



City of Lawrence

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CITY COMMISSION

MAYOR
ROBERT J. SCHUMM

COMMISSIONERS
MICHAEL DEVER
HUGH CARTER
MIKE AMYX
ARON E. CROMWELL

June 26, 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. Proclaimed the month of July, 2012 as Parks and Recreation Month.

B. CONSENT AGENDA

Mayor Schumm requested that item number 13, agreement with Convention Sports & Leisure, 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 item number 13. Motion carried unanimously.

1. Approved City Commission meeting minutes from 06/12/12.
2. Received minutes from various boards and commissions:

Parks & Recreation Advisory Board meeting of 06/05/12
Lawrence Douglas County Bicycle Advisory Committee meeting of 05/15/12
Public Incentives Review Committee meeting of 04/24/12
3. Approved claims to 270 vendors in the amount of \$3,192,705.45.
4. Approved licenses as recommended by the City Clerk's Office.

Drinking Establishment license for On The Border, 3080 Iowa
5. Bid and purchase items:



- a) Set a bid opening date of July 17, 2012 for Bid Number B1240 Contractor Services to Complete Emergency Sanitary Sewer, Force Main, and Air Relief Valve Repairs.
6. Adopted on second and final reading, the following ordinances:
- a) Ordinance No. 8749, relating to weigh limitation for certain trucks designed and used for garbage, refuse, solid waste disposal, mounted fertilizer spreaders and animal dung spreaders.
 - b) Ordinance No. 8750, amending Chapter X relating to the disability provisions of the City of Lawrence Human Relations Code.
 - c) Ordinance No. 8751, establishing the new crime of refusing to submit to a test for the presence of drugs or alcohol while operating a motor vehicle.
 - d) Ordinance No. 8752, pertaining to the examination and licensing of certain trades, to comply with amendments to state law that will be effective July 1, 2012.
7. Adopted Resolution No. 6977, approving Tax and Securities Compliance Procedures for the city.
8. Accepted dedications of easements for Final Plat, PF-5-3-12, for Oread West No. 16 (formerly Research Park), located at 0 Research Park Drive. Submitted by Paul Werner Architects, for Alvarado Development Corporation, property owner of record.
9. Approved a Site Plan, SP-5-33-12, for sidewalk dining at 934 Massachusetts Street (Minsky's Pizza) and approved sidewalk dining and hospitality license. Submitted by Paul Werner Architects, for Round Corner Building Corp, the property owner of record.
10. Approved a Site Plan, SP-5-39-12, for the expansion of a non-conforming use for Harbour Lights, located at 1031 Massachusetts Street, including a rooftop hospitality deck and a building addition for a ramp for wheelchair accessibility. Submitted by Mike Myers of Hernly Associates for David Heinz, the property owner of record.
11. Approved the 2012 Investment Policy.
12. Authorized staff to apply for an Assistance to Firefighters Grant for station video conferencing. The grant requires a twenty percent (20%) local match, for an estimated cost of \$71,000.
13. THIS ITEM WAS REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. Authorized the City Manager to execute an agreement with Convention Sports & Leisure in the amount of \$25,000 for economic impact study for the proposed sports village/recreation center.
14. Authorized the City Manager to execute an agreement with the State of Kansas for capital and operating assistance funds in the amount of \$250,986 for expenses associated with the City of Lawrence transit system.

15. Authorized the Mayor to execute a Reciprocity Agreement with Johnson County Contractor Licensing, allowing for the issuance of reciprocal licenses to contractors licensed by Johnson County Contractor Licensing and the City of Lawrence under certain conditions.
16. Approved as signs of community interest, a request from the Nordic Heritage Festival to place temporary directional signs located in various rights-of-way in the City on Saturday, October 6, 2012.

Regarding consent agenda item number 13, agreement with Convention Sports & Leisure, David Corliss, City Manager, said we were recommending entering into this contract in order to study the economic impact of the proposed facility. The vendor specializes in this type of analysis. Our economic development coordinator has worked with this firm before. We looked at several proposals and this one was the best. This is really just part of our due diligence in considering this proposal and our investments in it.

Carter said he wondered if we could ask if they could look closely at hotel room nights, and give us an understanding of the type of events and the number of room nights they generate, so we can consider that later as we start booking events.

Corliss said those were good suggestions and we would talk about including that in their study.

Schumm said he pulled this from consent because there are some comments that this proposal is being rushed through without enough information, but this contract is part of our fact finding and due diligence.

Corliss said we would try to have this on our August 7 meeting.

Mayor Schumm called for public comment.

KT Walsh said Haskell and KU are both a long way from the proposed center and we should have some outreach to them, especially Haskell.

Moved by Cromwell, seconded by Carter, to authorize the City Manager to execute an agreement with Convention Sports & Leisure in the amount of \$25,000 for economic impact study for the proposed sports village/recreation center. Motion carried unanimously.

C. CITY MANAGER'S REPORT:

David L. Corliss, City Manager, presented the report.

D. REGULAR AGENDA ITEMS:

1. **Conduct public hearing on the establishment of a Neighborhood Revitalization Area (NRA) at 810/812 Pennsylvania (the Cider Building). Consider adopting on first reading, Ordinance No. 8753, establishing the revitalization area; consider approving the NRA plan, and consider authorizing staff to finalize a city-county-school district cooperation agreement concerning the administration of the NRA plan and authorize the Mayor to execute the agreement.**

Aron Cromwell stated that he was recusing himself from this item because of an ongoing business relationship. He left the room at 6:53 p.m.

Diane Stoddard, Assistant City Manager, presented the staff report.

Amyx said the cost benefit ratio was 1.29.

Stoddard said yes.

Moved by Amyx, seconded by Dever to open the hearing. Motion carried 4-0 with Cromwell abstaining.

KT Walsh said the East Lawrence Neighborhood Association was in favor of granting the NRA. The developer had worked well with the neighborhood.

Leslie Soden, East Lawrence Neighborhood Association, said this was a perfect example of creative place making.

Moved by Amyx, seconded by Dever, to close the public hearing. Motion carried 4-0 with Cromwell abstaining.

Amyx said the cost benefit analysis indicated a 1.29 benefit. Redevelopment has not come in this area until now. He said PIRC's recommendation swayed his vote more than anything.

Carter said he agreed. It meets the criteria now, but the return on investment can and should be leveraged. We have an atmosphere that attracts creative people. This has his support.

Dever said it is a great opportunity. The developer had worked with the city and the neighborhood. This is a great chance to use some of our unique qualities in our community.

Schumm said he couldn't think of a better site and rehabilitation. This ought to be the poster child of success for the Neighborhood Revitalization Act.

Moved by Dever, seconded by Carter, to adopt on first reading, Ordinance No. 8753, establishing the revitalization area, approve the NRA plan, authorize staff to finalize a city-county-school district cooperation agreement, and authorize the Mayor to sign the agreement, and authorize staff to execute a performance agreement with the applicant. Motion carried 4-0 with Cromwell abstaining.

Cromwell returned to the Commission Chambers at 7:00 p.m.

2. Consider the following items related to 900 New Hampshire:

- a) **Consider applicant appeal on HRC determination. Conduct public hearing and make a determination that there is/is not a feasible and prudent alternative to the proposal and make a determination that the proposal includes/does not include all possible planning to minimize harm to the listed properties.**
- b) **Consider adopting on first reading, Ordinance No. 8728, removing the property on the east side of the 900 block of New Hampshire from the current Downtown 2000 redevelopment TIF (tax increment refinancing) district and refer to the Public Incentives Review Committee to consider the proposed project.**

For a transcript of Regular Agenda Item Number 2, see the attached Appendix A, transcript prepared by Candace K. Braksick.

E. PUBLIC COMMENT:

None.

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 Dever, to adjourn at 12:16 a.m. Motion carried unanimously.

APPROVED:

Robert J. Schumm, Mayor

ATTEST:

Jonathan M. Douglass, City Clerk

EXHIBIT A to City Commission Meeting Minutes of June 26, 2012: Transcript of Regular Agenda Item Number 2, items relating to 900 New Hampshire, prepared by Candace K. Braksick.

1 BEFORE THE LAWRENCE CITY COMMISSION
2 LAWRENCE, KANSAS

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5 Re: Application for Design Review
6 of 9-10, L.C., No. DR-12-185-11.

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9 June 26, 2012

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BEFORE:

Bob Schumm, Mayor
Mike Amyx, Commissioner
Hugh Carter, Commissioner
Aron Cromwell, Commissioner
Mike Dever, Commissioner

City Hall
Lawrence, Kansas

APPEARANCES:

For the City:

Toni Wheeler, City Attorney
Randall Larkin, Senior City Attorney

For the Applicant:

Dan Watkins
William Fleming

For neighborhood homeowners:

Ronald Schneider

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1 MAYOR SCHUMM: All right, now we're on No.

2 2. Couple things, please. We want to hear

3 each and every speaker that wants to speak.

4 You will be allowed five minutes; if you can do

5 it quicker than five minutes we would

6 appreciate it. At four and a half minutes --

7 we've got our shock clock right here. At four

8 and a half minutes there will be a gentle

9 sounding tap on the shoulder that sounds like

10 this (indicating). That means that you've got

11 to wrap up and be prepared to sit down in the
12 next 30 seconds, and we would appreciate your
13 help with that.

14 Be sure and sign in. And there is
15 absolutely no applause for any speaker, this is
16 a business meeting and we need to conduct it as
17 such, so we'd appreciate your accommodation
18 with regards to these conditions for the
19 meeting.

20 Staff has some special instructions
21 tonight because we do have a court reporter.

22 MR. LARKIN: Good evening, mayor,
23 commissioners, ladies and gentlemen. My name
24 is Randy Larkin and I am a Senior Assistant
25 City Attorney and tonight before us is an

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1 appeal from a decision of the Historic
2 Resources Commission.

3 Before I get to the legal substance of the
4 issues tonight there are a couple of
5 preliminary matters we need to take care of.
6 In reviewing a decision of the Historic
7 Resources Commission the City Commission acts
8 in a quasi-judicial capacity. Because that is
9 the case and because there is a likelihood that
10 there may be further proceedings after tonight
11 the City welcomes Mrs. Candace Braksick, a
12 certified court reporter, tonight. She will be

13 transcribing all the events and everything that
14 everybody says tonight for future record in
15 case it is needed.

16 Because that is the case, because she is
17 taking down everything, there are a couple
18 guidelines we would like all speakers to follow
19 tonight. First, when speaking speak audibly
20 and distinctly. The court reporter cannot take
21 down whispers, mumbles, nods, gestures, facial
22 expressions.

23 Please refrain from speaking over one
24 another; if you allow the person speaking
25 before you to finish their thoughts before

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1 speaking that would be greatly appreciated.

2 And third, members of the public, as you
3 approach the stand and state your name state it
4 clearly and possibly spell your name for the
5 court reporter that would be a great help.

6 Thank you, Mrs. Braksick, for your
7 services tonight.

8 Also, because the City Commission is
9 acting in quasi-judicial capacity we, the city
10 commissioners need to disclose ex parte
11 communications. Ex parte communications are
12 communications that individual commissioners
13 may have had with individuals outside the

14 confines of this room regarding the issue, and
15 the purpose of the disclosures is so that all
16 of the decision-makers have the same
17 information upon which to make their decision,
18 that is, they are working from a level ground.
19 It also allows opponents or proponents of the
20 project to possibly rebut something that may
21 have been heard outside this room, so it
22 provides a fairer ground for everybody.

23 So, commissioners, if you would like to do
24 ex parte communications at this time that would
25 be great.

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1 MAYOR SCHUMM: Okay. I'll start off by
2 saying that I have had numerous e-mails from
3 members of the public both pro and con, nothing
4 new information in that. There was a proposal
5 by a Town Peterson, but I think it is in the
6 public arena, in terms of tonight's material
7 and it's been online.

