



City of Lawrence

CITY COMMISSION

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ARON E. CROMWELL

COMMISSIONERS
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HUGH CARTER
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February 21, 2012

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. Proclaimed February 21 – April 22, 2012 as Helping Citizens of Lawrence Fulfill the American Dream of Home Ownership.

B. CONSENT AGENDA

It was moved by Schumm, seconded by Amyx to approve the consent agenda as below. Motion carried unanimously.

1. Approved claims to 197 vendors in the amount of \$1,148,379.83. The list of approved claims will be posted to the agenda the day after the City Commission meeting.
2. Approved licenses as recommended by the City Clerk's Office.

Drinking Establishment licenses for El Mezcal Restaurant II, 804 Iowa Street, Johnny's Tavern West, 721 Wakarusa Dr. Suite: 100, Gaslight Gardens, 317 North 2nd Street, Allstars, 913 North 2nd Suite: C.

3. Approved appointment of Richard Renner and Patrick Kelly to Lawrence Cultural Arts Commission positions that will expire 01/31/15.
4. Bid and purchase items:
 - a) Approved sale of surplus equipment on Gov Deals.
 - b) Waived bidding requirements and authorized payment to JCI in the amount of \$26,388 for repairs at Pump Station 5.



- c) Authorized purchase of electrical equipment for ball diamond lights at the Youth Sports Complex from Western Extralite Company for \$31,546. The City is utilizing the State of Kansas Cooperative Purchasing Agreement for this purchase.
 - d) Awarded bid for storm sewer pipe, precast curb inlets and junction boxes for Project No. PW1126, Delaware Street, 8th to 9th Streets, Storm Sewer, & Waterline Improvements to Cretex Concrete Products Midwest in the amount of \$99,625, provided the fabricator can meet the terms established in the contract documents.
5. Adopted on second and final reading, the following ordinances:
- a) Ordinance No. 8704, to rezone (Z-11-26-11) approximately .20 acres from IG (General Industrial) to IL (Limited Industrial), located at 920 and 920 ½ Delaware Street. (PC Item 8A; approved 7-0 on 1/25/12)
 - b) Ordinance No. 8705, to rezone (Z-11-28-11) approximately 41.15 acres from RS10 (Single-Dwelling Residential) to RM12 (Multi-Dwelling Residential), located at 1900 W. 31st Street. (PC Item 10A; approved 7-0 on 1/25/12)
 - c) Ordinance No. 8706, for Special Use Permit (SUP-11-5-11) for Aspen Heights for the development of multiple detached dwelling structures on a single lot in an RM District as required by Section 20-402 of the Land Development Code. (PC Item 10C; approved 7-0 on 1/25/12)
6. Adopted Resolution No. 6963, authorizing the Mayor and City Clerk to execute a Deed, Bill of Sale, and Termination of Lease Agreement, and to take all other actions necessary to transfer to DST Realty, terminate all interest of the City in the project and carry out the intent of the resolution, all pursuant to retired industrial revenue bonds for the property at 2000 Bluffs Drive.
7. Authorized Staff to negotiate an Engineering Services Agreement with Professional Engineering Consultants for Design and Construction Phase Engineering Services for project UT1105DS, 2012-2013 Watermain Relocation/Rehabilitation Program.
8. Authorized the City Manager to execute a Professional Services Agreement with Viable Third Community, LLC, which would provide for public participation services for the update of the Metropolitan Transportation Plan at a total cost of no more than \$20,000. The costs related to this contract will be paid by federal funding, at no cost to the City.
9. Received 2011 report on Police Department TASER use.
10. Authorized the Mayor to sign revised Subordination Agreements for Russell and Carol Beeson, 507 Louisiana.

C. CITY MANAGER'S REPORT:

During the City Manager's Report David Corliss highlighted the 2011 Economic Development Report; reported on improvements made at Disc Golf Course at Centennial Park; the success on the Parks & Recreation Department holding a Bring a Friend to Gymnastics Week; and, the reported on the 2011 Weatherization Grant Program.

