needed to be added, such as irrigation, which was desirable, but more units needed to be added to get that. It was never his intent to add more apartments to that site.

Schumm said the approved site plan that was laid out by a speaker was a contract that had been agreed to among the city, developer and neighbors.

Carter said he agreed. In September, the only document that came back was the map not the entire plan, which was added to the agenda today. He said he voted in September knowing what was in the plan, which was only 12 pages of text. On page 4, the plan indicated undeveloped property and specifically indicated plots, including Remington Square. In those minutes, from that meeting, Commissioner Amyx wondered why there was no public comment. The plan was spelled out well and approved. It was a tough decision because the neighbors preferred another plan, but the plan that came

forward was a compromise. In the future, when there was overwhelming support of a different plan by the neighbors that information should be brought to the City Commission's attention. He said he had prepared diligently and was ready for any information that would have changed his mind and it just didn't come forward. There were conditions in the site plan that could address some neighbors' concern. He felt the City Commission needed to follow through on the plan.

Cromwell said he respected the neighbors' opinions and the developer's reasonable rezoning request. He wasn't in a position to accept the request at this time.

Dever said he appreciated Carter's comments. It was a tough decision and he felt there was miscommunication. The Commission had approved the plan in September. The propensity of the 5 acres to develop had been discussed. The Commission went to the extent of commenting on the land uses based on that. He said he thought, at one point, that they had talked about excluding parcels from the plan and this was not excluded. It had been marked for density of development. He said his belief was that the lower density, in terms of people living on the acreage, was beneficial because it did not maximize the number of people living at that location. There were two scenarios. One scenario was that a new owner remodeled and increased the units and the other scenario was a vacant parcel was developed, as proposed, where a lower density was achieved. He said it boiled down to sticking to the approved plan, going through the process to find the least impactful development for the neighbors. Relative to the gigantic developments elsewhere, this development was preferable. This matter was hard to understand in making both parties happy.

Schumm said he was the only Commissioner without historical knowledge of this matter. The way it was originally developed left a question in his mind with the development located on one end. The original zoning was an up-zoning and the developer decided the location to site those buildings. He asked if there was firm honest

intent in the first contract or was there hopefulness that the other parcel could be redeveloped later.

Dever asked about the original zoning.

Day said the previous zoning was RSO and had a comparable density, but was a little lower, but the zoning would have not allowed straight multi-family with that particular zoning. She said a lot of that discussion was about returning the rights that went with that property prior to the adoption of the development code in 2006.

Dever asked how much more density.

Day said 12 units, slightly higher but a different form.

Amyx said Remington Square was a good project. He said he appreciated the work that had been done. If the zoning was increased to RM24 with the agreements in place, this project would be better. He said the original RM15 zoning that was approved, should be considered the maximum zoning on the property.

Cromwell said it was a tough decision and there were good points on all sides.

Carter said he was not passionate about more apartments, but he didn't want to send a message that the Commission was "wishy washy" regarding zoning. It felt like the Commission did not know they had voted on before and that wasn't acceptable.

Amxy said he knew what he had voted on when he voted for the rezoning.

Carter said he was referring to the plan.

Cromwell said he didn't like the way this plan had gone and as a result, did not provide a clear framework to the business community.

Carter said as uncomfortable as it had been, the City came out better for future decisions in being more careful and thoughtful.

Dever said if they didn't want to allow change to a plan, they shouldn't put a parcel in a plan with a number and a color on a map that meant something. If they didn't intend to mess with this tract, that tract should have been left out of the plan. He said he

worried about the next part of the plan or what parcel they wouldn't like. If anything, they learned that anyone affected by a plan should be notified in a more broad way and the City Commission needed to be informed about public comments. He cared about being transparent and effective in the planning process.

Moved by Carter, seconded by Dever, to approve rezoning (Z-8-12-11) of approximately 15 acres from RM15 (Multi-Dwelling Residential) to RM24 (Multi-Dwelling Residential), located at 4100 W 24th Place, and adopt on first reading Ordinance No. 8683. Aye: Carter and Dever. Nay: Amyx, Cromwell, and Schumm. Motion failed.

McCullough said item 1b was moot given the commission's vote on 1a.

2. Receive final report from the Peak Oil Task Force.

Charles Marsh presented the report.

Cromwell said he appreciated the hard work done on this document.

Mayor Cromwell called for public comment.

Daniel Poull, speaking on behalf of the Sustainability Advisory Board, read a quote from Sarah Hill Nelson in support of the report. For the SAB, he said he recommended that the Commission accept this preparedness document.

Michael Almon said he had the honor of serving on the task force and thanked Cynthia Wagner for her work on this. He read the following statement:

To put our Lawrence Peak Oil Plan into context, I would like to quote Richard Heinberg, author, energy analyst, and Fellow at the Post Carbon Institute - <http://www.postcarbon.org/person/36200-richard-heinberg#>. Mr. Heinberg has written ten books, two key ones being "The Party's Over" describing petroleum depletion, and "Blackout" about coal depletion vs. growing electricity demand.

I quote from his most recent book, "The End of Growth", which may not be a convenient sentiment, yet nevertheless an unavoidable one. Energy depletion and economic contraction go hand in hand, and indeed the world is already experiencing both. All but a few world economies are in decline with austerity measures being imposed. Federal and local budgets are being slashed, and we know the commercial vacancy rate here in Lawrence.

Peak Money may have been hit in mid-2007. Total bank holdings worldwide are around 10 to 11 trillion, down from 31 trillion in 2007. The lending power of banks is halving about every 3 years now, this according to Albert Bates, attorney and educator with the Global Ecovillage Network.

Considering how global energy depletion is already limiting the growth of the global and local economies, allow me to quote Richard Heinberg:

“Many people assume that solving our problems means being able to continue doing what we are doing now. Yet it is what we are doing now that is creating our problems.

“But our society as a whole is not inclined to do what is required to solve them, even if the consequences of failing to do so are utterly apocalyptic. This statement seems bizarre on its face. Who would prefer to see economic collapse, the exhaustion of precious natural resources, the disappearance of millions of species, the failure of food systems?