8 I did have a meeting, and I was trying to
9 recall the date today, but it was prior to the
10 HRC meeting so whatever date that was, prior to
11 that last date, probably a week or so in
12 advance of that, or maybe ten days, in which I
13 was in a meeting with the city manager, the
14 development team, I don't remember exactly who
15 was there but there was four members, the

16 hotelier, I think Mike Dever was there, and I
17 don't recall who else was at that meeting,
18 maybe no one else.

19 At that meeting we talked about the fact
20 that the, I told them that I thought the size
21 was too large, that the commission, they didn't
22 have three votes on the commission, because I
23 had previously visited with each commissioner
24 individually to find out where they were at so
25 I could help guide this project in a manner

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1 which would be consistent with what the HRC was
2 saying.

3 At that meeting I asked if they would
4 consider moving the project from the south side
5 of Ninth and New Hampshire to the north side
6 where Black Hills is, indicated that was
7 impossible because of lengths of leases at that
8 location, as well as some tenant problems they
9 had. At that meeting they did offer to reduce
10 the structure by one floor. That's it.

11 Sir.

12 MR. CORLISS: Bob, I sent you an e-mail
13 earlier today. That meeting was on April the
14 10th.

15 MAYOR SCHUMM: April the 10th, thank you.
16 I can think of no other ex parte contacts I

17 have had. I walked out around the block when
18 this started, I met some neighbors and just
19 said hi but there wasn't anything of any
20 interest there that no one would have any value
21 in knowing.

22 So want to go next?

23 COMMISSIONER DEVER: Sure. We, I was a
24 part of a meeting with the potential developer
25 of this project at least on one occasion at

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1 City Hall. Those meetings were attended by
2 myself, the mayor, and several staff members.
3 I have attended an East Lawrence Neighborhood
4 Association meeting several months prior to
5 that when the original proposal was submitted
6 and answered questions related to the structure
7 and that was before I think some of the issues
8 regarding the Historical Resource Commission's
9 findings were made clear and I saw that there
10 might be potential for a conflict if I
11 discussed it any further so I tried to shy away
12 from, you know, having conversations about
13 this.

14 When the second proposal came forward, you
15 know, I think we've, I've talked with
16 individual residents via e-mail, over the
17 phone, just trying to have some sort of
18 feedback from them about the structure and how

19 important that neighborhood is to them but
20 nothing really of any substance with any other
21 party involved in this process.

22 MAYOR SCHUMM: Okay. Commissioner Amyx.

23 COMMISSIONER AMYX: Again, like the rest
24 of the commission members, I have had quite a
25 few e-mails and I have had the opportunity to

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1 visit with a number of people in my business.
2 It seems like this has been a big topic the
3 last several weeks especially, you know, up and
4 down Massachusetts Street so I have had the
5 opportunity to have a lot of communication with
6 a lot of people and just general discussion,
7 people offering comments to me and things.
8 Again, as the mayor mentioned, Mr. Peterson's
9 proposal, you know, but here again, we all have
10 copies of that so there's no new information
11 there.

12 Quite a few phone calls with individuals
13 but I don't think really any new information
14 that no other member of the commission was not
15 privy to, so about where I'm at.

16 MAYOR SCHUMM: Thank you.

17 COMMISSIONER AMYX: Uh-huh.

18 COMMISSIONER CROMWELL: I have had
19 numerous contacts with both proponents and

20 opponents of the proposed project. These
21 happened through e-mail, telephone, and in
22 person but none of those contacts contained any
23 material which is not currently in the public
24 record.

25 COMMISSIONER CARTER: I would say the

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1 same, specifically with the development group,
2 I had two meetings, one was before April 10th,
3 one was after, I don't know the dates, so
4 anyway, one was pre discussions of the changes
5 with the initial -- first one was just a review
6 of the project, just educational, second one I
7 think the developer had indicated that they'd
8 heard I had some issues with the project,
9 wanted to know what those were, I indicated I
10 was really, really just waiting on a
11 feasibility study, those were my main
12 questions, and we did go ahead at that time,
13 though, and they reviewed the changes that had
14 been made since the previous submission of the
15 plan. That was it. Other than that lots of
16 e-mails from folks but nothing, nothing
17 material and nothing that's not out there
18 already.

19 MR. LARKIN: Thank you, mayor,
20 commissioners.

21 Tonight the City Commission hears

22 Application for Design Review of 9-10, L.C.,
23 No. DR-12-185-11. The proposed project, which
24 the succeeding speakers will describe in much
25 more detail than I will, involves a proposed

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1 structure on the vacant lot at 900 New
2 Hampshire Street. Because the property is
3 within the environs of several historic
4 structures, the Downtown Historic District, and
5 the North Rhode Island Residential Historic
6 District, before the project could proceed it
7 had to be presented and reviewed by the
8 Historic Resources Commission. On April 30th,
9 2012, the Historic Resources Commission
10 considered the project and determined that it
11 would encroach upon, damage or destroy the
12 North Rhode Island Residential Historic
13 District.

14 Accordingly, under state law, the project
15 cannot proceed unless tonight the City
16 Commission determines, based on a consideration
17 of all relevant factors, that there is no
18 feasible and prudent alternative to the
19 proposal and that the program includes all
20 possible planning to minimize harm to such
21 historic property resulting from such use.

22 Now, on March 6, 2012, in anticipation of

23 a previous hearing regarding one of the earlier
24 incarnations of this project, the City's
25 Attorney's Office drafted a Memorandum kind of

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1 outlining the law relating to the City's
2 decision in this matter. On June 21, 2012, the
3 City Attorney's Office prepared a Supplement to
4 that Memorandum and it confirms that there has
5 been no intervening change in the law and
6 updates certain events but specifically it
7 notes that the last page of the March 6
8 Memorandum, which encompasses paragraphs 31
9 through 36, are now moot. Those related to the
10 City Code and Certificate of Appropriateness.
11 At the April 30, 2012, hearing those were
12 granted so those are not part of tonight's
13 appeal.

14 So against that backdrop I now turn now to
15 the substantive discussion of the March 6
16 Memorandum outlining the City Commission's
17 scope of review and its standard of review.
18 There are really three issues I want to talk
19 about. One is relevant factors and the
20 feasible and prudent alternatives and then the
21 program and planning to minimize harm, so I
22 will do that separately.

23 At the outset, in 1977 the state
24 legislature enacted the Kansas State Historical

25 Preservation Act. The Act provides that any

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1 project that is going to be built within the
2 environs of an historical property must be
3 reviewed by the State Historic Preservation
4 Officer. In some cases the State Historic
5 Preservation Officer may delegate that
6 authority to local governments and in this case
7 has an agreement with the City of Lawrence to
8 do so and the City of Lawrence has appointed
9 the Historic Resource Commission to perform the
10 duties of the State Historic Preservation
11 Officer. As was discussed earlier, on
12 April 30th the Historic Resources Commission
13 held a hearing in this case.

14 The burden of establishing that there is
15 no feasible and prudent alternative to the
16 proposal and that the program includes all
17 possible planning to minimize harm to such
18 historic property resides with the proponent of
19 the project, so it is on the applicant. They
20 have the burden of proof.

21 Discussing the scope of the Commission's
22 review, the Commission can consider, what the
23 scope of review is what materials, testimony
24 and other evidence that the City Commission may
25 consider in making its decision tonight and in

1 making its decision in this case the City
2 Commission is constrained to considering
3 relevant factors.

4 Now, according to regulations promulgated
5 by the State Historic Preservation Officer, a
6 relevant factor is defined as pertinent
7 information submitted by project proponents or
8 opponents in written form, including evidence
9 supporting their positions. Thus, a proposed
10 alternative use may only be considered a
11 relevant factor if it is in writing and
12 includes sufficient factual information that
13 would support a conclusion that such proposed
14 alternative is not only feasible but prudent.
15 For example, a proposed alternative use is a
16 relevant factor if in writing it addresses
17 certain technical, design, and economic issues
18 related to the proposed project, as well as the
19 project's relationship to a community-wide
20 plan.

21 Other relevant factors may include, as it
22 may be relevant to this case, the character of
23 the neighborhood, the zoning and uses of nearby
24 properties, the suitability of the property for
25 the proposed use, the extent to which the

1 proposed use would detrimentally affect the
2 nearby property, the length of time the
3 property has remained vacant, the relevant gain
4 to the public health, safety and welfare when
5 balanced against the hardship to the owner if
6 the applicant is denied, the recommendations of
7 professional staff, and compliance with the
8 comprehensive plan. Those are known as the
9 Golden factors and are applied in a wide
10 variety of land use decisions. Now, the Golden
11 factors are by no means the only factors that
12 are relevant. There may be other factors that
13 are relevant to this specific case that are not
14 listed that the City Commission may consider.

15 Now, however, suggested alternative uses
16 that lack sufficient factual support are not
17 considered relevant factors and may be ignored
18 or must be ignored by the City Commission.
19 Moreover, the aggregation of one or more of
20 such suggestions absent any evidence to support
21 them does not convert those statements or
22 suggestions into a relevant factor. If a
23 suggested alternative is not a relevant factor,
24 then the City Commission may not consider it,
25 and, significantly, the proponent is not

1 required to refute it.

2 Now, in this case, because the applicant
3 or the proponent has the burden on this appeal
4 to refute any relevant factor that may be
5 presented as an alternative use, for that
6 reason I think there is scheduled a little
7 rebuttal time at the close of the public
8 meeting for the applicant or proponent to
9 present a rebuttal.

10 Now having outlined the scope of review
11 relating to relevant factors, I turn now to the
12 substance of the City Commission's decision.
13 As noted earlier, the City Commission must,
14 based on consideration of all those relevant
15 factors, decide two things: First, whether
16 there is no feasible and prudent alternative to
17 the proposal; and two, whether the proposed
18 program includes all possible planning to
19 minimize harm to such historic property
20 resulting from said use, and I will address
21 each of those separately.

22 According to the regulations, "no feasible
23 and prudent alternative" means that there is no
24 alternative solution to the proposed project
25 that can be reasonably accomplished that is

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1 either sensible or realistic. The word
2 "feasible" is defined as capable of being
3 accomplished or being brought about, as

4 possible, suitable or reasonable. The word
5 "prudent" means wise in handling practical
6 matters, exercising good judgment or common
7 sense.

8 When considering whether there is no
9 feasible and prudent alternative the City
10 Commission must under the regulations consider
11 these four factors: Technical issues relating
12 to the project, design issues relating to the
13 project, the proposed project's relationship to
14 the community-wide plan, if there is one, and
15 economic issues related to the proposal.

16 The determination that the City Commission
17 makes must be made on a case-by-case basis.
18 That means that the City Commission must look
19 at the particular facts of this case and apply
20 the standards to it to make its decision.

21 Typically, as in this case, when a
22 proposed project does not involve the
23 destruction of historic property, then the
24 courts do not construe the no feasible and
25 prudent alternative as tightly as they do in

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1 cases that would involve the demolition of a
2 historic property. What the courts require in
3 these cases is that the City Commission take a
4 good hard look at all relevant factors and,

5 using plain common sense, base its
6 determination on the evidence presented before
7 it.

8 Now turning to the second conclusion or
9 the second part of what we must find, the City
10 Commission must determine that the program
11 includes all possible planning to minimize
12 harm. This regulation requires the materials
13 presented to the Historic Resources Commission
14 clearly identify alternative solutions and
15 their effects and describe the mitigation
16 measures proposed by the project proponent that
17 address the adverse affect determination of the
18 Historic Resources Commission. By "program"
19 the legislature means the project.

20 In making this determination the City
21 Commission must consider factors such as
22 lighting, traffic, vandalism, noise, drainage,
23 fire concerns, height, trash, among others, and
24 determine whether the proposed project has been
25 designed or planned to protect the historic

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1 property from those sorts of harm.

2 In conclusion, to comply with the Kansas
3 State Historical Preservation Act the City
4 Commission must examine all relevant factors
5 and from those factors determine whether, one,
6 there is no feasible and prudent alternative to

7 the proposal, and two, whether the proposal
8 includes all possible planning to minimize harm
9 to protected properties. In drawing its
10 conclusion the City Commission shall consider
11 any relevant evidence logically connected to
12 its ultimate determination. That determination
13 must be made based on the particular facts of
14 the case and will depend in large part on the
15 nature of the proposed project and the affect
16 it will have on the historic properties and
17 their environs.