Commissioner Carter asked if the city used the entire amount of the weatherization grant.

Corliss said he thought that was the case. The City had contingency in the grant funds, but he would gather additional information for the City Commission.

D. REGULAR AGENDA ITEMS:

1. **Conduct a public hearing regarding the issuance of sidewalk dining licenses for 3 Spoons Yogurt, 715, 8th St Taproom, Aladdin Café, Buffalo Wild Wings, Einstein Bros Bagels, Jackpot Music Hall, Jefferson's Restaurant, Signs of Life, and The Bourgeois Pig.**

Jonathan Douglass, City Clerk/Assistant to the City Manager, presented the staff report.

Mayor Cromwell opened the public hearing.

After receiving no public comment, it was moved by Schumm, seconded by Amyx, to close the public hearing.

Moved by Schumm, seconded by Carter, to find that it is within the public's interest to approve the issuance of sidewalk dining for 3 Spoons Yogurt, 715, 8th Street Taproom, Aladdin Café, Buffalo Wild Wings, Einstein Bros Bagels, Jackpot Music Hall, Jefferson's Restaurant, Signs of Life, and the Bourgeois Pig. Motion carried unanimously.

2. **Consider approving Site Plan, SP-2-13-12, a request by Briggs Automotive to use the right-of-way of W 29th Terrace and a portion of the Iowa Street Frontage Road for the commercial display of automobiles including the display of signs and a wind turbine.**

Dan Warner, Planner, presented a staff report.

Cecil Kingsley, BG Consultants, representing Briggs Automotive, gave a brief history regarding the reasoning behind the request for this item. He said before proceeding with this project, Briggs needed to understand whether they could use the area as planned.

Russ Briggs, Briggs Auto Group, gave a history of their organization. He said their organization felt they would be a good fit for the community. He said they had similar dealerships in Manhattan which produced approximately 4.5 million a year in sales tax and was their goal for Lawrence.

Amyx said regarding the portion of the right-of-way needed for commercial display of automobiles, he asked about the impact it would have on Jack Ellena Honda's location.

Briggs said he had met with Mr. Ellena on several occasions and did not know what impact it would have on Ellena's location other than relocating their sign on Iowa Street.

Amyx asked if Jack Ellena would be displaying his automobiles in the area where their sign would be located on Iowa Street.

Briggs said correct.

Amyx said he assumed those automobiles would be delivered by large tractor trailers and asked if those trailers could maneuver through the area.

Briggs said that was how it was designed.

Mayor Cromwell called for public comment.

Amyx said regarding the area to the north and south of the ingress/egress from Iowa Street onto the frontage road and south of that turn in to the frontage road from Iowa, he asked if that was easement.

Scott McCullough, Development Services Director, said that area was platted as easement.

Amyx asked if to the north was right-of-way.

McCullough said correct.

Amyx asked how the City Commission's role changed in allowing a use of right-of-way versus an easement.

McCullough said it might not change conceptually depending on how this issue was vetted out with research of various agreements the City had with KDOT, when the frontage road developed. He said like many approvals granted by the City Commission or staff that was on a State highway, it might need both local and state approval. He said this might be one of those issues, but staff was not certain and had not had the times and meetings with KDOT to understand what they had in terms of that frontage road. In any event, whether it was right-of-way or easement, KDOT might have some authority and staff needed to have a meeting with KDOT to discuss those issues and then analyze this matter. As staff understood it today, they knew it would at least take local approval and it might take state approval at which time staff would seek that understanding from KDOT if the City Commission granted approval.

Jane Eldredge representing a number of retailers who were very interested in this project and the precedent it sets regarding the Use of Rights-of-Way, particularly on major highways. City staff, in their report, asked if the City Commission approved this site plan, to make certain that it was only this area and only this situation. She said the ability to have visibility for ones products, particularly on major highways where there were speeds in the range of 40 to 45 mph was very important. She said while they applauded what Mr. Briggs and his company was doing, they did not want others forgotten in the process and would expect and hoped to have similar treatment for those who would follow.

