



City of Lawrence

CITY COMMISSION

MAYOR
ARON E. CROMWELL

COMMISSIONERS
ROBERT J. SCHUMM
MICHAEL DEVER
HUGH CARTER
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April 24, 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 Schumm presiding and members Amyx, Carter, Cromwell and Dever present.

A. RECOGNITION/PROCLAMATION/PRESENTATION

1. Proclaim April 23-27, 2012 as Tree City USA Week and April 27, 2012, as Arbor Day.
2. Proclaim the month of May, 2012 as Bike Month and the week of May 14 – 18 as Bike-To-Work Week.
3. Proclaim the week of April 22 – 28, 2012 as Week of the Young Child.
4. Proclaim Saturday, May 5, 2012 as Sertoma Bar-B-Q Cook Off Day.

B. CONSENT AGENDA

Mayor Schumm asked that items 4b and 5c be pulled from the consent agenda for separate discussion.

It was moved by Amyx, seconded by Cromwell to approve the consent agenda as below, minus items 4b and 5c. Motion carried unanimously.

1. Received minutes from the Board of Electrical Appeals meeting of 01/04/12 and the Traffic Safety Commission Meeting of 04/02/12.
2. Approved claims to 227 vendors in the amount of \$1,681,843.66 and payroll from 04/08/12-04/21/12 in the amount of \$1,853,607.23.
3. Approved licenses as recommended by the City Clerk's Office.



Drinking Establishment licenses for Set 'em Up Jacks, 1800 East 23rd Ste: G and Frank's North Star Tavern, 508 Locust St.

4. Bid and purchase items:
 - a) Awarded the bid for the 2012 Overlay Program Phase 1, Project No. PW1209, to Sunflower Paving, Inc., for a total amount of \$669,773.70.
 - b) THIS ITEM WAS PULLED FROM CONSENT FOR SEPARATE DISCUSSION. Awarded bid for Project No. PW1207, 23rd Street ITS Project, to K & W Underground, Inc. in the amount of \$119,946.00.
 - c) Authorized final payment and change order in the amount of \$11,552.92 to R.D. Johnson Excavating Co., Inc. for the Farmland Demolition project.
5. Adopted the following ordinances on second and final reading:
 - a) Ordinance No. 8697, Ordinance No. 8698, Ordinance No. 8699, Ordinance No. 8700, and Ordinance No. 8701, for the annexation of approximately 126.4 acres for Yankee Tank/Lake Alvamar.
 - b) Ordinance No. 8726, for a Text Amendment (TA-2-1-12) to the Land Development Code to revise the minimum amount of area of a structure needed to be eligible for a .5 parking space per bedroom standard from 3,500 square feet to 4,500 square feet.
 - c) THIS ITEM WAS PULLED FROM CONSENT FOR SEPARATE DISCUSSION. Ordinance No. 8718, for a Text Amendment (TA-10-16-11) to Chapter 20 of the City Code, Land Development Code, to review the uses of the existing industrial districts.
6. Approved a Temporary Use of Public Right-of-Way Permit allowing the closure of 10th Street from Massachusetts to New Hampshire from 9:00 a.m. – 4:00 p.m. Saturday, June 2, for the Queen's Diamond Jubilee celebration event.
7. Approved a Temporary Use of Public Right-of-Way Permit for the Lawrence Art Guild to close Massachusetts Street from North Park Street to South Park Street on Sunday, May 6 (or rain out date of May 13) from 6:00 a.m. – 7:30 p.m. for the 2012 Art in the Park Art Fair.
8. Approved Special Event Permit, SE-4-15-12, for a Cinco de Mayo/Poehler Open House public outdoor concert event in the vacant lot located at 800 Pennsylvania Street on May 5th, 2012 from 1:00pm-9:00pm. Submitted by Tony Krsnich, for Ohio Mortgage LLC, property owner of record.
9. Accepted dedication of an additional easement for Final Plat, PF-7-4-11, Inverness Park Plaza Addition No. 5, for public utility improvements on property located at the southwest corner of Crossgate Drive and Clinton Parkway in conformance with approved Public Improvement Plans.