18 With that, I close. Toni Wheeler, the
19 city attorney, and I will be on hand in case
20 you have any questions. Also, at the
21 conclusion of the hearing we would ask that you
22 request staff to prepare findings of fact and
23 conclusions of law. While they are not
24 required or mandated in cases such as this, the
25 courts strongly urge City Commissions when

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1 hearing cases like this to prepare findings of
2 fact because it assists them in case there are
3 additional proceedings.

4 MAYOR SCHUMM: Any questions?

5 COMMISSIONER DEVER: Question. Can you
6 clarify, for me at least, the language defined
7 as feasible and prudent alternative to the

8 proposed project? Specifically what I would
9 like to know is, when it states "the proposed
10 project" in parenthesis in my mind the proposed
11 project is that which we are looking at today,
12 would an alternative to the proposed project be
13 one that is similar in use and scope or could
14 it be any potential other use or land use that
15 might occur at the property?

16 MR. LARKIN: If -- it could be any use.
17 If it is a relevant factor, then it can be
18 considered. If someone presents something that
19 would be possible or could be done on that
20 property, within the same footprint or
21 different footprint, or some other project that
22 could possibly work, as long as there is
23 sufficient evidence to establish that it is
24 feasible and prudent, then that is the
25 standard.

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1 COMMISSIONER DEVER: So any land use,
2 including nothing going there, is a feasible
3 and prudent alternative?

4 MR. LARKIN: Well, I don't -- leaving it
5 vacant is probably not. For example, I know
6 case law states that you can't require someone
7 to sell the property so I think leaving it
8 vacant, I don't know that leaving it vacant
9 would be a prudent and feasible alternative.

10 COMMISSIONER DEVER: Okay. Thanks.

11 MAYOR SCHUMM: Questions? Okay. Thank
12 you very much.

13 Why don't I give the public the outline of
14 how we are going to conduct this hearing
15 tonight. First of all, we did hear from our
16 legal staff and the next item then would be a
17 staff overview from the HRC determination by
18 Lynne Zollner. Then the next item will be the
19 staff overview of an incentive request and
20 Diane Stoddard will take care of that. The
21 next speaker will be Springsted, Incorporated,
22 summary of financial reports. We'll follow
23 that by the applicant presentation, William
24 Fleming, Dan Watkins, and others. Following
25 that will be a presentation by Ronald

22

1 Schneider, who is the attorney for the
2 neighborhood association, or the neighborhood,
3 I should say. Following that will be public
4 comment and after public comment will be
5 rebuttal by the applicant. I have also
6 indicated to the counsel for the neighborhood
7 that he should have opportunity to rebut
8 anything that he wants to rebut as well.

9 The staff will proceed with their
10 development of their information. There is no

11 time limit on it. I have talked to Attorney
12 Schneider today and I asked him how long he
13 would like to make his presentation and he
14 thought 20 minutes, I said that's fine. All
15 other comments, though, from the public will be
16 held to five minutes so I hope that is
17 agreeable to everybody. I have tried to work
18 it out so that everyone gets heard and all the
19 information gets presented.

20 So with that in mind, that is the
21 framework, I don't know how long this is going
22 to go. It is likely that we will take a break
23 somewhere in between here so that we can all
24 remain mentally alert.

25 All right, please proceed with the review

23

1 of the HRC.

2 MS. BRADDOCK-ZOLLNER: Thank you, mayor,
3 commissioners. Lynne Braddock-Zollner, the
4 historic resources administrator for the City
5 of Lawrence, here this evening with the appeal
6 of the Historic Resources Commission
7 determinations for the new proposed project at
8 900 New Hampshire Street.

9 This is the project location. The orange
10 shaded area is the proposed project location.
11 This would be Ninth Street and this is New
12 Hampshire Street.

13 Some photographs documenting the site.
14 This is looking to the east at the project
15 site. Looking at the project site looking
16 towards the south. Looking back to the west at
17 the project site. And then looking to the
18 north on the project site.

19 The project is, the applicant is
20 requesting construct a new five-story multi-use
21 structure at 900 New Hampshire Street. The
22 mixed use building includes two levels of
23 underground parking, Town Place Marriott
24 extended stay hotel, a restaurant and a ground
25 floor retail space. The structure will be

24

1 approximately 121,908 square feet, with the
2 hotel occupying the majority of the structure,
3 including a portion of the first floor, the
4 second, third and fourth floors, with the
5 restaurant on the fifth floor.

6 The proposed structure will be concrete
7 and steel framed with materials that include
8 stone, brick and metal panels. The height of
9 the structure at the corner of Ninth and New
10 Hampshire Streets will be 63 feet. The
11 proposed structure incorporates varying numbers
12 of stories to address transitioning from New
13 Hampshire Street to the commercial district to

14 the North Rhode Island Street Residential
15 Historic District. The height at the alley is
16 40 feet and the height at the Arts Center is
17 44 feet. The overhead doors are located on the
18 north elevation to allow for access to the
19 loading dock and underground parking.
20 Storefront systems are located on the north and
21 west elevations and the ground floor
22 finistration also includes the entrance to the
23 building and the hotel lobby.
24 These are some elevations and schematics
25 designed by the architect that we are using

25

1 this evening. This is the New Hampshire Street
2 elevation.

3 This is the Ninth Street elevation.

4 This is the alley or the east elevation of
5 the structure with a rendering showing it at
6 the bottom that's the same.

7 And this is the elevation that will be
8 adjacent to the Arts Center.

9 The property is located in the environs of
10 several properties listed in the National
11 Register and the Lawrence register and the
12 register of Historic Kansas Places. The
13 property is located in the environs of
14 Lawrence's Downtown Historic District and the
15 North Rhode Island Street Residential Historic

16 District and both those districts are listed in
17 the National Register of Historic Places. The
18 property is located in the environs of the
19 Shaler Eldridge House, which is listed in the
20 Register of Historic Kansas Places. The
21 property is located in the environs of the
22 Social Service League building, which is listed
23 in the Lawrence Register of Historic Places.
24 And the property is located in the Downtown
25 Conservation Overlay District.

26

1 This shows that graphically. Again, your
2 project area is the shaded area in gold. This
3 is the Downtown Historic District, this is the
4 North Rhode Island Street Historic District,
5 this is the Social Service League building, and
6 down at the bottom of the screen is the Shaler
7 Eldridge House.

8 The Historic Resources Commission
9 considered this project in three reviews. The
10 first review they did was the Certificate of
11 Appropriateness review and that is in Chapter
12 22 of the Code of the City of Lawrence and that
13 is our Historic Resources Code. They looked at
14 the project using the Downtown Conservation
15 Overlay District review or the Downtown Design
16 Guidelines review, and then they reviewed the

17 project under the state preservation law.

18 Under the Certificate of Appropriateness
19 review or the Chapter 22 review the project is
20 being reviewed under this standard because it
21 is in the environs of the Social Service
22 League, which is listed in the Lawrence
23 Register of Historic Places. It is important
24 to note that when projects are listed in the
25 Lawrence Register of Historic Places the

27

1 Historic Resources Commission, as well as the
2 City Commission, adopts an environs definition
3 and that was included in some of your staff
4 information and I can answer questions about
5 that if you like but the conclusion of that was
6 that this area of the environs had changed
7 dramatically and would be commercial
8 development in the future, that was the
9 anticipation.

10 There is a presumption with the
11 Certificate of Appropriateness review and the
12 environs that the certificate will be approved
13 unless you can show that the proposed
14 construction or demolition would significantly
15 encroach upon, damage or destroy the landmark
16 or the historic district and the Historic
17 Resources Commission felt like the applicant
18 with their proposal to monitor the Social

19 Service League building to make sure that there
20 was no physical damage to the structure met the
21 test and they approved the Certificate of
22 Appropriateness five to one at their meeting on
23 April 30th.

24 They did review the project under the
25 Downtown Design Guidelines. Now, the Downtown

28

1 Design Guidelines were first adopted in 2001
2 and a revision was approved by this Commission
3 in 2009. They are a development tool to ensure
4 compatibility with development in the Downtown
5 Conservation Overlay District. It is not the
6 intent of the Downtown Design Guidelines to
7 restrict development in such a way that it is a
8 step by step you have to meet each and every
9 design guideline, the intent is to meet the
10 overall intent of the guidelines, so that you
11 may not meet one or more of the guidelines but
12 you are meeting the overall concept of the
13 guidelines. The Historic Resources Commission
14 reviewed this project under the Downtown Design
15 Guidelines and made a determination that it did
16 meet the intent of the Downtown Design
17 Guidelines and approved that review four to two
18 at their April 30th meeting.

19 The state preservation law was the third

20 review that the Historic Resources Commission
21 did on April 30th and they determined that the
22 proposed project would damage or destroy a
23 listed property. Specifically they found that,
24 using the standards and guidelines for
25 evaluating the effect of projects on the

29

1 environs, that the project did not meet
2 standard No. 6. There again, they were
3 focusing on the size, scale and proportion and
4 massing of the environs and that this proposed
5 project did not meet that for the North Rhode
6 Island Street Residential Historic District.

7 They did note, if you looked at the
8 minutes from that meeting, they did talk about
9 how this does fit with the, it is compatible
10 with the Downtown Historic District but because
11 this is a residential district the scale and
12 massing and special relationships in a
13 residential district are different from a
14 downtown district and they did not feel that it
15 met the test for that residential historic
16 district.

17 The applicant is appealing, as Randy
18 mentioned, that decision per KSA 75-2724 and
19 the agreement with the State Historic
20 Preservation Officer and the City of Lawrence.
21 The City Commission is not being asked to make

22 a determination whether or not this project
23 damages or encroaches upon the listed property.
24 That decision has been determined by the
25 Historic Resources Commission and that stands.

30

1 The City Commission is asked to hold a public
2 hearing to determine if there is a feasible and
3 prudent alternative to the proposed project and
4 if no feasible and prudent alternative is
5 available, that the City Commission shall
6 determine if all possible planning to minimize
7 harm to the listed property has been
8 undertaken.

9 And I will leave you with that and answer
10 any questions that you might have.

11 COMMISSIONER DEVER: I have a question,
12 Lynne. Can you tell me if any of the infil
13 developments that have occurred along New
14 Hampshire have met the standards of the HRC,
15 specifically the Lawrence Arts Center, Hobbs
16 Taylor Lofts or Borders bookstore? Have any
17 three of those, did any of those meet the
18 requirements and did it have to become, did it
19 become, come before this board?

20 MS. BRADDOCK-ZOLLNER: I would do some
21 more research to answer that specifically but I
22 can tell you that the Downtown Historic

23 District was listed after those projects came
24 online, as well as the North Rhode Island
25 Street Residential Historic District, so I

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1 would have to look specifically. Someone who
2 was here longer than me might be able to answer
3 that question. I do believe that Borders was
4 an appeal to the City Commission but I would
5 have to research that and get those answers
6 back to you.

7 COMMISSIONER DEVER: Okay. Dave, do you
8 know the answer?

9 MR. CORLISS: I'm sorry, Commissioner
10 Dever?

11 COMMISSIONER DEVER: Do you know the
12 answer to that question?

13 MR. CORLISS: No, I don't.

14 COMMISSIONER DEVER: Okay. Thank you.

15 MAYOR SCHUMM: Anybody else? Mike.

16 COMMISSIONER AMYX: So, Lynne, the
17 Certificate of Appropriateness only deals with
18 the proposed project and the effect that it had
19 on the Social Service League building, is that
20 correct?

21 MS. BRADDOCK-ZOLLNER: That's correct.

22 COMMISSIONER AMYX: And not the district
23 as a whole?

24 MS. BRADDOCK-ZOLLNER: And not the

25 district as a whole.