Mayor Cromwell said this was a unique application in which the staff report clearly indicated that they did not want to see this type of application all over town. He asked what were the difficulties associated with vacating that road and turning it into private road. He said he assumed there were utility easements and other things.

McCullough said there would be a hearing process to vacate the public right-of-way and we want assurances to maintain the vehicular and pedestrian connectivity of the corridor even if it was turned back over for private use. We could do that through public access easements for vehicles and pedestrians. It was a public hearing process to vacate placing new easements on that location. It would also be an administrative site plan process to get the design and development code compliant.

He said staff would need to discuss with KDOT, the frontage road aspect and if they had authority over that area. He said part of why staff exercised doing a right-of-way agreement was based on the applicant's timing issues and desires to do some things on private property that had some link to the area along 29th Terrace.

Cromwell asked if there was a deadline.

Briggs said there was an initial deadline on getting started.

Schumm said it was a great project and applauded Mr. Briggs for wanting to redevelop that area that was worn out. He said he would much rather see Brigg's Automotive there than going out on the edge of town. He said this was a unique district and made up of entirely car sales and activities. There were four moving parts that need to be dealt with in one way or another that impacted the current code; which were the extra signage that occurred on the medians with regard to the sale bills for the cars, the wind generator, the Iowa Street frontage and how they decided to allow or disallow the display of merchandise, and the median and its display of merchandise.

He said he thought the median at 29th Terrace should be vacated allowing it to become a private drive and allow for the use the applicant had proposed under the joint ownership with the property next door and was a way to legally and practically solve the problem of everyone else wanting to do the same thing all over town. He said cross access would be important in that area. The windmill or generator, he did not have a problem as long as it was just for the generation of electricity from wind. He said he was at a conference last week and they

discussed wind generation and the idea of height on those windmills in order to catch the wind. He said the caveat for him was that there were no streamers and/or 14 colors and used as a sign and only used for the generation of power. He said he was having difficulty with the signs because it would fly in the face of the City's current sign ordinance. He said he was on the original City Commission that setup the new sign code that controlled and reduced signs. He said this was a better community because of the size of signs that were allowed and the reluctance to have signs all over the place. He said it would become a sign war and someone would want more and bigger signs than the other person. He said he had difficulty with the signs on the medians. He said he could not support the display of vehicles on Iowa Street because if it was not public right-of-way, it was perceived as to be public right-of-way. He said with the 29th Street location, there would be people that wanted to place merchandise on every green spec of land up and down Iowa Street. He said he would be hesitant to vote in favor of that particular part of the program.

Amyx said regarding signs, he assumed Commissioner Schumm was talking about the 10 square foot signs at 29th Street Terrace.

Schumm said he was referring to signs that were attached to the light posts.

Amyx said the information provided showed 10 square foot car information banner signs. He said he did not have a problem with those signs along the West 29th Street Terrace area, but had a problem with signs on the light posts in that area. He said he was fine with the wind tower as long as it met safety regulations. As far as vacating the roadway at 29th Street Terrace, he asked if the property would go to the property north and south. He asked if Briggs owned 100% of the property along 29th Street.

Briggs said John Ellena had the Honda portion, but he owned 2/3 of the property along 29th Street.

Amyx asked if Briggs was paying the bills.

Briggs said yes. He said through a manufacturer's eyes it was a blighted area. He said they were not asking for money, but just for cooperation from the City.

Amyx asked how many vehicles would be displayed on the Iowa Street frontage road.

Briggs said there would be 20 to 25 vehicles.

Amyx asked if that would be a double row of vehicles.

Briggs said yes.

Amyx asked if there needed to be 20 to 25 vehicles displayed.

Briggs said that they would prefer that amount, but they could go with 15 to 20 vehicles.