10. Concurred with Traffic Safety Commission recommendation to deny the request for traffic calming on 11th Place between Michael Street & Monterey Way (denial recommend 8-0).
11. Approved application to KDOT for Federal-Aid Safety Program funding for improvements at 9th St. & Kentucky St. and 9th St. & Michigan Street.
12. Authorized staff to submit application for KLINK funding (state fiscal year 2014) for south Iowa Street, 29th Street to south city limits, resurfacing project.
13. Authorized staff to negotiate an agreement with BG Consultants for engineering services for the 23rd & Iowa Geometric Improvement project. The agreement will be presented at a later date to the City Commission for approval. Adopted Resolution No. 6966 authorizing the issuance of \$1.5 million in General Obligation Bonds for main trafficway improvements at the intersection of 23rd Street & Iowa Street.
14. Authorized the Lawrence Cultural Arts Commission Community Arts Grants as recommended by the Lawrence Cultural Arts Commission.

Regarding item 4b), bid for Project No. PW1207, 23rd Street ITS Project, Schumm asked for a staff report.

David Corliss, City Manager, presented the item.

Schumm asked how this interacts with the ongoing desire to pull the 96 strands around the perimeter of 6th and Iowa out to the business park.

Soules said it doesn't complete the loop but it gets us closer, working our way toward East Hills.

Schumm asked if there was third party involvement in pulling some strands.

Stoddard said that an agreement had been executed with Community Wireless Communications.

Mayor Schumm called for public comment. None was received.

Moved by Amyx seconded by Dever, to award bid for Project No. PW1207, 23rd Street ITS Project, to K & W Underground, Inc. in the amount of \$119,946.00. Motion carried unanimously.

Regarding item 5c, Ordinance No. 8718, for a Text Amendment (TA-10-16-11) to Chapter 20 of the City Code, Land Development Code, Schumm said he had received a request from the League of Women Voters to pull this item for discussion.

Scott McCullough, Planning and Development Services Director, presented the item.

Mayor Schumm called for public comment.

Gwen Klingenberg said that the idea that this use exists, as it is written it is a new use with far reaching abilities. If you allow it you are actually changing the IG because it is an accessory use now. She said she was also curious about the process if someone comes along now and requests it.

McCullough said it is by definition what a gas and fuel use can be now. Our charge was to separate that use out of the gas and fuels use and then process where it should be allowed. It does exist today as a principal use in the gas and fuel codes in numerous districts today.

Schumm asked if it is currently in IG.

McCullough said yes, it would currently be a permitted use as gas and fuel sales.

Corliss asked what would happen if someone presented a site plan for a truck stop today in IG, would it be an allowed use.

McCullough said yes. It is not an accessory use, it is a gas and fuel sales use. As it stands today someone with IG could present a site plan for a truck stop and we would process it.

Carter said now someone could say fueling station and it would not be a truck stop and reduce some of the angst. It reduces some of the confusion.

McCullough said yes, we saw a potential difference between a truck stop and gas and fuel use.

Cromwell said he thought we do need to bring this up in the near future but he didn't see this as the time to do that.

Amyx asked if the Mayor had decided when to put it on the agenda.

Schumm said it could be quickly, but not decided yet.

McCullough said he owed a report on this use and the recycling processing use, and that could happen within the next few weeks.

Moved by Amyx, seconded by Cromwell to adopt on second and final reading, Ordinance No. 8718, for a Text Amendment (TA-10-16-11) to Chapter 20 of the City Code, Land Development Code, to review the uses of the existing industrial districts. Motion carried unanimously.

C. CITY MANAGER'S REPORT:

David Corliss, City Manager, presented the report.

Carter asked what grant opportunities were available through the Playful Cities designation.

Stoddard said grants through the KaBoom organization.

Carter asked what the grants could fund.

Stoddard said generally playground equipment in lower income areas.

Carter asked if skate parks could be included.

Stoddard said she would research that.

Cromwell said we had a great Earth Day celebration in Lawrence, one of the best he has seen.

D. REGULAR AGENDA ITEMS:

1. **Conduct a public hearing and consider adopting an ordinance regarding the sale of alcohol for temporary events including the Arts Center Final Friday event, Art Tougeau Parade After Party and the Replay Spring Into Summer event. Consider approving Temporary Use of Public Right-of-Way Permits for the same events.**

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

Moved by Amyx, seconded by Dever to open the public hearing. Motion carried unanimously.

Mayor Schumm called for public comment. None was received.

Moved by Amyx, seconded by Cromwell, to close the public hearing. Motion carried unanimously.