32

1 COMMISSIONER AMYX: Okay.

2 MAYOR SCHUMM: Further questions? Thank
3 you.

4 MS. STODDARD: Good evening, mayor and
5 commissioners. Again, I am Diane Stoddard,
6 assistant city manager. I have been asked to
7 provide a brief overview for you of the
8 applicant's incentive request as it may be a
9 relevant factor in your discussions this
10 evening.

11 I have placed a map here on the screen
12 that was also provided in your agenda materials
13 for this evening. The developer is requesting
14 that the City establish a tax increment
15 financing redevelopment district in the area
16 that is outlined here. The different colors
17 denote a north project area and a south project
18 area. Essentially they are proposed mixed use
19 developments on the northeast corner and the
20 southeast corner of the Ninth and New Hampshire
21 intersection.

22 The overall proposed private investment is
23 approximately \$45 million with the project.
24 The developer has requested three basic
25 incentives to be applied in the project. One

1 is tax increment financing, the second is
2 transportation development district financing,
3 and the third is industrial revenue bond
4 financing, and I will walk through each of
5 those requests for you.

6 First, a tax increment financing, or TIF,
7 again, this would be the district that is
8 outlined on the map.

9 And Chuck, if I could ask you if you could
10 pull the document camera up.

11 As I am going through this request it may
12 be helpful for you to see the overview of the
13 incentives on a large list here that captures
14 overall the projected revenues and the
15 projected expenses related to both the TIF and
16 the TDD districts.

17 The TIF district would capture the
18 incremental new revenues generated by the
19 development for a period of 20 years and these
20 revenues would then reimburse the developer for
21 TIF eligible costs, such as parking garages,
22 site improvements, interest costs and possible
23 land acquisition associated with the Lawrence
24 Arts Commons project, which I will talk a
25 little bit about here in a moment.

1 The base amount of taxes would continue to
2 flow to the taxing jurisdictions throughout
3 this entire period. As, there is materials,
4 again, in your agenda item that proposes a
5 Lawrence Arts Commons project, which has been
6 proposed by the Lawrence Arts Center and would
7 involve possible acquisition by the City of the
8 Salvation Army parcel that is located south of
9 the Lawrence Arts Center. Under the proposal
10 the Lawrence Arts Center would utilize the
11 property to further the mission of the Arts
12 Center. 900,000 is included in the overall
13 project budget allocated toward this possible
14 project. Staff and the developer are
15 suggesting that five percent of the annual TIF
16 revenue, which would generate approximately
17 27,000 per year or a total of approximately
18 530,000 over the 20-year period, be dedicated
19 for this project and then should additional
20 revenues come in beyond those projected after
21 the development, developer has been reimbursed
22 their costs the City could continue to be
23 reimbursed for these project costs up to a
24 total of 900,000.

25 I think it should be continued to be

35

1 emphasized, as we did in the packet and the

2 materials to you, that the discussions are
3 taking place with the Salvation Army but it has
4 certainly not been finalized in any way
5 regarding the acquisition of that property at
6 this point.

7 Another note regarding the tax increment
8 financing district is that it is proposed to
9 capture both sales taxes from the city and the
10 county share and also the property tax
11 increment, for a total projected increment of
12 approximately 10.6 million over the 20-year
13 period.

14 Next the Transportation Development
15 District or TDD district. This is a tool that
16 allows an additional sales tax to be placed
17 within the district that then can fund certain
18 Transportation Development District eligible
19 costs. It is proposed that a one percent
20 additional sales tax be added within the
21 district and this amount is projected to
22 generate approximately 1.18 million over the
23 maximum 22-year period. Of the total amount
24 collected the first 850,000 is proposed to be
25 dedicated to the City toward repayment of the

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1 bonds issued by the City on the existing
2 parking garage in the 900 block of New
3 Hampshire, and there is a memo in your packet

4 that outlines staff's rationale for this amount
5 as seen as appropriate contribution for the 900
6 New Hampshire parcel toward that existing
7 garage since that 900 New Hampshire parcel
8 would be, have to be removed from the existing
9 TIF district in order to be placed into the new
10 district.

11 Next is the industrial revenue bonds.
12 These bonds are a conduit financing mechanism
13 that a city and developer can utilize, with the
14 developer being responsible for all of the
15 principal and interest payments on the bonds.
16 There is no obligation to the city in any way
17 to repay these bonds. The benefit to the
18 developer in using this tool is that materials
19 that are used in the construction would be
20 exempt from sales tax.

21 It should be emphasized that with regard
22 to all of the project the developer is
23 proposing a pay-as-you-go project. In other
24 words, the developer would front all of the
25 private development costs and the costs related

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1 to the improvements that they hope to be
2 reimbursed through the TIF and the TDD and
3 there would be no bonds or anything issued or
4 any other obligations from the City with regard

5 to the project. The exception to this would be
6 the Lawrence Arts Commons project. If that
7 were to be undertaken by the City that would
8 likely involve some amount of City debt
9 financing.

10 One thing I want to emphasize to you as
11 well is that this evening you are not making
12 any commitments on the incentive request. As I
13 had discussed previously with you at another
14 meeting, there is a number of steps involved in
15 creating all of these districts and ultimately
16 granting the request, if you choose to do that.
17 There is a calendar that is in your packet that
18 outlines that process.

19 I wanted to also note that Gary Anderson,
20 the City's bond counsel, is here from Gilmore
21 and Bell this evening and he could answer any
22 particular process questions that you may have
23 about this or any of the legal questions
24 related to these financing mechanisms.

25 This evening we are proposing that the

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1 City Commission should consider action on first
2 reading of an ordinance removing the parcels on
3 the east side of 900 block of New Hampshire
4 from the existing district, and that would just
5 be, again, an initial action, and also set a
6 date for the Public Incentive Review Committee

7 to consider this request and provide a
8 recommendation. The suggested date for the
9 PERC meeting we are suggesting would be July
10 the 10th at 3:00 p.m., should that request be
11 advanced to PERC. I want to point out that
12 your calendar does indicate a July 17th
13 possible date for that meeting but we have
14 learned that the developer does have a conflict
15 with that date.

16 Next I would like to introduce Springsted,
17 Incorporated. David MacGillivray and Tony
18 Schertler are here from that firm. The City
19 has engaged this firm to complete the financial
20 analysis that is involved with this proposed
21 project. The cost for their work is funded
22 through a funding agreement with the developer.
23 They have completed a total of four reports
24 that are also provided in your agenda
25 materials. That would be a three-story

39

1 feasibility analysis, a four-story feasibility
2 analysis on the 900 New Hampshire site, a north
3 project need for assistance analysis, and an
4 overall TIF feasibility report.

5 And with that I will turn it over to David
6 and Tony. I believe David is going to provide
7 you an overview of the firm and I think Tony is

8 going to walk through the reports for you.

9 MAYOR SCHUMM: Diane, I have a question
10 first, please.

11 MS. STODDARD: Yes.

12 MAYOR SCHUMM: On the sales tax portion of
13 the revenues that are going to go into the TIF
14 does that also include the hotel-motel bed tax?

15 MS. STODDARD: I'm sorry, mayor, it does
16 not include the bed tax. The bed tax, I should
17 point out, is, it would be an additional amount
18 that is proposed to flow directly to the City
19 and that amount is estimated at around 75,000
20 per year.

21 MAYOR SCHUMM: There's no claim on that to
22 the TIF?

23 MS. STODDARD: Correct. There has been no
24 request related to that guest tax fund.

25 MAYOR SCHUMM: Other questions? Thank

40

1 you.

2 MR. MacGILLIVRAY: Good evening. My name
3 is Dave MacGillivray. I am chairman of
4 Springsted, Incorporated, and with me is Tony
5 Schertler, senior vice president, who also
6 heads our housing and economic development
7 group.

8 Our presentation is going to cover
9 predominantly five areas, first a short

10 overview of who we are, and then secondly, as
11 Diane said, we have been engaged by the City to
12 look at four different financial areas, all
13 financial feasibility studies relating to this
14 project.

15 I will start at the bottom of the list and
16 that is the redevelopment project statutory
17 financial feasibility study and that goes to
18 the tax increment financing request in that the
19 state statute requires the council if they want
20 to proceed with that to show that project
21 benefits exceed project cost.

22 City of Lawrence goes well beyond that
23 statutory piece and looks at a needs analysis,
24 meaning do they need the money and coincident
25 with that are they making an unfair rate of

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1 return, so you will see in the south project
2 area a four-story needed assistance analysis
3 and the north project, that responds to that
4 piece, and as currently proposed it is a
5 four-story project and so we did that needs
6 analysis.

7 Following that and then given the
8 discussion whether it should be shorter the
9 City approached us about doing, what happens if
10 the project was a three-story project, what

11 would happen to the financial feasibility of
12 that, so that was overture on the part of the
13 City to look at a shorter project and see what
14 the financial feasibility would be.

15 Little bit on Springsted. Sixty-year firm
16 headquartered in St. Paul. We operate in ten
17 states. We have five practice areas. How is
18 it germane to this evening? Housing and
19 economic development and public finance, we
20 three others that relate to local government.

21 We are an independent adviser. All of our
22 clients are public sector. We have never
23 worked for a developer. We aren't
24 underwriters. We solely work for public sector
25 and nonprofit groups. We took that position 60

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1 years ago so you could ensure objective advice
2 for the City in your decision-making.

3 Kansas experience is extensive. In the
4 economic development area we were involved with
5 the first tax increment financing project in
6 Manhattan in 1985, the mall, and not every but
7 I would consider most of the major economic
8 development projects in Kansas. I'll get to
9 that a little bit later.

10 The services within economic development,
11 we do developer review, you know: Do they have
12 the capacity and the wherewithal to deliver

13 this project? Do risk assessment and what we
14 call the but-for test: Do they need the money
15 with the assistance or can they do the project
16 without it?

17 We bring a national perspective. We do
18 projects in, coast to coast actually.

19 And lastly, in Kansas some of the
20 noteworthy things, basically NASCAR and all of
21 Village West from the beginning I've been
22 involved with, Wichita downtown, Manhattan
23 downtown, we just completed a new project there
24 with a new museum and conference center.

25 And then a little bit about us. I am the

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1 chairman of the firm. We have about 60 some
2 employees across our offices. I have been
3 working in Kansas since the mid 1980s. Most of
4 our economic development work in Kansas I have
5 done. Lawrence, a number of projects over the
6 last 15 years, Oread, I see some familiar faces
7 from that. I do remember we worked on the
8 parking ramp that's across the street from this
9 proposed development back when that was
10 proposed and basically I think our work in
11 public finance and economic development goes
12 back about 15 years for the City.

13 Tony heads our economic development and

14 housing group. Prior to joining Springsted
15 about five years ago he was the lead person of
16 a major city's economic development department,
17 both core downtown as well as neighborhood
18 projects, established central cities, had many
19 of the issues that you're talking about
20 relative to neighborhood sensitivity. He's
21 been active in the last few years in Kansas.
22 When the casino project was first proposed, the
23 due diligence and all the potential operators,
24 Tony led that effort for the unified
25 government, we're sort of on an ongoing basis

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1 with KCMO doing TIF and but-for, needs analysis
2 for their various projects.

3 So that's our background. I'd be glad to
4 go into more. Oh, there's one more on me I
5 want to talk about and that is I am the adviser
6 to the National Government Finance Officers
7 Committee on Economic Development where they
8 develop best practices for local governments
9 and I co-teach a national GFOA class on
10 economic development that goes into many of the
11 issues you're talking about.

12 We have this broken into four segments.
13 We are going to start with the height situation
14 and talk about the four-story, I'm sorry,
15 three-story, then four-story, then the north

16 project, and lastly the statutory finding on
17 the TIF.

18 Height feasibility analysis. Here again,
19 we were retained by the City after the proposal
20 of the four-story to look at an alternative
21 option on a three-story project. I thought, we
22 put this slide, what does feasibility mean? We
23 had your attorney talking about feasibility
24 relative to the historic situation. Ours is
25 financial feasibility, which is different. It

45

1 is really would a rational investor commit
2 their money to this project? And what does
3 that depend on? It depends on risk, how long,
4 and what else you have to invest your money in.
5 I think another test is would a bank lend them
6 money for this project at market terms, so you
7 could walk in with anything but is it
8 financeable and through a rigorous sort of
9 lending process what would be the answer to
10 that?