Kingsley said when looking at the master planning the entire area, because of what was already present, if envisioning where 29th Street Terrance would intersect Iowa, south, vehicles were already staged at that location, if going north, then those vehicles were backed up. He said they were trying to master plan the entire area where it looked uniform and make it look like it was all one auto plaza to line it up straight across. He said when they originally presented this proposal to City staff they thought it was KDOT right-of-way and approached their planning with that thought. He said he was convinced it was an access easement and not right-of-way, but KDOT would still lay claim to the access easement. He said their original plan was to get together with City staff and discuss with KDOT the use of this area and what made sense, if the Commission wanted to move forward. If it was right-of-way or easement, he did not want to take KDOT out of the process and would like consensus on what needed to be done in that area. He said whether it was 20 to 25 vehicles displayed, it was consistent to what was seen on the south except with the new design with the pavers and such.

Amyx said there would be no way he would want to take KDOT out of the picture, because KDOT was going to have a claim in the decision making process. He said he thought it was a good idea to look at the display portion of this proposal with the applicant, staff and KDOT.

Amyx said he concurred with Eldredge in that there might be other applications.

Dever asked if staff had the original copy of the Auto Plaza Subdivision.

McCullough said staff had an original copy.

Dever asked about the mystery behind that copy.

McCullough said because staff had that original copy and previous agreements between the City and KDOT that needed to be reviewed in connection with the platting. He said as this area developed, KDOT and the City reached certain agreements about frontage roads and different access management that needed to be researched and conclusions reached about who had some control over this particular area. He said most of the frontage road had remained in KDOT right-of-way. This plat had a particular easement and a plat note that spoke to the timing of the easement and whether it was going to actually be physically connected to Iowa Street and timing about reverting back to the owner. If it was as simple as looking at the plat and its notes that would be one thing, but staff needed to review the previous City/KDOT agreements

Dever asked if the plat showed it as property that was owned by the adjacent landowner.

McCullough said correct. There was an easement over Lot 1 of that plat and not right-of-way dedicated, but an easement granted to the City of Lawrence.

Dever said in looking at the County maps, it was not on any parcel.

McCullough said in looking at the GIS layers, it appeared to be right-of-way, but when looking at the plat, the legal document was in-fact easement.

Dever said how long ago were those agreements made.

McCullough said he understood those agreements were made in the 1960's and 1970's.

Schumm said he was on the Commission when the property was vacated to the south which would line up with that new allowance to the north. It was a vacation of right-of-way at that time. He said a person would presume that that would follow through that entire area from the far south to the far north.

McCullough said there were other parts of Iowa Street that were either dedicated or vacated, depending on the development proposal at the time.

Cromwell said he appreciated the very large investment that Briggs and others had put into this area. The plan was ambitious and a unique attraction to bring people into this community and improve their car buying experience. He said it was enough departure from their normal plans and was in favor of the vacation. He asked if the applicant could do what they wanted to do if it was private road.

McCullough said if it was vacated with appropriate access easements there were some higher levels of development activity. He said the applicant needed to comply with the codes. He said there were not a lot of examples where someone was using private roads for commercial purposes. He said there were either driveways or parts of parking lots. He said it would be unique, even as a vacated road, with a public access easement and was one option before the City Commission.

He said sometimes it benefitted the development to get closer to the road through setbacks. The most recent example was the Frontier Apartment that had a public right-of-way vacated, but access maintained through easement because the neighbors used it as cut-through traffic area. It was allowed it to be a private road and some closer encroachment of the buildings in that area.

Cromwell said he had some concerns about Iowa Street and part of that needed to be worked through the system. He said he did not want everyone thinking they could use that right-of-way. He said it was a great plan and there might be some way of doing signage that complied with what was normal on that area of Iowa Street. He said moving in the direction of vacating 29th Street Terrace would solve a lot of the issues. He said he was in favor of staff looking at that idea and moving forward. He said regarding the wind tower, people worried about it being a marketing piece. Generally speaking, there needed to be a fall radius around a wind turbine a little bit higher than the height of the tower, but there was no code. He said that fall

radius would warrant some thought and what would be appropriate in the City as well as safety standards for the future. He suggested looking at vacating 29th Street Terrace and wait to see what Iowa Street had in store for KDOT. There was some potential of displaying vehicles on Iowa Street.