“Well, no one, if we put it that way. Yet we humans are hard- and soft-wired with genetic and psychological programming that can make it very difficult for us to undertake costly short-term behavioral change in order to avert future catastrophe.

“All the solutions to our growth-based problems involve some form of self-restraint. That's why most of those solutions remain just good ideas. That's also why we will probably hit the wall. The crucial question is, how serious will that crisis have to be to get our collective attention and force us to change our behavior? Will the crisis be so severe as to destroy the very basis of civilization?

“It need not be so, and by working now to ensure that the tools that are needed to enable the economy and society to adapt to the post-growth era, we can create the conditions for a rapid response when we finally adjust to the scale of the crisis facing us.

“Nevertheless, if some scale of impact is inevitable, this poses profound immediate challenges for individuals, families, and communities. How should we be preparing?”

I want to commend the City Commission for the foresight to appoint a task force to draw up this Peak Oil Plan, and the Mayor's Task Force members for their persistence in sorting through a very complex issue. We now have a plan to guide our preparations.

I hope our community can break free of those psychological constraints that Richard Heinberg spoke of. This plan is a readiness plan, an emergency preparedness plan, whose value is increased in direct ratio to how soon it is actively pursued.

One area of planning that I regret is not covered in this Peak Oil Plan is that of providing broad based community support for the most vulnerable populations. More and more of us are sinking into poverty and even homelessness, the very issue

that has galvanized the nation with the Occupy Movement. To be locally pro-active for vulnerable population groups will help avoid not only much suffering, but also the possibility of social unrest.

Because the City of Lawrence understands the need to implement this plan's response recommendations in its own operations, I believe that the next most important item is for the City to rapidly communicate to the citizens of Lawrence the implications and solutions within this plan. To get widespread community buy-in, we will need to overcome those human behavioral constraints, both among individuals and among the business community.

Nancy Thellman said that they owed a great deal of thanks to Cynthia Wagner and Professor Chuck Marsh. She thanked Almon for bringing forth ideas and information. She thought the report was a good document.

Tim Herstead thanked the Commission for taking action on this issue. The City of Lawrence was among a handful of cities taking the initiative on this issue. He said he wrote an article which had been reposted on "The Oil Drum," one of the biggest peak oil blogs.

Matt Schwabauer said he recommended approval and that action be taken. As Almon had pointed out, those issues challenged the fundamental paradigms running this country since 1492. He said they cannot continue to take over raw land and turn it over to consumerism and needed to adopt a more appropriate way of life. The world everyone would live in would be more intense. In the past, they had solved problems with more fossil fuels and development, but perhaps with more floods they won't have access to those options to deal with mother nature's fury. He said he didn't want to be all doom and gloom because he thought they could have a better life. They had an opportunity to do something better. Pretty obvious facts argue for this eco-conscious way of life. There were forces aligned against that though. The Occupy Movement had captured the essence of greed. They could not continue to allow the few to exploit the resources they all needed in the new reality. The media and people with access to money, maybe not the people but the systems, might not have the capacity to adjust to the new realities.

Steve Moring thanked the commission and task force for their efforts. One of his main concerns was agriculture. Before the industrial revolution, one in three people were involved in agriculture. Since then they had been able to benefit from “energy slaves.” Right now, they had less than half a percent of people involved in agriculture and as the world changes they would need to go back towards agriculture. It was important to continue efforts to implement strategies to deal with the crises that would come from Peak Oil. He said the Sustainable Action Network was involved in activities to change the way things were done locally and build this community.

Daniel Lassman said his main concern was whether the report incorporated how climate change would affect the area. In NE Kansas there would have been hotter drier summers and colder wetter winters with more extremes throughout the year. Thankfully, they might not be affected by the dust storms in western Kansas. They might have unexpected peaks in energy usage in Lawrence. He was not sure whether the report addressed the possible decreased agricultural yields as a result of droughts. The current predictions of the UN were that human population would peak this century between 9-11 billion. At that point, the basic concept of growth would have to be changed. People would need to redefine what wealth was if it was not growth.

John Benjamin said he totally agreed with the goal of the task force and thought local action was as necessary as global action. He thought some of the points could have unintended economic consequences. How would trash be rated by volume when often trash was compostable versus non-compostable. Having a rate based on volume might incentivize littering. The local garden program was also problematic because they were going to be growing produce in the city there could be higher intensity agriculture than intended. He thought the best action was to put pressure on state and federal governments to incentivize less use of carbon based fuels, such as carbon emission taxes. The local government could voice support for such initiatives. He thought the task force was on the right track, but there were certain issues to be more closely scrutinized.

Dever said it was a great document. The time frame by which they achieved both a climate protection plan and peak oil plan was longer than anticipated, but a great job was done. A lot of those plans were already being implemented. They lived in a socially responsible community. He said he appreciated Cynthia Wagner's and other's work on this endeavor. He was impressed with how the ideas were boiled down. This was a beginning and hopefully some good policies would come out of it.

Cromwell said it was interesting there were two products of KU's environmental studies program here on the commission. He said it was amazing work and he knew how hard it was to pull this all together right now with the vast amount of information out there. They had a better understanding of the issues and made better decisions while governing as a result of having those reports. In a few years a tremendous amount of progress was made. In looking forward there would be increased pressure to do more. There were a lot of great things that come together in this community. One could not argue that demand was going up and resources were going down. Prices were going up and changes were needed in the way we were living. They had to make environmental issues a focus. Having a strong economy in Lawrence was also important because if people have to go to Kansas City for jobs while energy costs were rising, they were going to leave Lawrence. This report would be very useful moving forward.

Carter said he echoed everyone's comments. He said the task force shouldn't beat themselves up over the length of time it took because this was a big issue with more information coming all the time. The concept of thinking globally and acting locally was important. The report was good for the community and also might inspire a snowball effect with others following our lead.