Moved by Cromwell, seconded by Carter, to find that the proximity of the temporary events is not adverse to the public welfare or safety; and grant distance limitation waivers for the events; approve a Temporary Use of Public Right-of-Way Permit allowing the closure of 10th Street from Massachusetts east to the alley from noon to midnight on Saturday, May 12, for the Replay Spring Into Summer event; approve a Temporary Use of Public Right-of-Way Permit allowing the closure of a portion of the 900 block of New Hampshire Street for the Arts Center Final Friday event and Art Tougeau parade staging activities from noon, Friday, May 25 until 1:00 p.m. Saturday, May 26, 2011; approve a Temporary Use of Public Right-of-Way Permit for the Lawrence Art Guild allowing the closure of the 100 block of E 10th Street from 1:00 p.m. – 5:00 p.m. on Saturday, May 26, 2012, for the Art Tougeau parade after party and awards event; adopt on first reading, Ordinance No. 8729, allowing possession and consumption of alcoholic liquor on certain public right-of-way in conjunction with Arts Center Final Friday event, Art Tougeau Parade After Party and the Replay Spring Into Summer event. Motion carried unanimously.

2. **AFTER THE PUBLIC HEARING IS OPENED, THIS ITEM WILL BE CONTINUED UNTIL MAY 8, 2012. Consider the following determinations by the Historic Resources Commission concerning the proposed project to be located at 900 New Hampshire Street:**

- a) **Consider making a determination based on a consideration of all relevant factors that there is/is not a feasible and prudent alternative to the proposed project at 900 New Hampshire Street and that the proposed project includes/does not include all possible planning to minimize harm to the listed properties. The Historic Resources Commission determined (7-0) on February 16, 2012 that this project will encroach upon, damage or destroy the listed historic properties and their environs.**

- b) **Consider an appeal of the HRC determination to deny a Certificate of Appropriateness for the proposed project to be located at 900 New Hampshire Street. The HRC determined (7-0) on February 16, 2012 that this project will encroach upon, damage or destroy the listed historic properties and their environs.**

David Corliss, City Manager, introduced the item.

Dan Watkins, representing the applicant, presented images and information on the updated plan.

Schumm asked if the east side had changed at all.

Watkins said it still included a big courtyard and step down to the back.

Cromwell said on the financing request, we have yet to see anything on this. He asked if we were receiving a request for both areas.

Watkins said it could expand the existing or create another one. The details hadn't been defined. They were just asking to start the clock on the financing tools.

Cromwell asked is there still a request for public financing of some sort on the new revised 900.

Watkins said yes. They were working on how all that financing would interface.

Carter asked where we are on the feasibility study.

Corliss said it was on hold because the project is changing.

Watkins said there is a feasibility requirement on the TIF district.

Carter said his understanding for the 900 project, they have been waiting. Do we expect something fairly timely on the project.

Corliss said we are dependent on the developer submitting the information on the project.

Watkins said we had two meetings last week and decided that submitting a new project to the HRC was the next step, so we had not submitted financial information yet.

Carter said it was educational to him wrapping his head around the incentive district.

Watkins said it would take several months to go through the whole public process so there would be time to understand it.

Schumm said the incentive request would be considered on the next agenda item.

Amyx asked if a new process would begin.

Schumm said it is a revised plan in the same process. It is the latest revision to try to gain approval of the HRC.

Mayor Schumm reopened the public hearing.

Leslie Soden asked if there was a withdrawal of the appeal.

Schumm said no.

Soden asked if there were two buildings now.

Corliss said the applicant has asked for their appeal to be continued to May 8. They have the legal right to do that. They also have a revised plan to submit to HRC, which will be presented to HRC on Monday. There will only be one plan considered by the City Commission.

Dever said if HRC approves it we don't have to.

Corliss said if HRC approves it, the site plan could be considered administratively unless it was appealed. The Commission would also consider the incentive request.

Dever said there would not be two designs. The new design would be considered in lieu of the previous design.

David Evans said they were not pulling their appeal, they are going to take the smaller building through. If that doesn't pass HRC muster they can still come back to the City Commission with the bigger building. He could see why they wouldn't pull the appeal because they would still have to be heard by the City Commission.

Schumm said that was true but we would still know there is a smaller version and that may be difficult.

Evans said we should have the feasibility study and it has to be ready.

Corliss said it has not been prepared by the consultant because they don't have the relevant factors.

Evans asked if they would use the same consultant.

Corliss said the problem was that they didn't have the information from the applicant.