Carter said the vacation of 29th Terrace made sense and in the end, because there was connection to the other street, it would be cut-through traffic. He said it would be an extension of their parking lot and speeds would reflect that as well. He said he was okay with the proposed signs with the thought that it would be interior to the complex itself. On the Iowa frontage road, he agreed letting that discussion happen with KDOT. The signage in that area was something that came down to a safety issue. The turbine was a marketing tool, but at the same time, was a good creative marketing tool and tying the turbine into being useful. He said he understood there was a need for height and safety concerns. He said this proposal was good and creative in-fill development which was important. He said Briggs pointed out that by the manufacturer's standards those were actually blighted buildings. He said car and home sales were big ticket items that were huge drivers to the economy and they were starting to see that improvement. He said one of the terms he learned was a "pump in" process which was people going to Johnson and Shawnee Counties, to buy vehicles and registering those vehicles locally which could be because of dated dealerships. He said this created new energy and would stop some of the auto sales leakage. He said he wanted to see all the car dealerships do well for that reason and there would be unique characteristics for others coming forward. He said the only other issue would be the discussions with KDOT on the frontage road and making sure all safety measures were exercised with having a turbine that close.

Dever said when he first looked at this plan, converting the 29th Street Terrace section between Four Wheel Drive and Iowa Street frontage road made sense to dedicate back to the adjacent land owners. Especially given that the applicant was planning on using that area for display purposes and marketing vehicles. He said he understood there were some land

ownership issues that needed to be resolved. He said it was all about trying to encourage the redevelopment of this area. As long as he lived in this area, it seemed there had been slow, miniscule upgrades made to this area and the City had suffered from a car sales standpoint. The tax dollars the City could generate as a community made this a real unique opportunity. He said Briggs had a good track record for solid developments and operating those facilities in a professional and classy way. He said if the City Commission could help facilitate additional car sales in this community which would generate more revenue for all sorts of great things, he was big fan. The Iowa frontage road issue was unusual. This was the widest spot of frontage road and was 2 or 3 times the width of other frontage roads or green space areas on Iowa Street. If they were talking about taking away a very consistent wide swath of green space that ran up and down Iowa, he could see it red flagged all around, but this was the largest section of green space along Iowa Street. The parcel to the south ran up directly to Iowa Street and was really not consistent along that road. He said when traveling he saw a lot of cities making major concessions for car dealers, simply because of the tax dollars generated by the commerce that occurred at that location. He said he did not want to re-write the rule book, but he wanted to see the reinvestment, the redevelopment and infill of this area with solid regional draws from a car dealer standpoint. He said being able to see the vehicles, and knowing rejuvenation was occurring and a new sense of desire to sell vehicles in Douglas County was worth considering some concessions along Iowa Street. Although the City Commission might not be the final determining factor, he wanted to throw his support in trying to utilize some of that area for a focal point and a center piece where this is a new and redeveloped area of this community. He said it boiled down to being reasonable and matching up a consistent setback from Iowa Street and not taking away a cornerstone along Iowa. He said this was a unique place and merited consideration. As far as wind turbines, he did not know anything about the fall zone, but was a good focal point to find the automotive plaza. He said regarding the signs, he thought a sign was important, but a better sign of progress was a good. As far as the signs along 29th Street

Terrance, if that area was vacated, then the property owner had the right to do anything as long as it was within their site plan requirements. He said it would be neat to have some unique draw that other communities did not have. He said he was excited for someone to invest time, money, energy and capital into a project that would generate tremendous value for the County and the City. He said he was in favor of trying to figure out a way to accommodate, most, if not all those desired changes.

Cromwell said he wanted to clarify that a wind turbine could be constructed safely, but wanted staff to look and understand it, in order to make sure that it was done correctly. Obviously it was something that was not done every day in town and there might be some things that needed to be taken into consideration.

Amyx suggested proceeding with the site plan subject to reviewing the wind tower construction. He asked how staff would handle this issue with KDOT regarding the easement.