Amyx said this report and the process had been a good teaching experience because seeing where the community was headed in the future was important.

Carter said the City had a Sustainability Coordinator to help with those efforts.

Schumm said he would move to accept the report with the understanding that the City would do as much as possible to implement the recommendations over the next two years.

Moved by Schumm, seconded by Dever, to receive the report. Motion carried unanimously.

At 8:28 p.m. the Commission recessed for a short break.

At 8:40 p.m. the Commission resumed the regular session.

3. Review a zoning compliance matter related to the use of 1146 Haskell Avenue, and provide direction to staff as appropriate.

Scott McCullough, Director of Planning & Development Services, presented the staff report.

Amyx asked why this zoning compliance matter was not an item for the Board of Zoning Appeals.

McCullough said this item was ultimately an item for the Board of Zoning Appeals.

Amyx asked if the City Commission should use discretion in their comments on this item.

McCullough said discretionary comment would be prudent.

Amyx said if this item was ultimately going before the Board of Zoning Appeals, he asked why the City Commission was being placed in a position of getting in trouble legally. He said it seemed the Board of Zoning Appeals was the City's legal arm regarding interpretation.

McCullough said this particular code standard has rarely ever been used in the community. The City Commission in its legislative responsibilities did adopt code standards for the community. Staff felt it prudent to bring to the City Commission, this rarely used code standard for guidance and direction from the adopters of the City Code and how to use this particular code standard because of the grave implications it had, not only for the business, but for the neighborhood.

Amyx said the City Commission adopted policy based on recommendation, not only from staff, but from the Planning Commission and comments from the public. The expectation

was that staff would carry out that policy. Again, there was a mechanism in place for the BZA to hear this type of case.

McCullough said Commissioner Amyx was correct. Technically the code sets up the process that staff provided administrative determinations which could be appealed to the BZA and the BZA not only helped interpret, but heard appeals as well. Again, this issue has received much community interest that staff wanted to get an open forum for the community to speak and to hear from the governing body on this matter. This matter did not stop at this meeting, but process had to play out and could include the Board of Zoning Appeals.

Mayor Cromwell said regarding the legal implications of the City Commission's action, it was implied that it be similar to an ex parte communication

David Corliss, City Manager, said the value was that this meeting was an open public meeting and staff did not have a lot of experience in this interpretation of open use of land. Before staff made its final staff determination, which then could be subject to an appeal to the BZA, staff wanted the benefit of direction from the governing body regarding what the Commission believed that code provision stated. He said the Commission might not be able to decide that interpretation, but he did not think that was inappropriate because of this forum, an open public meeting. Staff had a number of issues they thought were salient. There was a lot of community interest regarding this issue and there had been community contact with the City Commission to see if there was any new information or any new understanding of what this provision stated. He said staff was not asking that this provision be changed, but asking that all information be exposed and the Director of Planning and Development Services would make his interpretation and would be publicly known. If there was a disagreement, the BZA could then review the interpretation of the provision.

Mayor Cromwell said he was asking whether the City Commission needed to be careful.

Corliss said he did not think the City Commission would be directing staff to do anything that would change this issue in any type of legal circumstance. If the Commission directs staff

that they believed that this provision in the code stated something, then staff had the benefit of the governing body's understanding of that provision. It was a value not only to staff, but to the community and the BZA. He said the City Commission could not direct the BZA, but could direct staff. Staff wanted to take that direction after City Commission review.

Mayor Cromwell said perhaps their comments were better directed toward supporting or refuting staff's interpretation of this provision.

Corliss said it could be the initial issues staff needed to take into consideration. He said it was clear the City Commission was not directing the BZA regarding how the provision would be interpreted if went to that stage.

Amyx asked if the City Commission could refer this item to the BZA.

Corliss said staff could find a way to get this item to the BZA, but the BZA handles appeals of administrative determinations.

Carter said it seemed like a good chance of an appeal regardless of the decision. He said he thought this item would find its way to the BZA.

Corliss said he thought it was exactly the point. He said because the fact that there did not appear to be an area of compromise on this item, then it was likely on or the other parties was going to see that additional review at the BZA level and more further refined. The hope would be to have a clear path tonight.

Amyx said he brought this issue up because of what the Commission went through with a downtown project which was to be careful of City Commission comments because the project would go to another committee. He said if that was the ultimate case, he asked if the City Commission would get into any trouble by giving direction when ultimately this issue would go to the BZA that had the responsibility of interpretations of the development code.

Corliss said he did not believe so, because the City Commission was not prejudging this issue and this issue would not come back to the City Commission from the BZA. Once the BZA made a decision, the only recourse that was a party before the BZA was to appeal the issue to

the State District Court. In the case of the Historic Resources Commission action that was in play last week, the City Commission was making a review of that piece of property in anticipation of that issue going before the HRC. The HRC would meet Thursday on that project, but whether or not there was an appeal that would come before the City Commission was something that likely, and staff did not want to prejudge that issue. In this case, staff was seeking any new information or any clarity in interpreting this code provision that staff needed and that the neighborhood had the opportunity to present in making a determination. He said if there was a decision to appeal that determination if it went to the BZA, then they had to go through district court. He said they could ask the City to change its code and other things, but as far as the BZA, the only recourse was the district court.

Schumm said what he was hearing was what the City Commission thought was the right interpretation. He suggested starting with the definition and staff's understanding of the definition.

McCullough said when staff began their investigation and cited the owner for their property, staff went through an avenue of attempting to reach some consensus about the issue. Staff recognized there were some legal issues that could end up in litigation through other avenues. He said when the owner presented a plan to staff, initially, it basically outlined everything in its current existing condition and staff could not accept that plan and it was still an open use of land. He and his staff had thought about it in terms of its relationship to the site itself or the ratio of open use to the overall use and its relationship to the building on the property. Part of the definition talked about an accessory building and whether or not the use was primarily in the structure or primarily outside. He said from staff's prospective, they were in the position that it primarily outside, under its former intensity on the property. Now that it had been reduced to the locations and scope at this location, and as staff marked out exactly with dimensions and tree lines as reference that they would know whether or not a line was crossed to enforce it in the future, and staff felt it was reaching compliance in terms of the open use of

land definition. The open use of land definition, to read it very literal, a person could not have a stack of pallets outside a building. He said staff interpreted it to be some amount of open use that was going to be accessory to a primary use.

