

**ITEM NO. 11 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE; CHP 20; SYNTHETIC TURF AS LANDSCAPING MATERIAL (MKM)**

**TA-4-6-11:** Consider Text Amendments to the City of Lawrence Land Development Code, Chapter 20, Articles 10 and 17, regarding synthetic turf as landscaping material. *Initiated by City Commission on 5/3/11.*

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, said synthetic turf was previously used at The Oread hotel, through an alternate compliance approval, and he thought that might be why the builder got off track with Frontier apartments. He said he did not desire to start using it everywhere and anywhere, only in specific circumstances. He felt it fit the location and the builder thought it was a good idea. He said the product they used did not contain lead. He asked for an opportunity to do more research and have more discussions about synthetic turf. He said he did not intend for this to be a blanket text amendment.

Commissioner Liese asked Mr. Werner if he thought the Landscaping Practices Comparison Chart that was in the staff report was accurate.

Mr. Werner said he did not know that it was accurate. He said water does go through synthetic turf. He said he needed to do more research.

Commissioner Liese said he wanted to know if the chart was accurate. He said if it was he could not imagine supporting a text amendment that would include synthetic turf. He asked how The Oread hotel got approved for synthetic turf.

Mr. McCullough said The Oread was approved through a request for alternative compliance. He said The Oread had very little setbacks and that a majority of the landscaping was real but that there was a small area where turf was approved through alternative compliance.

Commissioner Liese asked if they could have filed for alternative compliance for this project.

Mr. McCullough said the reason it was approved for The Oread was because there was only a small area of synthetic turf. He said the applicant did have some options. They could have challenged the interpretation of the code or sought alternative compliance and appealed that decision of denial. He felt the avenue they chose was appropriate. He said ultimately the project would need to comply before being granted occupancy permits.

Commissioner Belt said he would be curious to know how many of the products were petroleum based.

Mr. Werner said he would look into that but he thought petroleum products were used more with athletic fields.

Commissioner Culver asked if a variance would just apply to a specific situation.

Mr. McCullough said staff would have to analyze that further. He said he did not discuss a variance much with Mr. Werner. He said it would be a tough hurdle to get a variance because the Code states no artificial materials shall be used.

**PUBLIC HEARING**

Ms. Jane Eldredge, attorney representing the applicant, said when the discrepancy was discovered there were a string of emails between Mr. Werner and Mr. McCullough indicating that the temporary occupancy permits

would be granted and that the City would work with the applicant if the applicant would make the request for a text amendment by April to the City Commission, in order to get it on the next Planning Commission agenda. She said the applicant did not provide a proposed text amendment and made the assumption that staff would draft a text amendment that would limit the use of synthetic turf to the kinds of situations that existed at The Oread hotel and Frontier Apartments. She said there were cities, predominantly in the southwest, that give people breaks on their water bills if they use synthetic turf. She referenced the lists in the staff report and said she had no idea of the validity, nor if the selection of those particular items were the appropriate set of factors to be looking at. She said it was hard to maintain a good looking lawn with narrow strips of ground that get a lot of foot traffic. She said the applicant would like the opportunity to work with staff about what kinds of things should be in a text amendment. She suggested a two month deferral.

Commissioner Hird asked why a variance or waiver was not requested instead.

Ms. Eldredge said she was unaware of the problem until Monday of this week. She did not think the applicant had a clear understanding of who should draft the text amendment.

Commissioner Hird said the site plan stated that real materials should be used, not synthetic turf. He said the builder knew it was going to be required and installed something not in compliance with the site plan.

Ms. Eldredge said she did not believe the builder was the one who agreed to the site plan. She said she did not know factually who did what and what the communication was between the parties.

Commissioner Hird said a text amendment may be way beyond the fix of this particular situation.

Ms. Eldredge said if the applicant had other projects where this sort of use may be appropriate then it should be addressed now.

Commissioner Burger asked how many square feet of the material had already been installed.

Ms. Eldredge said she did not know.

Mr. Werner displayed the area on the overhead.

Commissioner Liese asked why the builder didn't install grass once they realized they were not in compliance.

Ms. Eldredge said this was the same builder that did The Oread hotel and thought it was okay. She said there had already been considerable expense installing synthetic turf and staff suggested a text amendment would be drafted so the builder felt no urgency to replace it.

Commissioner Liese said he wanted to hear more information. He agreed with what Commissioner Hird said about the fact that the builder had a site plan that differed from what they installed. He wanted to know what the community thought about it after they were informed.

Ms. Eldredge said she agreed and wanted a published text amendment that would be informative to the public.

Mr. McCullough said several sections would need to be revised.

Ms. Eldredge felt there should also be standards for maintenance.

Ms. Gwen Klingenberg, Lawrence Association of Neighborhoods (LAN), said she was not able to start research until recently but felt it was a start. She said LAN did oppose a site plan not being followed. She said synthetic turf lawns were only recommended with hard to maintain or limited lawns. She referenced specifics, such as the price, of turf from several different companies.

Commissioner Hird said the public hearing would be left open.

### **COMMISSION DISCUSSION**

Commissioner Finkeldei said he did not think the Frontier Apartment project was relevant to this text amendment because they were really discussing whether they should amend the Code. He asked if staff had to make the decision again would they still approve synthetic turf at The Oread.