Gary Rexroad said he wanted to talk about the positive attributes of the proposal. We had heard a lot about land use and a specific neighborhood, but we hadn't heard much about what this project would do for Lawrence and downtown. It would create temporary and long term jobs. It would become an attraction to downtown. It would totally transform that corner. It would attract out of town dollars to Lawrence that wouldn't be there otherwise. The tax base in Lawrence is roughly 75% residential. Working to bring in commercial tax base will benefit residents. He asked what the planned revenue impact of the project and how many jobs it would create.

Schumm said it would be included in the feasibility study. The project had changed dramatically.

Rexroad said with that in mind he would encourage going the other way on height and its impact on economic development.

Katherine Harris said she was still very confused. She said she had been opposed to the height, mass, and impact of the project. She was confused about how in the world are we to have enough time to review the proposal. She said HRC is a legal entity following state laws. It is not a whimsy thing. If we are going to be prepared to discuss a project, how can we do that by Monday with no actual plans available?

Watkins said he did provide a ten page set of plans to the speaker's attorney yesterday.

Harris said in the hurry of how fast this thing is moving, we are still vigorously opposing a special HRC meeting so we have time to consider it, all of the stakeholders. We have had questions all along and have asked the city commission to slow it down. She said Kirk McClure had sent a very thoughtful letter. There were also two sets of information she found on the

agenda tonight. She had seen the Comprehensive Plan and a chapter on sustainable neighborhoods. We talk a lot about jobs but there are only jobs when there are viable businesses. How much is it costing the city in terms of people hours to consider all of these changes?

KT Walsh said she was glad that the new plan was getting shorter. She was responding to the applicant's letter. Our experience in the past was hearing about things when they had been on the books for 6 months. First, we need a district study. If the NE corner of 9th and NH was going to be redeveloped perhaps a transit hub, low-mod income affordable housing could be included. Incentives to use bikes instead of vehicles could be helpful. We must be careful not to create a wall of upscale buildings with their backs to lower income housing. The mural on the Black Hills should be considered. The mural was owned by the building owner. The new owner should know the history of the mural. Perhaps it could be incorporated into the new development. Soundproofing, as the Hobbs Taylor building had, should be incorporated. In Austin young professionals moved into the music district and then started complaining about the music. New soundproofing codes had to be adopted. Lastly, at an opening at the Percolator we had poets and bluegrass music and a KU fan had called in a complaint that he couldn't hear his game.

Schumm said this had been a long process and we wanted to open it up tonight to keep that going. He encouraged people to stay involved.

Carter said a couple people brought up the district study. He said regarding McClure's letter, he was not proposing a moratorium but a study. That was incorporated into the study we were going to get. The district study was coming but it wouldn't be here before this project was processed.

Amyx said he appreciated everyone's confusion. It was hard to keep up with the changes. People need to make sure they go the meetings and have their voices heard.

Dever said he agreed that the feasibility study information was mandatory to his consideration of the item. He said he had been asking for financial proformas from the developer for months. They had delivered those ten days ago or so. The project had changed so dramatically. The information has not been available until recently. His goal was to make sure that whatever was built would last for a long time. The financial part of this is a lot harder to ascertain than just taking a floor of the building in the computer program. There is no attempt to hold back the financial information, it is just very fluid.

Schumm said the developer mentioned that there were some meetings last week. He, Dever, city staff, and developers had been in that meeting. In that meeting it was conveyed that there was not enough support on the commission to convey approval. The developer came back with a smaller proposal. Lopping a floor off was a reasonable and prudent action. He wasn't sure what the HRC would find, but they were acting within their responsibility.

Cromwell said we had a project that has undergone a variety of iterations. The changes weren't a problem, they were a sign that the process was working well. This is the way it is supposed to work. This body will be in charge of weighing all sides of this. You can't make everyone 100% happy but we would get a good result. He thanked everyone for their patience.

Moved by Amyx, seconded by Dever, to continue the public hearing until May 8.
Motion carried unanimously.

3. Receive revised request from First Management, Inc., and 900 New Hampshire, L.C.

Dan Watkins presented the item. He said the request was to get the process started on the request.

Schumm said there was substantial discussion at the meetings about the TIF. The applicant had requested to withdraw the TIF and draw a new one. He said that concerned him because he looked at that TIF as a contract with the public. We have that on the table that will need to be decided at a later date, that money needs to come from this project and go to the

existing garage, as well as their new parking structure. It is his understanding that the new TIF would be phased to include the new structure at the other corner.

Corliss said we need new numbers to figure that out. He said he thought commissioners had concerns about removing the property from the existing TIF.