Schumm said that followed the Price Banks letter in 2003 when it was described that what would take place on the site was open storage of palletized appliances or parts of appliances.

McCullough said they were not of the opinion that this was meeting that representation. He said staff was trying to reach a goal of getting closer to what that impact would be of that representation because that was one example of an industrial type commercial use that the office granted in 2003 to the owner, but staff was not trying to say that it was now in compliance with that letter, but more in keeping in compliance with definition of open use of land and recognizing that the property did and had enjoyed legally non-conforming rights for some time.

Dever said he was confused because he understood staff was coming to the City Commission for some sort of clarification or opinion on how much land could be used to qualify it for open use of land. Specifically it stated: "How much land could be used to qualify it for an open use of land." This was stated in the City Commission's action and in staff's memo.

McCullough said the core question specific to this property was with this compliance exhibit, that showed the amount of outdoor use on the property. He asked if that was more or less in keeping with the intent of the definition of open use of land in the City's code as the City Commission took in all into consideration.

Dever said then he went back to the legal definition of open use of land which states: "Auto wrecking yards, junk and salvage yards, dumps and sale yards were enjoyed uses for open use of land."

McCullough said those types of uses were included in the definition of open use of land. He said there had been discussion with the owner's legal representative that recycling facilities were defined elsewhere in the code and were not listed in this use. The argument had been

made that because of the code structure, that a recycling facility by definition could not be an open use of land. That argument had been disagreed with, but with the understanding that there was grey area. He said he believed there was an element of a recycling processing center that could be an open use of land when it was to the extent of what staff found in its investigation in 2010.

Dever said the use that was occurring on this land up until recently where the majority of the site was filled with auto, auto parts, materials, and salvaged items, was an enjoyed use under this code.

McCullough said not under the 2006 Code, but under the 1966 Code.

Dever asked why it was listed as a use that was allowable in the 2011 memo.

Amyx said the staff report referenced Section 20-1701 which defined open use of land which was what Commissioner Dever stated.

McCullough said in April of 1966, the property was annexed and the 1966 Code was adopted virtually the same night and then publication and other things happened within weeks of that adoption. He said for all intents and purposes the review of the records showed that this property was zoned RS-1, upon annexation the property was being used for an auto/salvage yard. The 1966 Code included a new provision in the code that was very similar to the 2006 provision which required the discontinuance of an open use of land. It was very similar, except that the timing of when they had to discontinue was different. He said he could not find a record that there was any effort by the City to seek out non-conforming properties and then take an effort to discontinue those properties. There was nothing in the record upon the annexation that showed that the City recognized that it was annexing a property that upon adoption of that new code that night would be a non-conforming use of land and had to be discontinued within a year upon adoption of that new code. He said from 1966 through 1993, the property had this auto salvage use and the City did not require that use to cease. He said he could only assume that

the City either did not recognize it as a non-conforming open use of land or simply overlooked that issue.

Dever asked if Section 20-1701 was different from what McCullough just stated.

McCullough said no, the code required that when an industrial open use of land in an RS district existed, it needed to be discontinued by November 1, 2008. He said when the 2006 Code was adopted the City did not take on an exercise to seek out what properties that code section would affect.

Dever said the definition of what the City did not want occurring was listed in Section 20-1701.

McCullough said this simply defined open use of land.

Dever said it stated “any open use of land that becomes nonconforming because of subsequent amendments to this Development Code shall also be discontinued on the same basis within 3 years of the effective date of the amendment that renders the use nonconforming.”

McCullough said that was the code section that would require it to be discontinued, but first they had to classify it as an open use of land. If it was an open use of land, it needed to cease and no longer be even a non-conforming use per City Code. If it was not an open use of land, then that standard did not come into play and was not applied to the situation. He said the use should have ceased in 2008. The Planning Office did not recognize it as an open use land until 2010 after the complaint and investigation.

Dever said that was why he was confused based on what he read. The use that was occurring should have been discontinued, but he thought there was Section 20-1701 that was related to some use that was exempt, but McCullough was eluding that it was specifically defined what the City did not want happening as an open use of land.

McCullough said on non-conforming properties. Open use of land was a permitted use in IG districts. He said this property was non-conforming because it was an RS zoning property.

Dever said he was unclear on whether staff was asking the City Commission to ascertain, agree, or define "Open Use."

McCullough said when the property included vast amount of storage the Planning Office reviewed the code and cited the property, invoking the standard that required it to be discontinued in 2008. He said there was an open use of land and the City Code required that use to be discontinued because it was non-conforming and did not have IG zoning. Staff began the process with the owner and the neighbors of looking for ways to comply. That process had taken them up to this point where the owner had scaled back to what was shown in that exhibit and the question now was if the reduction of the open outdoor use on the property reclassifies it from open use of land to simply a recycling processing center, which one could argue against that it enjoyed some of the legal non-conforming use status in 2003. Staff could declare that property in compliance and not an open use of land, therefore, not required to be discontinued because the open use of land no longer existed.

Schumm asked was that area organized enough so it was not considered an open use of land.

McCullough said the core question was if this scenario, as framed in this exhibit, was meeting the definition and therefore an open use of land or not an open use of land. The implication was that if it was an open use of land, it must cease.

Dever said he understood, like an accessory use to the structure they were discussing. He said staff would like some help in clarifying whether or not this was enough remediation of the extensive open use that occurred to make it an accessory use to the improvements and/or the historical exemption that this building had in the past.

McCullough said precisely.

Carter said when coming to the City Commission to determine if it was an appropriate amount to be considered an accessory use to the building, he said they needed the square footage of the building and its function.