McCullough said staff needed to meet with KDOT and review legal documents to understand whose authority that the area was lying in. He said by all the City Commission comments, he was assuming the Commission supported vacating 29th Street Terrace which was a process in itself along with an administrative site plan that staff could process. If elements such as signage and heights did not comply with code, there were other avenues the applicant could take. He said there was some administrative relief that staff could accommodate some of those elements in the proposal, depending on the scope. The Sign Code Board of Zoning Appeals would hear sign code variances on private property and site planned property. Staff needed to vet out the processes and where to go next. The direction was being somewhat changed by going toward private elements on a property. Staff needed to meet with the applicant and work out all those issues. He said he it sounded as though the City Commission supported the concepts. The Iowa Street portion of this project might or might not be up for vacation and staff would need to work through that issue with KDOT.

Mayor Cromwell asked what staff needed from the City Commission as far as direction.

McCullough said staff was not ready for a specific motion, but the applicant and staff received direction from the City Commission and they needed to get together and work on an outline of the next steps.

Dever asked if the City could dedicate the frontage road south of the turn-off from Iowa Street in order for the applicant to keep this in the constraints of a site as opposed to the public right-of-way. If the City vacated 29th Street Terrance, it would be up to a parking lot in essence. He asked if that would be the access road, south of the turn.

McCullough said they might be willing to vacate their portions if in fact they controlled that portion and that would be part of staff's discussion with KDOT. He said he could see one option to vacate the frontage road and 29th Street Terrance. That property would all go back to the property owners and be site planned. At that point, staff would continue with administrative process.

Dever said that process might be cleaner all around from a development standpoint.

Cromwell agreed and said there was work to be done. Again, he appreciated the investment and it was a bold plan. He appreciated the emphasis that Briggs had on internet sales and bringing tax dollars outside our community to inside our community. He said that was important in keeping up with the technology of car sales.

Schumm said he had considered the possible vacation of the north/south sides of frontage road, but that changed the dynamics of how he would look at Iowa Street. He said once again, if the City was going to start using vacated public right-of-way for merchandising, that was well and all good for this particular project, except there would be people knocking on the City's door wanting to do the same thing and the City might have problems accommodating those request. He said he would suggest some kind of action at this time other than just conversation about this issue. He asked if it would be appropriate to indicate, by vote, that they

wanted to start with the vacation of 29th Street Terrace or wait to see what happened with the discussion with KDOT.

Corliss said the City Commission could direct staff to prepare the necessary documents for the vacation hearing, direct staff to respond to the district engineer from KDOT, if it was KDOT right-of-way by responding to KDOT that the City wanted to try to accommodate some usage in that area. He said there was support for a wind turbine and the issue with signage was to go to the Sign Code Board of Appeals and the City Commission was not asking staff to change the sign code to respond to this request. He said he was trying to craft a motion so that the City Commission could step forward.

Amyx said he would like the Ellena's to be included in those discussions with KDOT because they were major players.

Moved by Schumm, seconded by Carter, to generally support the project and direct staff to prepare the necessary documents for a vacation hearing for 29th Terrace to accommodate site planning private property, being sure to meet with other owners along the street and establishing public access over the existing right-of-way; meet with KDOT to discuss accommodating some amount of display of automobiles in the Iowa Street Frontage Road and possibly vacating that area; and to address safety issues related to wind turbines as the property is site planned. Motion carried unanimously.

3. **Consider waiver request by Grob Engineering Services, LLC from City Code section 19-214(c) with respect to Site Plan SP-12-82-11, 720 E. 23rd Street Raco Carwash.**

John Shutak, Utilities Engineer, presented the staff report. He said based on review of the site plan, supporting documentation, and past precedents by the Department of Utilities, Planning and Development Services, Legal, and Finance staff, it was staff's opinion that the waiver request cannot be supported.

Mayor Cromwell asked how common was a second structure on a site, and if so, he asked if there were other examples of granting waivers for this requirement.

Shutak said typically with a commercial lot, there were either individual buildings on a lot or a large establishment, such as the Kohl's Department Store area where there was one lot under single ownership with multiple buildings. He said the instance did arise where the City provided separate service lines to individual buildings that resided, under a single ownership.