11 How is it measured? And what we use and I
12 think the industry uses is called internal rate
13 of return and that is if I put my money in now
14 and I get this much over time and then I sell
15 it what's the interest rate of bringing that,
16 what's the value today and sort of it's that

17 stream of income and ultimate sale, what does
18 that mean in terms of rate of return? So you
19 could buy a thousand dollar government U.S.
20 Treasury Bond you get these days, you know,
21 1.5 percent, dollar fifty be -- let's use a
22 hundred dollars, it's easier, 1.50 per year and
23 at the end you get your hundred dollars back so
24 the internal rate of return is 1.5 in that
25 case.

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1 And then so we're going to talk about the
2 internal rates of return based on developer's
3 representation, our testing of those, and then
4 we are going to compare those to three things.
5 Predominantly Price Waterhouse Coopers
6 quarterly publishes for all types of economic
7 development projects what is the range and
8 average rate of return so if people are
9 investing in this what are, what is that market
10 and what is that rate of return?

11 Then in testing some of the assumptions on
12 cost we've looked at other national standards
13 of cost per square foot, et cetera, and the
14 ability to rent hotel rooms or apartment rooms,
15 and then our own experience, because we're
16 doing this every day in a lot of different
17 places.

18 Three-story height analysis methodology.

19 Developer had prepared a ten-year cash flow.
20 Cash flow is here is our cost, here is our
21 revenues coming in, here is the cost of
22 obtaining those revenues, here is the
23 difference or profit, and at the end we sell
24 the facility or there is an alleged sale,
25 alleged means because they get their money back

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1 at some time you have to consider that, so we
2 looked at these.

3 Next we looked at the cost and operating
4 assumptions. I think I really want to
5 underscore the word tested. I mean, we didn't
6 just accept these, we tested these. We
7 prepared the financial assistance analysis on
8 taxing increment financing, TDD, and then we
9 did the internal rate of return calculation.

10 Just briefly, and I think this has already
11 been alluded to, the three-story scenario,
12 excuse me, it's commercial and apartment uses.
13 I think we want to make one point here. The
14 three-story building has 52,476 square feet,
15 you have some retail on the first floor, then
16 apartments, but I think the third bullet down,
17 which is total leasable area, is 43,393. That
18 means that any building you're going to have,
19 you know, corridors, you're going to have

20 stairways, you're going to have elevators,
21 you're going to have common spaces that are
22 not, they don't generate income, they generate
23 cost but they don't generate income, so the
24 total leasable area is reduced by 17 percent to
25 43,000, then with the underground parking.

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1 They provided a build-out of this project
2 on a cost basis, it is a \$12 million project.
3 They based their estimates on \$133 per foot,
4 which is comparable to what their experience is
5 on the development across the street. That RS
6 Means is a national source that says here is
7 what, for this sort of development this is a
8 range of cost per square foot, \$129 to \$180, so
9 the 133 is at the low end of that range. So it
10 is in the range so it is acceptable market but
11 it is, you know, not a fancy building, it is a
12 lower per-square-foot building.

13 The assistance scenario, we talked about,
14 so we have a, what was really submitted was the
15 four-story project, then at the interest of the
16 City we said, well, let's look at it if it was
17 a three-story. Well, the three-story, because
18 the developer wasn't requesting it they weren't
19 necessarily requesting any assistance for it so
20 we assumed that the assistance level, the TIF,
21 the TDD, that they would receive on the

22 four-story would be transferred over to the
23 three-story so even though they're, you know,
24 it's not necessarily, you know, relates
25 specifically to a three-story it does provide a

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1 basis of comparison with the four-story option
2 because if you went with a three-story without
3 any assistance the rate of return would plummet
4 as compared to the four-story so we put that in
5 there and actually it's, so there is a
6 assumption of assistance at a three-story
7 level.

8 Internal rate of return, Price Waterhouse
9 Coopers for the first quarter of 2012 their
10 survey for apartment projects ranged from an
11 internal rate of return of 5.25 to 14 percent,
12 with a average desired return of 8.28 percent,
13 so when we talked about is it feasible, would
14 you put your money into this if you were in the
15 apartment business, well, you should get a rate
16 of return somewhere in that window and on
17 average about 8.28 percent.

18 So doing our analysis, we showed that the
19 three-story project without any public
20 assistance would be 0.2 percent, less than one
21 percent, and if you provided the level of
22 assistance that they were getting on the

23 four-story the level of assistance would be
24 3.83, level of return would be 3.83 percent.
25 These are all under the Price Waterhouse and

50

1 our experience relative to acceptable internal
2 rate of return.

3 So it is, you know, significantly under
4 and without assistance it is basically a zero.
5 So we said what would it take -- I mean, these
6 are estimates. This is trying to look at the
7 future. What would it take to get to those
8 levels that are an average with the Price
9 Waterhouse? A, it would require either a
10 30 percent decrease in the project cost or a
11 40 percent increase in the revenues or a
12 combination of both, 16 percent and 16 percent.
13 Now, you know, we can't comment on, you know,
14 it's possible that costs could go down
15 30 percent or that revenues could go up 40 but,
16 you know, it's an order of magnitude that is,
17 you know, outside of what I would call a bell
18 curve so you have to look at the probabilities
19 and reasonable people may assign different
20 probabilities to those so your rate of return
21 could go up if costs go down or revenues go up
22 or there's some combination.

23 So our conclusion is that the 3.83 percent
24 is well below desired market rate of return as

25 surveyed by, you know, Price Waterhouse

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1 national listing of apartment users across the
2 country so you could conclude that potential
3 three-story project, given the current
4 projections, is not financially feasible based
5 on the comparison to market returns.

6 And I think we will just keep rolling
7 through ours and -- because you have a lot,
8 before we take any questions. I would say
9 throughout this we have tried to strike a
10 balance between there's a whole bunch of stuff
11 in those reports and a little, you know, some
12 numbers but looking for the conclusions.

13 MR. SCHERTLER: Tony Schertler with
14 Springsted. Thank you, commissioners and
15 mayor.

16 I am going to move quickly through the
17 next analysis because I think it has to do more
18 with your entitlement decision or your
19 incentive decision later on and I believe that
20 staff wanted to be sure that you had all the
21 information that was available that had been
22 compiled to date so even though it may not be
23 directly on point to the alternative, feasible
24 alternative analysis, it is there to illustrate
25 what happens with the project as proposed and

1 where it is on the incentive.

2 The other principle I would like to
3 emphasize is that what we are attempting to do
4 here is be transparent and frame the issues so
5 as facts change when you are putting together
6 assumptions and you have estimates and then
7 you're going to eventually have bids and you'll
8 have more solid data as you move forward all
9 those facts can be configured in here to update
10 your projections and that is why we do the
11 sensitivity. Primarily we are trying to
12 determine whether, and this is a negotiation so
13 people are going to ask more for, than they
14 need occasionally, that's our experience, so we
15 do the sensitivity analysis so that we can test
16 the developer's request to make sure that he's
17 not asking for too much or where we think he is
18 overstating a cost we'll push that down, we'll
19 question that and push it down because
20 obviously if he's overstating a cost he's
21 understating his return and so we are, we bring
22 these pieces together so that it's, the
23 community can take a look at and change things,
24 change assumptions.

25 The next three reports that I will go

1 through quickly, because they are really more
2 material to your decision on entitlements and
3 incentives, are Lawrence's request that when
4 somebody seeks financial assistance that there
5 be a needs analysis, some people call it a
6 but-for analysis, but it is really an
7 understanding of what is driving the request to
8 make a range of a reasonable investment, and it
9 is a range. People make investments for a
10 variety of different reasons so we are showing
11 a bandwidth here, if you will, and it's when
12 they drop down below we understand that they
13 need it.

14 We also use these, for example, to
15 determine whether they're asking for too much
16 so if a developer is getting 25 percent return,
17 thank you very much, it looks like a great
18 project, hope you get rich but you really don't
19 need any community assets to get you there, and
20 so this is also used as a regulator, not only
21 to determine whether something needs help but
22 to stop it, block it down at the top and come
23 back and say, you know, we think you guys don't
24 need this, or somewhere in between, where
25 you're going to look for some public purpose

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1 costs that you're trying to accomplish.

2 I'm going to move through this quickly.
3 We have a lot of data. I do -- well, we'll
4 see, and I'm available for questions as we go
5 through it.

6 Again, the methodology David has already
7 talked about. We're using some published data
8 on those ranges of returns, we're using
9 published data on costs. We also have direct
10 experience here. Those costs happen to fall
11 within those ranges.

12 The need for assistance analysis to
13 determine if the proposed projects would not
14 reasonably be anticipated to develop without
15 the adoption of the requested financial
16 assistance and I just touched on that. If the
17 returns are below six percent an arm's length
18 investor isn't going to make that investment so
19 what is it going to take to go out there.

20 Again, as Dave touched on, these are
21 project facts. We don't have to go over these.
22 I will point out that, as all these projects
23 do, there's always tweaking, there's always
24 adjusting until you are ready to close on your
25 deal. I would just point out that what we

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1 analyzed a couple weeks ago was 81-unit
2 extended stay hotel with some apartment, eight
3 units apartments. The developer has recently

4 adjusted that to a 90-unit and that makes
5 sense. If you look at the returns that we were
6 projecting earlier, he's trying to get those up
7 as well, he's trying to figure out a way to
8 make this investment work for his team and his
9 lender.

10 Again, these are costs, we don't have to
11 go -- they're all in your package. The
12 evidence is there. We've got these broken
13 down, and again, we're always looking over here
14 on the right column: Are those reasonable
15 assumptions? Are those developer fees
16 reasonable? You know, is there a place where
17 they're maybe shifting costs to again
18 understate return and overstate costs?

19 The developer has proposed a 75/25 split
20 between debt and equity for funding of the
21 project, permanent financing of 12 million,
22 permanent equity of 25 percent. Again, our
23 expertise, we do a lot of public debt but we're
24 also doing a lot of economic development deals
25 and this falls within the range that Springsted

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1 has encountered when we're negotiating with
2 developers on permanent financing for real
3 estate development deals so nothing here
4 jumping out of, you know, they're not getting

5 interest rates that are outside the norm.

6 Developer is requesting assistance in the
7 form of TIF and TDD. Again, Diane already
8 touched on this. This is really sort of going
9 back through the interest costs, the parking
10 garage, the site improvements. Those details,
11 again, are in your package, and again, I am
12 conscious of being relevant and material to the
13 alternatives analysis.

14 Projected potential rate of return
15 realized by the developer from the operation of
16 the proposed development scenario for
17 comparison to market --

18 THE REPORTER: You have to slow down a
19 little bit.

20 MR. SCHERTLER: Oh, I'm sorry, I
21 apologize.

22 Again, in this scenario, the last scenario
23 was an apartment building so the range of
24 investment returns are a little different than
25 they are for a hotel development and the Price

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1 Waterhouse survey says the range of the
2 quarterly report updated on what is going on
3 says that reasonable range is between 10 and
4 15 percent or the, where people are investing
5 right now, with an average of 11.65, so the
6 four-story alternative, four-story with

7 restaurant is a hotel project so that IRR
8 shifts a little bit, it's a different type of
9 product.

10 The projected internal rate of return for
11 900 New Hampshire based on the assumptions
12 outlined were without assistance the project at
13 the way the developer proposed it has a
14 2.6 percent, with assistance it's 5.73 percent,
15 so you can see that this is a skinny project.
16 This is below recent returns, which is why
17 you're seeing some adjustment possibly, and
18 I'll let the developer speak to that.