McCullough said he did not have the square footage, but there was some amount of retail, the operations for the recycling processing, the payments and coordination. There was processing that occurred in storage of some materials in this building, a scale, and a drive back for different types of material to be dumped out of different types of vehicles throughout the open areas.

Dever said it stated that the existing building was 12,700 square feet.

Schumm asked why the developmental codes outlaw a non-conforming use within a certain number of years. He said he always understood once a non-conforming use was in place, it was more or less grandfathered and kept regenerating itself year after year.

McCullough said the power was granted, in municipalities, that the State Legislature provided that a city could amortize out non-conforming uses. Some cities chose to do so and this was one of the uses.

Schumm asked if those amortized non-conforming uses were specified.

McCullough said as the City declared amortizing out non-conforming uses. He said that this was a unique use and was one that needed to be discontinued.

Brad Finkeldei, on behalf of Bo Killough, said he was present to ask the City Commission to support staff's efforts to help the applicant reach compliance. After a lot of work by his client he had the ability to use a smaller portion of the property as set forth in the compliance document. He asked the Commission to support McCullough's recommendation as set forth in the compliance document. An open use of land did not involve improvements except accessory structures. As McCullough said, this was a term that took a full understanding of facts and circumstances, and they reached a point of compliance where they didn't violate the open use of land. There were a lot of other interesting points that could be relevant and could be

discussed at some point in time. A discussion of nuisances involved another code section that was not the topic of discussion tonight.

Carter said in his discussions with Byron Wiley and Michael Almon, the nuisance issue was the reason why there was no compromise. Shrinking the space did not change the nuisance noises.

Finkeldei said they had one meeting with the neighbors, but the neighbors did not come to a second meeting because they felt there was no compromise. Staff has not cited a violation of nuisance. Going forward, depending on what the city did with recycling, could change a lot what his client did in his business, in the coming years. The neighbors were focused on the nuisance, but were present for a different issue tonight.

Mayor Cromwell called for public comment.

Byron Wiley read the following statement:

“Hello, my name is Byron Wiley and I live at 1200 Almira. We petitioned the city commission to review this issue and to request enforcement of the May 4, 2010 Notice of Violation. This is what we came here for, not to review a site plan for them to continue an illegal land use. This issue was originally brought to the attention of the city in February 2006.

I purchased my property in August 1996, in what was then a fairly quiet and peaceful neighborhood. I had expectations that surrounding properties would not infringe on my rights to peacefully enjoy my property. When I purchased my home, the only business operating at 12th and Haskell was a fairly quiet auto repair shop. How is it possible that this property could morph into a full scale industrial operation?

I did some research on the non-conforming use of this land.

On August 5, 2003, Linda Finger approved a nonconforming use for this residentially zoned property relying on incorrect land use history from the buyer’s and seller’s attorneys. She said that the proposed uses were similar in nature to the previous salvage and sales operation.

Mr. Killough’s attorney claimed in 2003 that the {recent use} of the property was for the salvage of automobiles.

The seller’s attorney also incorrectly represented the land use, stating that individuals in the salvage, and other industrial businesses leased the property during this 10 year timeframe.

That was incorrect.

Neighbor's observations, phonebook & city directory records and aerial photos confirm there was no industrial or salvage related activity from 1993 to 2003.

You can clearly see from this list that the only businesses operating on this property from 93 to 2003 were a quiet auto repair and towing business, not salvage or industrial.

In this 1995 aerial photo it is crystal clear that there was not any industrial or salvage related activities

The 2000 aerial shows auto repair and auto storage from the towing company

The 2002 aerial shows the same

This is 2003 aerial before the bargain center occupied the property

- We were not notified of the administrative decision granting this use; therefore, how could we have appealed this mistake at that time?
- City code clearly stated that if a non-conforming use is discontinued for a period of 6 months, it shall revert back to its underlying zoning, which is residential in this case. This was roughly a 10 year gap in intensive industrial activity.
- The intention of nonconformity zoning codes is to bring non-conforming uses into alignment with underlying zoning. In this case, making it compatible with a residential neighborhood.
- Nonconformity zoning law is supposed to reduce intensity, not go the other direction into a more intensive use.
- The "Open Use of Lands" code clearly directs that activities "shall be discontinued," and does not state that this code "shall be flexible."

Nonconformity amortization laws are intended to bring nonconforming properties into alignment with underlying zoning, not to perpetuate the nonconforming use. Case law clearly distinguishes this intent.

The nearly continuous intensive noises, traffic issues, and pollution issues are as ever present and aggravating as at any time in these past 7 years.

The peace, quiet and scenic character of this neighborhood has been violated. "Who wants to live next to a 'dump'," as one neighbor succinctly described the abject situation. We have a right to enjoy our property both inside and outside.

Current city codes clearly prevents the establishment of such intensive industrial activities adjacent to neighborhoods. Following the 1979 zoning code that was in place in 2003, would have prevented this from being established in the first place. Enforcing appropriate and key codes now, will resolve the intrusive nuisance affecting our neighborhood. Please enforce, not circumvent, the notice of violation issued on May 4, 2010.

Please enforce the Open Use of Lands code with its intended function to align a nonconforming property with underlying zoning, not to perpetuate the nuisance-ridden nonconforming use.

Melinda Henderson recounted various communications regarding the property. Mistakes were made because planning staff relied on attorney's statements of the applicant. She displayed aerial photos of the property over the years. There were commercial uses, not industrial uses, for over 10 years, much longer than the 6 months that a nonconforming use was allowed to lapse without reverting to underlying zoning. The notion of using the site as recycling was not mentioned in 2003. She asked Commissioners to note how close and personal the land use to the neighborhood was. The intensity significantly ramped up in 2005. A recycling center was an industrial use and an illegal use of land and should not be allowed to continue. The recent reduction in the area used has not reduced the nuisances of the land. Please direct staff to enforce the notice of violation.