Schumm said there may be other public improvements to incorporate into the TIF. It was a work in progress. It is very different from the original request.

Amyx asked if the financial analysis info that we would get on the new project, would it be able to show the responsibilities we still have in the original TIF, because we are going to have to make that decision. If we are going to cut down the taxable property in that district how would it be handled.

Corliss said yes, we would need to get that information. What we need to know is what kind of revenue would the final approved project generate from sales and property taxes, and what would we do with that money.

Amxy said we had ongoing responsibilities under the 2000 TIF, we have to make those good and have the means to do it. As long as that is being considered he looked forward to seeing it.

Dever says that is exactly what he tried to think about. If we cut off floors we reduce the revenue potential, but adding the additional parcel may offset that. None of us want to see our ability to recover money for the parking garage to be reduced.

Schumm said you have to keep in mind that that dirt is generating no money now. If they can generate money for the old and the new TIFs, that is a good project. If you include the building to the north, that is another thing to consider and we will have to wait and see. We are looking out for the public's interest.

Mayor Schumm called for public comment. None was received.

Moved by Carter, seconded by Cromwell, to receive request and direct staff to work with the developer to prepare appropriate documents for City Commission consideration. Motion carried unanimously.

4. **Consider a motion to recess into executive session for 1 hour for the purposes of: 1) possible acquisition of real estate; and 2) consultation with attorneys for the City on matters deemed privileged under the attorney client relationship. The justification for the executive session is to keep possible real estate acquisition terms and conditions and attorney-client matters confidential at this time. The regular meeting of the City Commission will resume in the City Commission meeting room at the conclusion of the executive session.**

Moved by Dever, seconded by Cromwell, to recess into executive session at 8:10 p.m. for 1 hour for the purposes of: 1) possible acquisition of real estate; and 2) consultation with attorneys for the City on matters deemed privileged under the attorney client relationship. The justification for the executive session is to keep possible real estate acquisition terms and conditions and attorney-client matters confidential at this time. Motion carried unanimously.

The city commission returned to regular session at 9:12 p.m.

No action was taken following the executive session.

E. PUBLIC COMMENT:

John R. Tuttle III said one of the items that bothered him the most was the agenda sheet, at the end it said "current vacancies, boards and commissions." First on the list was downtown task force, an act of fraud. It said newly formed task force but wasn't it newly reformed? I never saw it on the agenda. We should see the ordinance number that ordains and codifies this new task force. Also, I wanted to bring up something about 900 New Hampshire LLC and your tax incremental financing programs. It is just another wordy way of saying ripping off the taxpayer. The developer has the same TIF program going on in ten different communities. He has holdings in multiple companies. Why are you guys giving one of the richest guys in the world more of our money? That doesn't seem like a fair appropriation of city resources. That isn't any more fair than your act of attainder with the parking ordinance. I don't

really get it man, how do you guys sleep at night? You write all of these unconstitutional ordinances. You are all conspiring together and violating decent principles of ethical behavior. You are failing in doing your duty to the citizens. You are denying me services owed to the people.

Michael Tanner said he thought you were going to pass this thing at 901 New Hampshire regardless of what anyone said. Regarding the parking ordinance, you are creating an ordinance passed on anonymous phone calls. We are being targeted and it is unconstitutional. You are trying to murder me by running me out of shady spots. You are trying to force me to have cardiac arrest. We are having some solar flares here, with the solar maximum. It is only fitting that I should fight this battle with you through Passover, because you have trespassed against me. My god is still doing battle with your phoenix god. What goes around comes around to bite you in the booty. I don't have to do anything. Your booty is going to go into Kansas City and you aren't going to have anything to look at. It's going to be a nice little boring retirement town you have here. You are guilty of somatic distortion. I never did follow anyone out of here. I have a letter here from Dave Corliss that I followed a city employee out to the parking lot. I did not walk up to any camera man in attack mode, as Dave Corliss said. I walked up the camera with my goofy hat to make a comment. I came out here to fight with the sword of my mouth. You are trying to kill me by driving me out of every shady part of town.

Corliss said on July 5, 2011 the City Commission adopted Resolution No. 6925 creating the downtown task force.

Schumm said that Corliss could answer other questions from Tuttle after the meeting.

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 Cromwell, seconded by Amyx, to adjourn at 9:29 p.m. Motion carried unanimously.

APPROVED:

Robert J. Schumm, Mayor

ATTEST:

Jonathan M. Douglass, City Clerk