19 And so our conclusion, obviously, is that
20 this project is not likely to occur without
21 financial assistance.

22 So we, again, just as we did with the
23 previous one, well, what changes? What's
24 driving the gap? Is there anything that can
25 increase value or reduce costs? So we do this,

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1 again, to try and smoke out sensitivity.
2 Without assistance if you, how do we get to
3 that benchmark of 5.73? We have a 20 percent
4 decrease in project costs, that's what it would
5 take, a 25 increase in lease rates, a combined
6 savings, again, we're trying to smoke out what
7 can affect those rates of return.

8 The north project, the second project not
9 related to this site, because you are creating
10 a tax increment district, again, we are doing
11 the needs analysis, similar thing, I'll move
12 through this quickly, the methodology is
13 similar, where I've identified what the project
14 is, seven-story, 114 apartment units.

15 Here is our cost calendar. Again, we're
16 looking at those percents of totals on the
17 right. Again, this is our building cost
18 estimates of \$133 per square foot, the RS Means
19 manual is 141 to 196 so if anything the
20 developer is understating costs. Those costs
21 could be higher and affect his return
22 negatively. We're usually looking for the
23 other way, by the way, we're looking for
24 overstating of costs. And he's got the current
25 estimates and then the parking garage costs are

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1 21,000.

2 Again, the financing is similar. His
3 lending terms are similar, five percent,
4 25-year term, 5.5 percent, that's reasonable.
5 And then again, these are the site costs that
6 Diane touched on earlier, those eligible costs.

7 The Price Waterhouse report market rate,
8 internal rates of return for the national
9 apartments segment, the north segment is an

10 apartment building so it's not a hotel so it's
11 got those lower range of returns. The hotel
12 has the 10 to 15, this is lower, is five, five
13 and a quarter to 14 so that is a pretty big
14 range, with an average desired return of
15 8.28 percent.

16 So the projected internal rate of return
17 on the north quadrant without assistance is
18 4.37 percent and 6.21 with assistance. The
19 returns for the north project fell below market
20 expectations, the Price Waterhouse, both with
21 and without assistance. Without assistance the
22 project is unlikely occur.

23 So we looked again, sensitized, what if we
24 increased project costs or decreased project
25 costs, increased lease rates, same thing that

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1 we did before, and again, this is all in the
2 package of information that you have.

3 Now we have combined these because there
4 was some concern that because the project on
5 the south side is so skinny so maybe we need to
6 look at combining these two efforts because it
7 is, after all, the same developer and so is
8 there some way that we're missing, another way,
9 a backdoor way that somebody is being unjustly
10 enriched, so we combined the two events, even

11 though they're scheduled a little differently
12 and there are some assumptions that you have to
13 use on the north quadrant. When we combined
14 the return without assistance it's 3.72,
15 combined return with assistance is 6.3, so just
16 another way to make sure that we're not missing
17 anything in our assumptions.

18 And then this is the TIF feasibility, this
19 is the statutory requirement of ensuring that
20 you have enough increment to satisfy your
21 costs.

22 And Diane, I can go through this but I'm
23 conscious of time.

24 MAYOR SCHUMM: Briefly, please.

25 MR. SCHERTLER: Okay. TIF financial

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1 feasibility show that the project benefits tax
2 increment revenues. Available revenues are
3 expected to exceed or be sufficient to pay the
4 project costs, I think we touched on that
5 already. We evaluated the two sites. We have
6 the details that Diane has already touched on
7 on your base valuation and what your increment
8 will be. The south project area feasibility,
9 hundred percent of the property taxes, hundred
10 percent of the sales tax, city and county,
11 through establishment of the Ninth and New
12 Hampshire redevelopment TIF district and south

13 project area revenues will be used to reimburse

14 --

15 THE REPORTER: Little slower, please.

16 MR. SCHERTLER: Oh, sorry; forgive me.

17 Trying to do two things at once, be clear and
18 move quick.

19 Revenues will be used to reimburse both
20 private and municipal expenditures, which Diane
21 touched on some of those costs that the City
22 would like to redirect those values to. The
23 south project area one parcel to be redeveloped
24 into a mixed use hotel and commercial building,
25 two tax exempt parcels to remain tax exempt,

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1 total base year assessed valuation of the
2 project estimated at 62,227. Project's total
3 fair market value upon completion in 2014 is
4 estimated at 6,870,042, generating a total
5 assessed value of 1,567,540.

6 The south project tax increment revenue,
7 the total tax increment for the south project
8 area of 6,210,276, total property tax increment
9 of 3.3 million, approximately, total sales tax
10 increment of 2.8, approximately, projected for
11 the 20-year period starting from south project
12 area approval. We will be submitting this
13 information again to you in a final form when

14 you make the incentive decision so I am glazing
15 over these numbers a little bit but, again, the
16 developer is requesting the City authorize the
17 establishment of a TDD, proposed levy of
18 one percent, we're looking at all these to make
19 sure that it satisfies statutory requirements
20 and the needs.

21 Total tax increment of 6.2 million, total
22 property tax increment of 3.3, total sales tax
23 increment of 2.8, total TD sales tax revenue of
24 1.1, developer financing of 17 million.

25 Again, Diane touched on the costs that

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1 they're seeking reimbursement for, the interest
2 rate that they've sought for their private
3 financing to be compensated for, the total
4 private south area project cost of 5,421,288,
5 and again, some of these numbers will adjust as
6 details come in.

7 The developer will finance 5.4, request
8 reimbursement of TIF/TDD revenue, including
9 interest expenditures, the total south area
10 project private TIF/TDD expenditures are
11 5,421,288, including interest expenditures of
12 the south redevelopment project cost.

13 Developer is only reimbursed revenues
14 collected. Again, Diane touched on this, this
15 is a pay as you go so the risk is lower for the

16 City than if the City were fronting money and
17 accounting for that to come back, so the
18 developer is financing that revenue stream.
19 There is no obligation on the part of the City
20 to contribute any shortfalls to finance the
21 total construction costs or interest
22 expenditures.

23 And the City, as Diane has touched on, the
24 City is seeking reimbursement for the following
25 south project area costs: Reimbursement for

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1 the existing parking garage, the Lawrence Art
2 Commons expense, and the total municipal south
3 area project costs of 1.75 million, total
4 combined south area project cost of 7.1.

5 And this is just a summary of the total
6 revenues that exceed the cost for your
7 feasibility analysis, and again, we will touch
8 on this at an appropriate time for your
9 findings on your statutory findings.

10 The north area, again now we're back on
11 the north side because this is all part of the
12 TIF feasibility analysis, we're touching
13 through the developer's requests on that. This
14 is the base values. I'm losing my thread here
15 a little bit so I'm going to move through this.

16 The north project is eligible to be

17 receive increments through the first half of
18 2032 and 2033 collection assumed all years that
19 are a hundred percent of property taxes are
20 paid when due. The total property tax
21 increments projected over the term of the north
22 project are \$4.4 million. Total tax increment
23 of 4.4, no sales tax increment projected
24 because it is an apartment building and there's
25 a commercial use but we're not projecting any

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1 sales there at this point, and the developer
2 financing of 27.6.

3 The developer is seeking reimbursements
4 for the following north project area costs:
5 Site improvement estimates at 800,000,
6 underground parking garage estimated at 2.6,
7 interest expense reimbursement at 5.5, rates
8 estimated, rate estimated at 2.1, total private
9 north area project costs of 5.5 million.

10 The developer will finance 5.5 million,
11 request reimbursement from TIF revenue,
12 including interest expenditures. The total
13 north area project private TIF expenditures are
14 5.5, including interest expenditures for the
15 north redevelopment project costs.

16 Developer's only reimbursed revenues
17 collected during the statutory term, no
18 obligation on the part of the City to

19 contribute any shortfalls; again, similar to
20 the south side.

21 And here is the conclusion. Project
22 benefits, which include projected TIF revenues
23 and developer contributions of at least
24 1,120,360 are sufficient to pay the project
25 costs. The 4.43 of the north project TIF

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1 revenues plus the 1.1 of developer revenues
2 totals 5.5 north project costs.

3 So that was quick and I apologize for
4 rapidly moving through the second phase but I
5 think the message we want to leave you with is
6 the methodology of doing the analysis of the
7 returns and the feasibility of the projects are
8 similar and we're using the same benchmarks
9 consistently on the development projects.
10 Thank you.

11 MAYOR SCHUMM: There any questions? Thank
12 you.

13 I'm sorry, we have one question.

14 COMMISSIONER CARTER: Sorry. Curious, on
15 the actual rate of return I didn't see, did you
16 determine -- what do you use as far as an
17 occupancy for a hotel?

18 MR. SCHERTLER: Mayor, commissioner, I
19 have detailed notes. I think we had a vacancy

20 rate in the hotel of?

21 MR. MacGILLIVRAY: Sixty some, occupancy
22 is 60.

23 MR. SCHERTLER: Sixty-six, 66 percent,
24 which, again, another industry standard that we
25 look at in hotel industry that matches up those

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1 projected vacancies and occupancies.

2 COMMISSIONER CARTER: Sure. And there was
3 no, that -- I don't know how you would actually
4 ascertain, it's not utilizing what current
5 occupancy rates are, are established.

6 And then just one other quick one is
7 you've mentioned occasionally you find as you
8 represent cities developers that are looking
9 for more assistance than needed and don't meet
10 the but-for. Just curious how often that maybe
11 happens and if there's there is a recent
12 example or --

13 MR. SCHERTLER: Mayor, commissioner, I
14 think what typically happens is that as
15 estimates are refined they're negotiated down
16 so it's -- we had a project in Brooklyn Park,
17 Minnesota, where the developer was seeking
18 \$10 million in assistance and at the end of the
19 day the city provided 3.5 million, because of
20 the way they financed it, because of some of
21 the cost assumptions, scheduling, and

22 understanding the city's capacities and
23 policies, so it is not unusual that the first
24 bite at the apple comes in bigger and these
25 things, they shift, because it is negotiated.

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1 COMMISSIONER CARTER: Thank you.

2 COMMISSIONER AMYX: Tony, going back to
3 the vacancy rate again, you used that as an
4 industry standard. Is that a local number that
5 was -- where did that 66 percent come from?

6 MR. SCHERTLER: The hotel proposal came
7 from the developer and we verified both I think
8 what, if we have data available for the
9 community that it's in what your hotel vacancy
10 rates are, they have been fluctuating. We also
11 use HVS. There is another I missed, I didn't
12 mention, another industry standard on what are
13 reasonable vacancy rates to project in hotel
14 developments, so we tested on those and it
15 falls within those ranges.

16 COMMISSIONER AMYX: Okay, so it wouldn't
17 be actual rates for Lawrence and Douglas
18 County?

19 MR. SCHERTLER: Mayor, commissioner, no.
20 And in fact, obviously any more detail you can
21 get the actual lifetime the better, the clearer
22 your vision is so, you know, as these things

23 evolve and you get actual leases and things
24 like that those are better data.

25 COMMISSIONER AMYX: Okay. Thank you.

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1 MAYOR SCHUMM: Questions? Thank you very
2 much.

3 Okay, we will have the presentation by Ron
4 Schneider and then we'll take a break after
5 that presentation, we'll open it up to public
6 comments.

7 I'm sorry, I'm sorry, the applicant is
8 next, beg your pardon.

9 MR. WATKINS: Mayor, commissioners, I am
10 Dan Watkins. I represent the applicant, Ninth
11 and New Hampshire, L.L.C., and I think the
12 staff and the consultants have done an
13 excellent job of laying out information for you
14 that is in the record tonight. We are going to
15 present additional information that goes to the
16 relevant factors that you are to take a look
17 at, and Commissioner Dever, I think it was
18 pointed out that your job is different than the
19 HRC's and you are, the Commission is to look at
20 all relevant factors that, and there's four
21 that are required that you look at. Those are
22 technical issues, design issues, the project's
23 relationship to the community plan, and
24 economic issues.

25 Economic issues aren't really things that

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1 are looked at by the HRC. They are things that
2 the City is required to look at on an appeal.

3 So applying a literal interpretation to
4 all feasible and prudent alternatives and all
5 possible planning, as I think some people would
6 like to have you do, is not what the law
7 requires here. Law requires you to look at the
8 relevant factors, take a hard look at that and
9 you can then weigh the evidence that is in
10 front of you and you can make determinations on
11 what is believable, what is realistic, and the
12 cases talk about common sense, using common
13 sense judgment about these factors.