Julie Mitchell, President of the Brook Creek Neighborhood Association, said the first problem they were having was vehicular traffic. Cars park on the no parking side of the street and block the road. Mud was tracked onto the street. Customers pull off into the neighbor's yard. Big ruts in the mud were created. There were vermin and projectile hazards from high winds. There were litter problems. Litter comes from the applicant's trucks where they dump it onto a pad outside the building. The screening fence was damaged and materials were piled up higher than the fence. Toxic fumes and fires were a problem and a hazard to the neighborhood. The property was in flood zone A. Any time the creek comes up everything flows into the creek and to the Kansas River. The neighbors supported recycling, but a processing center was not compatible with the neighborhood. The nuisances involved were what happened when industrial uses were within feet of homes.

Theresa Martin said she lived in Old West Lawrence and no one would let this happen in Old West Lawrence. She said the noise ordinance was violated by this facility. The noise was not temporary but continuous, 6 days a week. She played sounds from the facility that she recorded from inside a house in the neighborhood. She said occasionally sounds could be

heard from the city facility but the sounds from the recycling facility were continuous. The excessive, intensive, continuous noises were not compatible with the neighborhood and had not been abated with the recent changes to the area used.

Beth Ann Mansur said she represented the Schwartz's who lived nearby and were not able to attend the meeting. She played a clip of an interview with the Schwartz's.

Tom Genereaux said he bought his property with the understanding that the nonconforming use was being resolved. Industrial activity was just flat not permitted and he displayed a video that demonstrated that activity. He said it was nonconforming use that was completely inappropriate for its zoning. He asked the Commission to enforce the notice of violation.

Andrea Repinsky said the use was an open use of land. It was salvage yard and did not have a special use permit, which should be required. The code did not allow staff to determine how much open use of land was allowed, because the code clearly says that no open use of land was allowed. A little open use of land was not OK. The nuisances were part of the reason a recycling processing center was not appropriate to the area. The site operated as a processing center, not a collection facility. The code says the Planning Director could approve a collection center, but not a processing center. There were multiple violations of city ordinances taking place at this site. Acceptable uses would be assembly and retail but only if heavy equipment was not used and open use of land did not take place. Those things did take place. Much more than limited palletized storage of materials was what was going on at this site. This was not clean salvage or recycling. It was a processing center and a salvage center, and it was operating illegally.

Craig Comstock said he had lived nearby since 2003. He supported the neighbors near the center and didn't believe the center should be able to exist as it did now. It should be made to conform now.

Linda Klinkle, Cans for the Community, said her group formed in 2005 and had given \$84,000 to the community from the recycling of cans. They had partnered with the recycling center and had seen many improvements to the center over the years. The parking lot was cleared and the back lot was more organized and cleaner now than in the past. She said they did a pretty good job of keeping the place presentable.

Gwen Klingenberg, Lawrence Association of Neighborhoods, said that violations of the old code continued to be violations under the new code. The property was not in compliance under either of the codes. The property owner had been given sufficient opportunities to comply. As pictures had shown the violations had expanded under both codes. They were not allowed to expand under either code. Under the new code there was a set of rules for nonconforming uses within RS. If the use discontinued for 6 months the use should not be resumed. One thing was very clear, when there was a conflict among regulations, the stricter shall apply. If it's open land use, it shouldn't be at that location. If that was zoned RS the use did not fit and was incompatible.

Boog Highberger said what staff was asking the Commission was to decide when a duck wasn't a duck. If it walked like a duck and quacked like a duck, it was a duck. He encouraged commissioners to enforce the notice of violation.

Marci Francisco said the League of Women Voters had sent a letter. The interpretation of the code was a matter for the BZA not the City Commission. The use of flood plain was nonconforming and an open use of land. The question was asked whether there were open uses of land. It was clear they were and that the uses outside were not necessarily related to the inside activities except payment.

Leslie Soden, East Lawrence Neighborhood Association, said she hoped they pursued the heavy use.

Phil Wood said he lived across the street and when that business drove a big bulldozer or used the heavy machines it shook his house.

Richard Heckler said he was present to support his colleagues in the neighborhood. He said the operator had more than enough time to comply with the codes and had chosen to operate in violation of those codes and was talked about for years. The street was collecting lots of debris and he had noticed that he was getting frequent flats traveling on the road by the recycling center.

Michael Almon read the following statement:

“Can you imagine living with the 12th & Haskell salvage and junk yard in your neighborhood? This is a textbook case of why we have zoning codes.

When Orville Ray closed his auto salvage yard in 1993 for more than the statutory six months, that land use right ceased on this property. It should never have been allowed to re-establish, neither by Planning Director Linda Finger's 2003 clause about Bo Killough's proposal being “similar in nature to the previous salvage operation”, nor when she looked the other way in 2005 as Mr. Killough expanded his land use classification without the required permits.

The City of Lawrence cannot claim ignorance of this expansion. Its maintenance yard is right next door. And the City also sells its own scrap metal to Mr. Killough. Thus, the City is not only condoning Mr. Killough's illegal activities, it is enabling them.

Since 2006, the Brook Creek Neighborhood has filed complaints about the legally defined public nuisances that are trespassing on our residentially zoned neighborhood. We are daily being denied our property right to enjoy the use of our properties.

After six auto fire incidents, and several citations by the Kansas Department of Health & Environment against Mr. Killough, City Planning & Development Services finally began discharging their duty. They issued Mr. Killough a strongly worded Notice of Violation on May 4, 2010. Within three weeks of the Notice issuance, Mr. Killough's attorney responded with a letter full of questionable logic. Then for a year and a half, the Notice went unenforced.

We want that Notice of Violation enforced. We petitioned you in September of this year to get that Notice of Violation enforced. We are not here tonight to entertain a schematic pseudo site plan that circumvents the Notice of Violation. We reject that feint entirely.

Stepping back in time, the five auto service and towing businesses that operated from 1993 until 2003 were all commercial uses, not industrial. According to the 1979 Code in effect at the time, a property owner could change a non-conforming use if the use is "within the same or more restricted classification as the original non-conforming use". So in 2003 when Mr. Killough bought the Ray property, ONLY commercial non-conforming uses existed there.