Mr. McCullough said he still stood by the position of synthetic turf for The Oread because it made sense at that location. He said it was a unique situation and the owner and builder were informed of the special circumstance. He felt that synthetic turf, in very specific situations, was appropriate.

Commissioner Finkeldei did not personally think they needed more studies on lead, zinc, water, etc. He did not think that would sway the Commission very much on what the end product was. He said there were probably certain very limited situations where turf could work. He suggested adding a line in to section 20-1007 (a)(1) that synthetic turf could be considered an alternative compliance. He felt they needed something specific to allow staff to consider it in certain circumstances. He did not want to direct staff and the applicant to do hours of study.

Commissioner Burger said the Code was very clear that no artificial plants may be used.

Commissioner Liese said he heard an undertone from the applicant that staff may have made certain suggestions that they did not adequately follow through with and guided the applicant wrong. He asked staff to respond.

Mr. McCullough said he would re-characterize the communications with the applicant. He agreed with Commissioner Finkeldei that Frontier Apartments was both not germane and very germane because it initiated the issue. He said in the email string that Ms. Eldredge noted staff recommended complying with the site plan as the quickest solution. He said staff stated that alternative compliance and/or a variance would not be supported by staff, given the clear intent of the Code. He said staff laid out various options for the applicant to pursue in resolving the compliance issue and advised that if the applicant desired keeping the turf a text amendment was the best vehicle to address the matter.

Commissioner Finkeldei asked the hypothetical question if staff would support a text amendment that would prohibit the use of synthetic materials anywhere in the city.

Mr. McCullough said staff could probably support that text amendment based on Ms. Miller's research. He said there were alternatives to turf.

Commissioner Finkeldei said he did not have a problem with synthetic turf. He suggested adding a note in section 20-1007 that synthetic turf could be considered as an alternative compliance issue.

Mr. McCullough said he believed when he approved the synthetic turf at The Oread that he would never be faced with the issue again.

Commissioner von Achen said in her mind there were two separate issues; the appropriateness of using artificial turf as landscape, and the procedural issue of accommodating an owner who willingly violated the Code with a text amendment.

Commissioner Blaser said he was not sure they needed a text amendment and was leaning toward not doing anything. He said almost all professional stadiums have gone back to natural turf because of problems with astroturf.

Mr. McCullough said this particular builder does amazing landscaping with his properties.

Motioned by Commissioner Liese, seconded by Commissioner Blaser, to deny the text amendment to the Land Development Code, Chapter 20, Articles 10 and 17, regarding synthetic turf as landscaping material.

Commissioner Finkeldei said he would vote against the motion because he felt the applicant needed more time to respond and there needed to be more public comment. He said if voted down he might move to initiate a different text amendment.

Commissioner Culver agreed with Commissioner Finkeldei that they owed it to the public, staff, and applicant for more time to review the information. He said he was torn because an isolated circumstance brought this to their attention but they had the responsibility to see how it fits or doesn't fit in the Code. He said a text amendment may address that. He said they owed it to the community to look into the issue further. He said at this point he would not support a motion to deny because a lot more work needed to be done.

Commissioner Burger asked what options the applicant would have if the text amendment was denied.

Ms. Miller said they would still have the option of requesting alternative compliance or a variance. She said staff would probably not support that but the applicant could appeal it to the City Commission.

Commissioner Burger said she was very aware that the developer did wonderful landscaping projects with properties they were associated with. She said she was glad there are options for them if the text amendment was denied. She said she would support the motion.

Commissioner Liese said he would not have made the motion if he did not believe there were other options.

Commissioner Finkeldei said what happens at Frontier Apartments should have no impact on what they do with the text amendment. He felt they should be separate issues.

Commissioner Burger said she did not know that she could separate the issues because on the text amendment application the applicant referenced the Frontier Apartments as the reason for the request.

Commissioner Hird said he did not have sympathy for the builder because it was on the site plan. He said it was hard for him to imagine that a builder would substitute an extremely expensive material without talking to the owner. He felt the issue was the text amendment and whether they should move forward it. He said he might support denying the text amendment, but that denying it right now might be too quick because he wanted additional information. He wanted to know more from staff about the approval of alternative materials given to The Oread and the rules for that so they would know if it was an acceptable alternative for a builder. He said he would vote against denying the text amendment now.

Commissioner Culver asked staff to research other communities that have addressed the issue and have incorporated it into their policies.

Motion failed 4-4, with Commissioners Belt, Culver, Finkeldei, and Hird voting in opposition.  
Commissioners Blaser, Burger, Liese, and von Achen voted in favor of the motion.

Motioned by Finkeldei, seconded by Commissioner Culver, to defer the item to the July, 2011 Planning Commission meeting.

Commissioner Burger asked how relevant the Environmental Chapter was to this.

Mr. McCullough said the Code was meant to implement the Comprehensive Plan. He said the Environmental Chapter would be published and adopted this week. He said the devil was in the details with this issue and they needed to figure out whether turf was a feasible landscaping material for many different reasons.

Commissioner Hird said he would like to know more about the authority of the Planning staff to grant alternative compliance.

Commissioner Liese would like to know what the public thinks.

Mr. McCullough said the item was properly noticed for the public to attend.

Motion carried 7-1, with Commissioner Burger voting in opposition.