Mayor Cromwell asked if the City had granted waivers or exceptions in the past.

Shutak said he did not know.

Phillip Ciesieiski, Assistant Director, Utilities Department, said in the 7 years that he had worked for the City, the City had not granted a request for a similar instance. He said he believed there were 3 requests in the last 18 months where a property had a site plan and made changes with those modifications referenced in staff's memo. He said staff had not received a waiver request since he had been on board with the City.

Shutak said there were a couple of instances where this issue came up, however staff had not ever received a waiver request from any of those developments.

Amyx said as long as this remained under a single ownership there would be no problem. He said it would only be problem if the property was split in the future with different owners.

Shutak said no, but it was a possibility in the future. The property could remain under a single ownership and have multiple owners of the buildings. He said that scenario would not come through the normal planning and development process and staff would never know about that situation. If the property were divided through the subdivision process, then it would come through the City's Planning and Development Services Department, through the normal development process where the situation could be corrected at that point.

Schumm asked how this situation came about because there were 2 buildings now that were not separately served. He said he understood that part of that building would be for a little

bit different use and all of a sudden a different water and sewer line was needed. He said there were 2 buildings that were using services now, but only one meter and one sewer.

Shutak said correct.

Schumm said he was having a hard time seeing the difference from where they were today to where the City was trying to go. He said the staff memo made good points, but in this particular case, there were 2 different buildings and 1 meter and because they were changes the use on one part of the building all of a sudden another meter was needed.

McCullough said it was the change of use that triggered another meter installation because of the intensification of the use on the property, by code, required the compliance with all City Codes. He said the applicant perspective was that the level of change they were proposing did not warrant the code requirements, but from staff perspective, their way of processing those types of applications was to bring those utilities issues into compliance with the code and that was done in the past to several properties in the last year or year and a half.

Schumm said it was a bit like non-conforming use and as soon as the use was changed, the City would want to upgrade to the current code.

McCullough said correct.

Dever asked if staff considered this application as an intensification of land use, and if so, in what way.

McCullough said the use was going from a bay car wash to a more retail use of the oil change service.

Dever said it all seemed similar to him, but asked if the rule was triggered by the intensification of the land use or any change of the land use.

McCullough said a minor change to an existing use. It was the change of that use to a new use of the retail oil service use that was triggering the need for a new meter in the Utility Code.

Dever asked if there was currently an oil/sand filter on the property.

McCullough said the applicant stated “no.”

Dever said his interpretation was that the City was receiving an improvement to the property and would hopefully be reducing the stress or contaminates flowing into the City sewer by the installation of this use and hopefully reducing the impact on wastewater. He said there was a huge amount of contamination that occurred in inflow in the sewer from car washes. He said he thought the change of use was an improvement and would probably also decrease the amount of traffic and vehicles being washed. He said he would hate to make it more difficult when everything was less intensified with this change.

Schumm said the City was trying to bring properties up-to-date with the current state of the City’s code and the only real value was if the property was sold and meters were separated which created issues. He asked if there was something else that the City Commission needed to know about regarding this situation.

Shutak said under its current site plan state there were 2 distinct businesses. He said whether it was under the same ownership or not, damage could be done on either property based on a service line failure. He said the City was looking at that liability for either the express lube or the retail building. If those 2 businesses had independent services then they were responsible to maintain their own service lines. He said any damage that was suffered was the sole liability of the occupant/tenant or owner.

McCullough said not only one building would be affected, but everything hooked into that service line.

Dean Grob, Grob Engineering, discussed staff references to City Code Section 19-112. He said the owner was responsible for the multiple buildings on the site and that this had no impact on adjacent owners. He said there was significant cost involved in compliance and it created an undue hardship on the property owner. He said that the separate meter cost would be in excess of \$20,000.

Carter said in addition to the addition costs of \$20,000 for separating those sewer lines, he asked what other costs were incurred. He said he assumed those were additional costs that would be financed.