Mr. Killough and his attorney stated in 2003 that he proposed to be "purchasing returned or rejected housewares and outdoor appliances and furniture, and salvaging such items to reassemble and sell". Linda Finger issued the non-conforming use permit stating the same. No mention made by either Killough or Finger of "large collection recycling", "recycling processing facility", "auto wrecking yard", or "salvage yard".

In 2003, Mr. Killough did open the 12th & Haskell Bargain Center, a reclaimed and reassembled merchandise store, inside the building, selling tools, appliances, equipment, and such. His attorney claims that, from the outset, it was not a salvage facility, but a recycling facility. Regardless, Mr. Killough had no permit for a recycling processing facility. Then, in 2005, Mr. Killough illegally expanded his operation to the dramatically more intensive, industrial uses of "large collection recycling", "recycling processing facility", and "auto salvage yard", all being non-conforming Open Uses of Land.

Now consider - the 1979 Code at that time prohibited him from changing to a less restrictive non-conforming industrial land use. Even if one argues that he could, he still failed to submit either a legal site plan according to Sec. 20-1431, or a Use Permitted upon Review application. He would then have been, and by 2006 Code provisions must still be, subject to the following City Code requirements.

A Large Recycling Collection Facility and a Recycling Processing Facility, both:

- (a) Shall not abut residential property.
- (b) Shall operate in a wholly enclosed building.
- (c) Power driven equipment must comply to the Noise Ordinance 6088.
- (d) No dust, fumes, smoke, vibration or odor may be detectable on neighboring properties.
- (e) The use shall not be detrimental to the health, safety, and welfare of neighboring property owners.

The Notice of Violation rightly contained the findings of fact that "The current use of the property qualifies as an Open Use of Land in violation of the Development Code. A non-conforming industrial or commercial open-use-of-land shall be discontinued by November 1, 2008". There can be no clearly delineated boundary of an Open Use of Land. You're either pregnant or your not. There is no halfway measure.

The City was derelict in its duty, first by ignoring Mr. Killough's expansion of his non-conforming use, and secondly, by failing to require the non-conforming Open Use of Land to end on November 1, 2008. After letting Mr. Killough skate on the 1979 Code, the Commission would be remiss if you approve this semblance of a site plan proposed this evening.

We are now three years, six weeks past the November 1, 2008 deadline. The City Commission would be wise to enforce the Notice of Violation tonight, and issue a cease and desist order effective tomorrow.

Schumm said he was still a little unsure of what they were supposed to do tonight. He said he understood staff was looking for direction based on a schematic and if that was sufficient to remove the open use of land from the property in question. He gleaned from the testimony that the neighborhood was interested in a “cease and desist” action. Would the complaint on file now end in a “cease and desist” order and would it come from BZA.

McCullough said the standing notice was the Notice of Violation, in which was noted the open use of land and the expansion of use. As the owner began down the road of compliance, staff set out to determine the issues and what the owner could do to satisfy staff, code issues, and the neighborhood. In taking that avenue of compliance, the city and Killough agreed that they would reserve the use of other avenues. What was helpful was to know the City Commission’s impression regarding the open use of land standard and whether issues that impacted the neighborhood should be looked at more stringently. Ultimately, this case could take several different paths. The notice stood today and the owner needed to comply per that notice. He said choosing a different strategy or other code provisions were another avenue to follow. The owner could take different legal responses to our notice of violation.

Schumm asked if staff was asking the City Commission to interpret the code.

McCullough said correct, in a practical sense.

Carter said he did not know if they needed to go down that road because it was clearly an industrial use. He did not know how they got to that point and how it was that complex. The intent of the code was clearly that the City did not want to have that type of use abutting a residential neighborhood. He asked if there was another site where this type of issue was happening.

McCullough said no. The question was how much outdoor use should be allowed related to the recycling center.

Carter said no matter how much, that site was still industrial.

McCullough said it still might enjoy some nonconforming rights based on the 2003 judgment.

Carter said the site still couldn't have the right to be such a nuisance to the neighborhood. It was an error in judgment in 2003 and they did not need to perpetuate it.

McCullough said the site was categorized as an open use of land and they needed to get back to palletized storage without the large stockpiles, materials and other things, then the implication of declaring it an open use of land was that the activities must stop. If they were to scale it back to some intensity that could show the property owner was going to comply with the representation of the 2003 letter, it probably wouldn't because it was going to have recycling center materials. He said as far as the Notice of Violation and what it addressed, it might be that the site needed to seek a Special Use Permit process to intensify the use from what was granted in 2003 to get at some of that intensification of what a recycling center was over and above, mainly retail. He said staff had not gotten that far in the process because they were hung up on the issue of "open use" of land and how far could it scale back and as staff presented a special use permit to the Commission based on the application, they wanted to say it was not open use of land, but it was an intensification of use that could be granted through a special use permit.

Schumm said if the City Commission decided the schematic was okay, then that defined non open storage relevant to this case. If the City Commission decided the schematic was not okay, then a complaint went forward and he asked if that was a "cease and desist" process or was there another alternative.

McCullough said staff had to explore options in how they would enforce it.

Schumm said he was not happy with the activity that was going on at that site and it was a heavy industrial use sitting next to a residential neighborhood. He said also on the other hand, he was sympathetic to a man and his business and trying not to take away the man's livelihood.

Amyx said the City Commission needed to be careful in understanding exactly what happened if the City Commission made a determination on this open use of land. He said he understood that the “cease and desist” would be the order that was handed down. If the City Commission made a determination that there was not this open use of land under the rules of the development code, he asked what had to happen.

McCullough said if it was an open use of land that it would intensify the approval of a special use permit process. He said he would imagine that they would make a finding that if it was not an open use of land, it did not need to “cease and desist”, but it was still more intense that the approval of 2003 code.

Amyx said an application had to be made under the rules of the development code to receive the necessary permits and meet the regulations of the code.

McCullough said that was one of the avenues staff reserved in the process to try and resolve.