14 Now I would like to submit in writing the
15 information that has gone into a lot of the
16 hearings that have taken place over the last
17 several years, or the last several months with
18 HRC, as well as some affidavits that have been
19 presented. All of this information was
20 provided to the City last Thursday prior to
21 this meeting but I would like to make sure that
22 it is submitted for the record tonight.

23 We can't read it all tonight.

24 MAYOR SCHUMM: Just for everyone, we said
25 there would be no whispering and Commissioner

1 Cromwell was whispering, he said, "Are we
2 supposed to read that right now?" So --

3 (Laughter)

4 MR. WATKINS: Well, I think it, in looking
5 at whether or not there is a feasible and
6 prudent alternative and you look at these four
7 factors, technical issues and design issues,
8 economic issues and the community plan, it is
9 not really -- this information shows you that
10 there's complex issues that have been addressed
11 by City staff and City advisory boards and
12 really dug into those issues. Micah Kimball
13 will, in his presentation tonight will talk
14 about those design and technical issues, as
15 well as community plan issues, and demonstrate
16 that, you know, while it is not realistic for
17 an opponent who may have ideas about a feasible
18 and prudent alternative to be able to spend the
19 money to develop all of the studies and the
20 plans and that sort of thing to prove a
21 reasonable and prudent alternative this
22 information goes to show that you can't just
23 throw something up against the wall and say
24 that it is feasible and prudent because we use
25 some figures that say it makes some sense,

1 okay. There are complex design, technical,
2 economic issues, there's competing community
3 goals and plans here, including development of
4 downtown, density in downtown, and others that
5 are contained both in the community plan, our
6 2020 downtown design plan, and others.

7 So tonight we are going to present
8 information both in affidavit and in testimony.
9 Micah is going to talk about multiple and
10 complex technical and design issues. Mike
11 Treanor's affidavit and his testimony will
12 focus on the community plan, as well as
13 economic issues associated with developing the
14 property. Chuck Mackey hopefully will be here
15 a little later, his son had an accident, he's
16 coming. He's the hotel developer. He will
17 talk about the feasibility of developing this
18 project.

19 The Springsted reports, of course, look at
20 the economic issues and look deeply into those,
21 again, and when you look at these, at both the
22 evidence that we present as to what has been
23 done in terms of all the planning and work up
24 to this point in analyzing any alternatives you
25 have to weigh that evidence, and we'll have

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1 comments on that after that is presented, so I

2 would like to, commissioner, I would like to
3 turn it over to Micah Kimball to go through a
4 slide presentation regarding things, then Mike
5 Treanor, and we'd be done with our
6 presentation.

7 MAYOR SCHUMM: Thank you.

8 MR. FLEMING: Mayor, I have extra copies
9 of his presentation. Can I pass that out?

10 MAYOR SCHUMM: Please. Please do. Will
11 you state your name for the court reporter,
12 please.

13 MR. FLEMING: Bill Fleming.

14 MR. KIMBALL: Good evening, commissioners
15 and mayor. Micah Kimball with Treanor
16 Architects, one of the project managers on this
17 project. It is good to see you guys again. We
18 are excited to come back and bring you guys the
19 revised project. I think last time or a couple
20 times ago when we met we talked to you guys and
21 one of the issues, one of the concerns was to
22 slow down the process a little bit, go back to
23 the HRC, go back to the ARC, meet with the
24 neighbors again, and we've done that, so we are
25 coming back with a new project, we have revised

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1 it, we have made significant changes over the
2 last nine months or so and feel like we have
3 made it a much better project. That process

4 did work, slowing it down, going back and
5 meeting with everybody did work and going to
6 show you a great project here.

7 What we are going to show tonight is a
8 quick recap of the designs, the design
9 iterations, not every little instance but kind
10 of the major changes and then the major
11 presentations that we had made, and also this
12 presentation is almost identical to what we
13 showed to the HRC on April 30th. We've made a
14 couple of comments but the images are the same.
15 The ordering may be slightly different but it
16 really is the identical, very, very similar
17 presentation to what we showed to the HRC.

18 Our calendar of events, in all of the
19 meetings that we've had, the public meetings,
20 this is a quick list of the process that we
21 have been through, starting with September 6th
22 when we went to the East Lawrence Neighborhood
23 Association, we presented the project to them
24 and then we came to the Historic Resources
25 Commission and presented the project and then

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1 have gone through a series of meetings, you
2 know, back and forth, some public, some
3 private, and we are back tonight for the
4 appeal.

5 Through that process there were three
6 review processes by the HRC, which Lynne had
7 outlined for you. We've gotten approval on two
8 of those. We're looking for the third appeal
9 on the state law review.

10 A quick project recap. This is where we
11 started in September of last year, actually we
12 had, this is where we went public with it, this
13 is the first time we went to the neighbors and
14 started presenting this and looking for input.
15 We had a hotel and an apartment project, mixed
16 use with retail on the ground floor. You will
17 notice that on this project, that the hotel is
18 on the top floor, the apartments are in the
19 center, and retail is on the ground floor.

20 Again, we had a really, we had a much
21 higher building when we first came out of the
22 chute with this. The corner, the hard corner,
23 Ninth and New Hampshire, was 79 feet, along the
24 Arts Center we had a full six-story component
25 all the way to the Arts Center with a pool at

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1 the end that you see that was 71 feet next to
2 the Arts Center, and along the back alley we
3 were at 64 feet, so this is our first blush at
4 this.

5 We came back in December with a revised
6 proposal to the HRC. Through many discussions

7 we had reduced the overall parapet height,
8 reducing the scale of the building, and along
9 the alley, in order to create a transition from
10 our downtown district to our residential
11 district we reduced the building and the number
12 of units that were in the program or listed in
13 the building, along the alley reduced that by
14 one floor. Again, this was a design issue.
15 This was transitional.

16 One of the biggest issues that we've
17 battled on this and was hit on earlier is that
18 we are in the convergence of several environs.
19 We're only in one district, one actual
20 district, the overlay district or the Downtown
21 Conservation Overlay District but we are in the
22 environs of four different either districts or
23 structures. All of these carry separate
24 reviews to them. Getting the project to be
25 designed to marry up and to meet any one of

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1 those reviews without conflicting to another
2 one, such as a residential neighborhood to a
3 downtown district, is a very difficult process,
4 if not impossible. It has so many inherent
5 design issues to it but we have worked to
6 overcome this and created a transitional
7 design. On one side we're honoring downtown,

8 on the other side we're respecting the
9 neighborhood, and we are caught in the
10 crossfire of the two.

11 So in January, after our December meeting,
12 December presentation to the HRC we started
13 working with the ARC, we went through a series
14 of meetings with the Architectural Review
15 Committee of the HRC and we looked at the
16 building and we took a step back and we
17 redesigned the building and we looked at where
18 the height was on the corner towards the Arts
19 Center and that we needed to lower that side.
20 We put the height out on the hard corner, this
21 is per recommendations of Downtown Design
22 Guidelines, internal review.

23 We also flipped the uses of the building,
24 we brought the apartments up to the top floors
25 and the hotel down to the lower floors, or the

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1 second and third floor, maintaining a retail
2 and, retail uses on the street level. Again,
3 retail uses is per Downtown Design Guidelines;
4 we can't put residential uses down there on the
5 street level.

6 But we reduced our level, or our number of
7 apartments and in order to economically offset
8 this and still make the project work and still
9 meet a program that was feasible for the

10 project we added a restaurant to the top floor
11 and took the pool that was up on the top floor
12 that was an indoor pool and made it into an
13 outdoor pool.

14 So this was in January. In February we
15 further refined this design, went to further
16 ARC meetings, several more meetings with the
17 neighbors. You can see that this is a whole
18 lot different. We're still tweaking the
19 design. We're trying to break down the massing
20 and the scale and the size and the height of
21 this project every which way that we can.

22 And here we are to our current design.
23 Mayor, you mentioned that we had the discussion
24 of taking one floor off so we did, we went
25 back, we took the top floor of units off,

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1 essentially creating a four-story building with
2 a five-story corner on it, so the corner is
3 five stories, the middle portion is four
4 stories and then along the alley we have that
5 at three stories so that it relates more to the
6 residential neighborhood; again, design issues,
7 trying to transition this, trying to transition
8 it down.

9 In doing so this creates a myriad of
10 technical issues, I think you'll see in the

11 affidavit there is a list of those, which may
12 not even be all encompassing but there's
13 several of those as far as code issues. Every
14 bedroom or every sleeping unit on the third
15 floor and lower in the city of Lawrence must
16 have an egress window. We can't take units and
17 turn them to the inside, they must have a
18 window for emergency escape and rescue by the
19 Fire Department, as well as natural daylight.
20 Even if it's not an emergency escape it's
21 supposed to have a window for natural daylight
22 in order to meet the building code.

23 Between January and the April presentation
24 some of the major items that we had revised
25 beyond taking the building down by, building

80

1 down, building height down by a single story
2 right off the top and losing the program off of
3 that, we also did set back off of the alley, on
4 the south side we pulled that back an
5 additional four feet, where the courtyard is
6 along the alley we pulled that back an
7 additional five and a half feet, added a
8 landscape buffer. Again, this was part of our
9 transitioning to the neighborhood. This is a
10 downtown project and it's zoned downtown, it's
11 zoned, you know, it's CD zoned so it is
12 commercially, commercial downtown but we do

13 have the neighborhood on the other side that we
14 are trying to transition to. We are trying to
15 pay homage to both sides.

16 And also there was a lot of comment about
17 the height of the Arts Center. There were some
18 comments that were made by Historic Resources
19 Commission in some of our presentations that
20 our project needed to relate in scale and size
21 to the Arts Center so in taking that top floor
22 off and with this new revised design we are
23 comparable or we feel that we are comparable in
24 scale and height to the Arts Center, especially
25 along the alley side and along the New

81

1 Hampshire side as well.

2 Looking back from our very first proposal
3 that you saw, kind of the first slide here, the
4 hard corner here was 79 feet. We are now at
5 63 feet. That is a reduction of 16 feet on the
6 Ninth and New Hampshire corner. At the Arts
7 Center it was 71 feet in our original proposal,
8 now we are proposing 44 feet, a reduction of
9 25 feet, and then in the alley originally it
10 was 64 feet. This shows 35 feet. That's
11 measured at the south end. It's 40 feet at the
12 north end, there's about five feet of grade
13 difference, I believe what Lynne had presented

14 earlier showed 40 feet, but given the
15 difference there, we are 24 to 29 feet less
16 than what we were in our original proposal.

17 So these are the design iterations that we
18 have made in order to accommodate, one, design
19 issues, technical issues, but comments from
20 various commissions, comments from the
21 developers, adjusting our program as we go
22 along the way. Yes.

23 COMMISSIONER CARTER: Quick question
24 before you switch pages. I just want to
25 confirm if the, on the second set of numbers

82

1 there, if the 44 and 71 are correct, then the
2 minus 25 is wrong, so which is it? Is it --

3 MR. KIMBALL: The 44 and the 71 are
4 correct.

5 COMMISSIONER CARTER: They are correct?
6 So it's 27.

7 MR. KIMBALL: Are correct, so it would be
8 27 feet.

9 COMMISSIONER CARTER: I just wanted to
10 make sure which number was wrong. Thank you.

11 MR. KIMBALL: Yes. So a couple of slides
12 here and we are going to go into our current
13 design and you can see the red dashed line
14 shows where that fifth floor was taken off.
15 That floor would be actually one level above

16 that so that is our relative height as we get
17 near the Arts Center and also showing where
18 that reduction is. The top, the top picture is
19 looking south from Ninth Street and the lower
20 picture, you can't read the caption on there
21 but that is the New Hampshire elevation with
22 the Arts Center on the far right.