Grob said yes, those were additional costs that would need to be incorporated into this project. He said he did not know why a system development fee should come into the equation and the site was developed. He said by gaining another water meter it would not give the applicant much more property to develop.

Amyx said this was a sizable investment. He said the oil and sand separator would take care of that infiltration. He said he did not see any harm to the adjoining properties with one water and sewer line. He said with this particular case, he could support the granting of the waiver and were better off in the end with the oil/sand separator.

Cromwell said he agreed and they were looking at a 10% price increase in the totals. Ultimately, the City of Lawrence was better served by having that oil/sand separator. He said most of the Utility Department would probably agree that they would like to keep the oil out of the City's sanitary sewer. He said the City would benefit by granting the waiver.

Schumm said there was always a due diligence when buying property and it was up to the property owner to disclose situations that were deficient and it was up to legal representation to figure that out. He said regarding if a problem arose with a sewer line on Building A and Building B was behind it then both buildings suffered the cause of damage. He said the property owner was the one that was taking the risk and not the City.

Carter said he agreed with all the comments, but was frustrated that this issue was before the City Commission. He said he did not have a problem with the legal department making an interpretation, but why this issue went to the Legal Department was beyond him. He said it was infill development and the City was not asking the owner to spend this amount of money and have this project delayed because the City was not protecting the community in any way. He said in staff's presentation, it was mentioned that the value to the client was to do it

now versus later, but that was the owner risk. He said the applicant was improving and investing in the community and the City was making an interpretation that was being difficult on a small business owner. He said he would like the City to start taking a look at some of these things and make common sense decisions versus putting people through this type of bureaucracy.

Dever said he was in favor of granting the waiver and if there was any question about the impact or ramifications to a future sale, there was due diligence that was required and stated in the deed. If there was any separation of those buildings it would be taken care of by the normal course. He said it was not an intensification of the land use and the City would end up with improvements and believed that the cost was a fairly substantial that did not benefit the City nor the land owner or adjacent landowners dramatically. He said this seemed more black and white, but he was liberal when it came down to this type of issue because the city wanted to see improvement and redevelopment of these types of properties. He said he understood that rules needed to be followed, but the City's interpretations could be better on this issue.

Amyx said he appreciated Commissioner Carter's comments, but the City Commission has asked staff to carry out the City Code even handedly. After listening to the Vice Mayor's comments about vacating streets 30 years ago and after being on the Commission for a number of years, you could expect to hear a number of appeals. He said the appeals would continue as long as the City was doing infill development. The final decisions rest with the City Commission until they changed the way the appeal process happened. He said he did not want to put an applicant into this position, but the way the code was written now, the City Commission would hear the appeal and it was the Commission's responsibility to make those decisions.

Carter said he understood, but his concern was when the appeal was not necessary. There was interpretation made every single day and there were business friendly interpretations and business unfriendly interpretations. He said his concern was the use of the City's time that it even came before the City Commission. He said he agreed with Commissioner Amyx's

comments about the appeals coming to the City Commission, but he did not see why this item needed to be appealed because the interpretation seemed like an easy one.

Moved by Carter, seconded by Amyx, to approve the waiver request for Grob Engineering from City Code 19-2149 (c) with respect to site plan SP-12-82-11. Motion carried unanimously.

E. PUBLIC COMMENT:

Leslie Soden asked if the City Commission received a letter from East Lawrence Neighborhood Association regarding the Downtown District Study.

Mayor Cromwell said that the City Commission received a letter from the Old West Lawrence Neighborhood Association, but not East Lawrence Association.

Carter asked if the East Lawrence Neighborhood Association wanted to hold up any development.

Soden said no.

Corliss said staff would make sure the City Commission received that letter.

F. FUTURE AGENDA ITEMS:

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

G: COMMISSION ITEMS:

None.

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 Cromwell, to adjourn at 8:20 p.m. Motion carried unanimously.

APPROVED:

Aron E. Cromwell, Mayor

ATTEST:

Jonathan M. Douglass, City Clerk