Mayor Cromwell said realizing they were talking about a different issue than open land use, they learned quite a bit about nuisances and noise. If one assumed the owner was operating under the purview of the special use permit, he asked where they would be at with the noise issue.

McCullough said a mechanism chosen with the applicant needed to show compliance of the site plan. He said the owner needed to present a site plan that showed very limited palletized storage of materials, scale back the recycling processing within the building and be more of a collection facility than processing at the level they were today.

Mayor Cromwell said they were discussing noise levels and the complaints by the neighborhood.

McCullough said that came from direct product of intensity of the open use of land. He said if taking away the out door use, there wouldn’t be trucks and crushing noises.

Mayor Cromwell asked if the current intensive industrial use noses were by products.

McCullough said that was something that staff did not address from the development code standpoint. He said there was record that the police had been to that site and made a determination of those noises. He said he needed to explore that issue with the Police Department and legal staff to determine if those were violations.

Mayor Cromwell said the City Commission heard those noise complaints from the neighborhood and wanted to make sure there was some response and were not only talking about open space.

McCullough said there were multiple issues that needed to be reviewed.

Carter said in following up with Commissioner Schumm's comments, in addition to someone's livelihood, there were 9 people with jobs and there was obviously some good being done for the community in recycling. He said he did not mean to gloss over those facts as if it were not important. In order for that site to be a conforming use and be limited to the building with only with pallets and other things outside, the business was done. He said this business was either going to work at that location or not, even going back to the 2003 determination. It was a shame this activity was established and never should have come to this point. He said they learned it was an enforcement issue, more that a zoning issue. He said that site was clearly not what it was zoned for and there were risks on the owner's part by building up the intensity to that level.

Schumm said if the City Commission took action and it was not favorable for the business owner, he asked if the owner had the right to appeal to the BZA.

McCullough said he thought the City Commission would be giving an opinion on some of the elements of this issue and there would be another letter to the owner with an administrative determination, which could be appealed. He said the City Commission was not deciding anything like enforcement.

Mayor Cromwell said this was interesting history of a piece of property and an evolution of a business. He said particularly going back the last few years, the intensity has ramped up.

He said they were talking about the open use of land having the exceptions and the business grew and then scaled back a bit. Clearly what this had become was an open use of land and furthermore there was a clear nuisance to the neighborhood in terms of noise issues, vibrations and other issues that needed to be dealt with in code enforcement. He said he was a little concerned that some of those issues had gone on as long as they had and had been intense at that site. He said the City's ordinances needed to be enforced. He said he would like to hear why it took so long to deal with those issues.

Corliss said what he understood the Mayor and other Commissioners to be saying was that this was not an acceptable open use of land.

Schumm said he concurred.

Amyx asked if there were decisions made by this businesses owner based on direction he received from the previous Planning Director. He asked if the City did things wrong.

McCullough said he could not speak to discussions, but the records showed the presentation at the Planning office provided for a limited palletized outdoor storage of materials. He said with discussions with the owner, this had been an evolution with the intensification had come with Wal-Mart closing down with renovation and it was a primary recycling facility in the community for a time. He said it there was a 2006 complaint that was handled as a fence issue and not a land use issue. He said the City Commission provided the guidance that staff needed and did not think a formal vote was needed or appropriate.

Schumm said he wanted to be completely sure of all the ramifications of the City Commission's actions. He said he would like staff to come before the City Commission knowing they had the first opinion of the City Commission that this site was too intense and asked staff where this would be leading to and the implications for the City Commission and the City.

Corliss said staff would have legal discussions with the City Commission. He said that was entirely appropriate. This issue had been painful and they had his apology for having to present this matter this way. He said this was not the way staff liked things presented as far as

its lack of clarity as to what the decision tree was. He said with this presentation and the neighbors opportunity for discussion, staff had an understanding of the Commission's opinion and could provide the City Commission with a full policy and a legal briefing on the view that this site was an unacceptable open use of land.

Mayor Cromwell said the question was that the Commission did not talk about one project specifically, but talking about interpretation and what other properties might be impacted throughout the community.

Corliss said he was not aware of other properties impacted, but would track that information down as well.

Dever said by trying to discuss this item, there were all those unintended consequences when really the question was what was going on at 12th and Haskell Avenue and what was the City prepared to do and how could they mitigate the impact to both the neighbors and the business owners.

Amyx said the City Commission needed an opinion on when it was appropriate and how it happened that the BZA heard this type of item. He said it was the BZA's job.

E. PUBLIC COMMENT:

John Thornburger asked that the commission withdraw Burcham Park from participation in the Common Ground Urban Agriculture Program.

Boog Highberger said he and Eileen Horn were attending the Pickney Neighborhood Association meeting on Saturday to hear the neighborhood's concerns with the site.

F. FUTURE AGENDA ITEMS:

David Corliss, City Manager, outlined potential future agenda items.

G: COMMISSION ITEMS:

Carter said he would like to discuss on an upcoming agenda the possibility of renaming a portion of 11th Street near the stadium after Don Fambrough.

Cromwell said we would coordinate with KU as well.

Carter said he had spoken with various people in the athletic department and chancellor's office and they were going to go forward with naming their drive by the stadium Fambrough Way, so the City Commission would just need to choose a different name.

Amyx said someone had contacted him about the lights in the parking lot around Borders that they were not on and it might be a safety issue.

Corliss said it was privately owned, but staff would check to see what we could be done.

Cromwell thought staff needed to do something to improve the video and sound in the meeting room.

H: CALENDAR:

David Corliss, City Manager, reviewed calendar items

I: CURRENT VACANCIES – BOARDS/COMMISSIONS:

Existing and upcoming vacancies on City of Lawrence Boards and Commissions were listed on the agenda.

Moved by Schumm, seconded by Dever, to adjourn at 10:58 p.m. Motion carried unanimously.

APPROVED:

Aron E. Cromwell, Mayor

ATTEST:

Jonathan M. Douglass, City Clerk