23 A couple of diagrams to show. This,
24 again, this is from New Hampshire Street
25 looking back to the east. The Arts Center is

83

1 on, is located on the south end of the project.
2 This is our project. This red dashed line
3 indicates the height of the barrel vaults of
4 the Arts Center. This masked out area
5 represents that same height and what you can
6 see above it is the amount of building that is
7 actually above that line and it's, especially
8 at the Arts Center is, it's six feet taller
9 than that barrel vault at that location but the
10 amount of massing that is actually higher than
11 the Arts Center is very limited on this
12 project.

13 The elevation that is at the very bottom
14 of the page, and you cannot read the caption,
15 this is looking back from the alley so
16 comparing where the three-story section of the

17 building comes back to the alley to where the
18 Arts Center is we are actually I think it's
19 three and a half feet below, yeah, three and a
20 half feet shorter than the Arts Center at that
21 location. Law of averages from front to back
22 where one side were lower, one side were
23 higher, so it is comparable, it is very
24 comparable in scale.

25 A couple of perspectives and some

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1 renderings to give you an idea of how the
2 project will be perceived beyond elevations,
3 sometimes it is hard to read those elevations,
4 but northeast perspective, this is 901 New
5 Hampshire project, recently completed and
6 occupied. This is 901 Rhode Island so you can
7 see the block. Creating this transition in the
8 stairstep from a downtown high density area to
9 the residential, which is a medium density,
10 which is also a mix of commercial uses and also
11 CS zoning in these five blocks, we'll look at
12 that here shortly.

13 The lower picture shows the view pretty
14 much from standing from the parking garage, we
15 may be standing a little bit farther back but
16 for rendering per, or for rendering sake and to
17 give you an idea of what the building looks
18 like looking down New Hampshire we have omitted

19 what the parking garage would mask from this
20 view.

21 Couple more slides. You can see the
22 transitional height if we draw a line from the
23 top of 901 New Hampshire across the project
24 site to the relative height of the roof ridge.
25 All the, everything is below that line on this

85

1 project, again, enhancing that transitional
2 stairstepping, reducing density as we get over
3 to the Rhode Island, North Rhode Island
4 district.

5 This is our site plan as proposed. Design
6 issues that we talked about, at one point we
7 had traffic coming through connecting to the
8 alley and then a hotel drop-off lane would
9 connect to the alley, would come around and
10 drop off into the parking garage. We omitted
11 that. We put the drop-off alley, or drop-off
12 lane on New Hampshire Street. That takes
13 traffic off of the alley. We've done a lot of,
14 we've made a lot of efforts to protect the
15 alley and to preserve it and to not put traffic
16 onto it but also relieve some of the congestion
17 that could happen. It is a rather narrow
18 alley, it is 16 feet wide, with some of the
19 structures right on the lot line. We've pulled

20 back from the lot line where we can and where
21 we can afford to on the project in order to
22 ease that congestion.

23 And while we are downtown, CD zoned, so
24 commercial downtown, across the alley that
25 zoning is all commercial strip zoning and a mix

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1 of businesses, multifamily residences and
2 rental housing and not-for-profit businesses.

3 These next series of slides are focused on
4 the view towards the back, again focusing on
5 the residential, or the Rhode Island district
6 and how this project has been treated to reduce
7 any impact on the Rhode Island district.

8 You can see the large courtyard. We've
9 stepped the building down, we've talked about
10 that several times, to keep the scale down as
11 we get closer to the alley but we've also
12 pulled this fence back and added the
13 landscaping, we mentioned that earlier but that
14 is to soften this courtyard and to soften the
15 approach and then also provide screening for
16 the courtyard. Then we've also added a
17 courtyard on this side to be for our guests for
18 the hotel.

19 This view down on the, down here is
20 looking down the alley to the north, so we are
21 standing at the south end, basically behind the

22 Arts Center, looking down the alley to the
23 north.
24 And then same view over here.
25 Couple of views that we've pulled together

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1 to see what this project is going to look like
2 through, from the neighborhood. You will see
3 that these next four slides are, the top will
4 be a perspective. You can see the project in
5 the background, we have done some rough
6 modeling of the structures that are on Rhode
7 Island, and then the site plan at the lower
8 part of the picture has a red arrow that shows
9 where the camera was set in our modeling
10 program so that you can see kind of where that
11 picture was taken from and the angle of view
12 that, that was used to capture this, so that
13 this is looking through, just south of the
14 Social Services League, looking over 909 Rhode
15 Island, eye level, what you are going to see in
16 the background, this is the courtyard and 900
17 New Hampshire, proposed project, beyond.

18 This is if you come further north on Rhode
19 Island Street standing in the middle of the
20 street, approximately, and looking back the
21 impact that the project has. We see that
22 there's very little impact due to the height

23 beyond, beyond the project, or sorry, beyond
24 the houses in that district.

25 And coming even further north and then

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1 going back across the street, trying to get
2 back even farther so that we could see -- if we
3 stood in the middle of the street here we
4 couldn't see the project so we brought the
5 camera back to the sidewalk, which would be on
6 the east side of Rhode Island, and you can see
7 the project through the houses but there is,
8 there's not a lot of impact, there's not a lot
9 of visibility. We have had some claims that,
10 well, you took all the trees out and this and
11 that and you've adjusted the model. Well, we
12 did take a lot of the trees out because if you
13 keep the trees in you don't see it but, so
14 there will be trees that do kind of filter that
15 vision as well, and we admitted that we've
16 ghosted the trees so you can actually see
17 through.

18 Coming back down towards the south end of
19 the lot, again, from Rhode Island, looking
20 through the houses, this is one of the largest
21 gaps in the structures so I think this is a
22 model of what you are going to see from that
23 point of view.

24 Back to our transitional height, showing

25 we are relating to both structures, we are

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1 relating to the height of the Arts Center. The
2 Arts Center, one of the things here that is
3 mentioned in the HRC report was the Arts Center
4 is a civic building and carries a different
5 review than a private building in private use.

6 Again, with all of these factors combined
7 the design issues that we were faced with to
8 come up with a project that was compatible with
9 everything was nearly impossible if you get
10 every review but we hit almost all of them as
11 much as we can. Much like what Lynne said
12 about the Downtown Design Guidelines, it is a
13 guideline in that if, you want to hit as many
14 as you can but if you can't hit one it doesn't
15 kill the project, it doesn't kill the review.

16 This is our last slide. This is a cross
17 section cutting through the project, cutting
18 through 901. This is US Bank, an elevation,
19 the alley, 901 New Hampshire, this will be New
20 Hampshire Street, this is the proposed project
21 of 900 New Hampshire, and then the alley again
22 and then the North Rhode Island district with
23 the tallest structures dashed in there, you see
24 the Social Services League is, the addition to
25 it is modeled as the box in the back, but

1 really what this shows is we've got 62 feet
2 along, from the, approximately 62 feet from US
3 Bank on the east side of it to the west side of
4 901 New Hampshire recently built, with a
5 stairstep and an elevation change of
6 approximately 17 feet. As we come across the
7 75 feet of building, then we have a 60-foot
8 right-of-way at New Hampshire Street with
9 77 feet, give or take some change, really
10 closer to 78, from 901 New Hampshire to 900 New
11 Hampshire. We have stepped the building
12 maximum height down to 23 feet from what was
13 across the street, so again, with the fuzzy,
14 you know, if you kind of squint your eyes this
15 is roughly 20 feet, this is roughly 20 feet
16 give or take a couple, then within our own
17 building and on its own site we've stepped it
18 again 20 feet, which is even more so, which
19 levels out with the maximum height of or
20 estimated height of the structures, the highest
21 structure that would be adjacent to our lot,
22 646 Rhode Island.

23 And that is over 102 feet with the
24 courtyard included. We only have a 16-foot
25 alleyway but we've got 102 feet of courtyard

1 including that, including that alley.

2 So that is my last slide. I will open it
3 up for questions but -- or defer them till
4 later.

5 MAYOR SCHUMM: Questions? Mike.

6 COMMISSIONER DEVER: Micah, you indicated
7 that these are rough estimations of perspective
8 and you used a program to model these
9 viewpoints and you used some I presume
10 scientific methods to take these pictures or
11 simulate these views.

12 MR. KIMBALL: Correct.

13 COMMISSIONER DEVER: Because the building
14 doesn't exist obviously, it's all hypothetical.
15 Did you identify any perspectives that were
16 negative or severely changed the viewpoint of
17 this project and omit them from our
18 presentation or was there any obvious
19 information that was omitted from our review
20 tonight so that we can make a clear and careful
21 decision on this?

22 MR. KIMBALL: No, there wasn't. In fact,
23 there was internal discussion on some of the
24 images that we were showing whether they were
25 favorable or not because that's why I mentioned

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1 the parking garage. That camera angle -- and

2 everything is drawn to scale, the houses, the
3 streets, it's overlaid off of a site plan that
4 we got off of the City website, the GIS
5 website, so everything is to scale, everything
6 is proportionate and we can measure exactly
7 what we've shown and we did not omit any
8 because we thought that they might be a
9 deterrent in any way. In fact, we did have to
10 occasionally hide a building because you
11 wouldn't be able to see the project coming
12 around either 901 New Hampshire or the parking
13 garage or some of the other projects that we
14 had modeled in there, so we would hide those
15 and it makes the project look a little bit
16 bigger and we had some internal debate with it
17 doesn't, you know, it doesn't do us a lot of
18 justice if the project looks bigger but if it's
19 not, then you can't see the project, you're
20 looking at the inside of a wall, so we did
21 debate that, but we did not omit anything.

22 COMMISSIONER DEVER: One more question.
23 And did you adjust any of the heights that
24 these representations were taken from in order
25 to improve the way this looks from a scale

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1 perspective?

2 MR. KIMBALL: No.

3 COMMISSIONER DEVER: Okay. Thank you.

4 COMMISSIONER CROMWELL: Likewise I guess
5 on here, the grade, the various terrain the
6 elevation, grade, was that taken into account?

7 MR. KIMBALL: The five feet of elevation
8 was the grade of the slope from the south to
9 the north, the five feet was, and then there's
10 approximately two feet of slope across the site
11 as well from the east to the west.

12 COMMISSIONER CROMWELL: But from the
13 position of the camera on Rhode Island Street?

14 MR. KIMBALL: Yes, yes, it, actually it
15 was, yes.

16 MAYOR SCHUMM: Yes it was what?

17 MR. KIMBALL: It was taken into account
18 with the five feet of grade, the slope from the
19 south to the north end of the lot.

20 MAYOR SCHUMM: Mr. Amyx.

21 COMMISSIONER AMYX: Micah, on the building
22 plans the small structures that are on top of
23 the buildings at the different levels of the
24 buildings, are those air conditioning units up
25 there?

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1 MR. KIMBALL: Yes.

2 COMMISSIONER AMYX: The are?

3 MR. KIMBALL: Those are mechanical, the
4 condensing units, yes.

5 COMMISSIONER AMYX: Mechanical's all the
6 on top? The building that is in the courtyard
7 that would be just to the south of the building
8 adjacent to the alley, what is that building?

9 MR. KIMBALL: That is our mechanical area
10 to feed the parking garage and also contains
11 some of our trash.

12 COMMISSIONER AMYX: Okay, so there is
13 mechanical facility in that building and it's
14 all enclosed and so --

15 MR. KIMBALL: It's all, it would be, yes.

16 COMMISSIONER AMYX: -- noise won't filter
17 out of that thing?

18 MR. KIMBALL: Right. That is the intent.
19 We've got three mechanical areas on that
20 ground, on the site plan or the ground floor.
21 One is for the retail but it is in the loading
22 dock area so it is contained within the inside
23 of the building. The other one you pointed
24 out, and then, and then there is another one
25 for the hotel, for the lobby of the hotel, and

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1 these will also, the, when I say mechanical
2 area, most of our condensing units are, for the
3 hotel, for the rooms themselves they're P-TAC
4 units so it's a through-wall unit. The systems
5 that are needed for the common areas are not
6 that large for the hotel because most of it is

7 served room by room, as you guys have seen in
8 any hotel that you've stayed in, or not any but
9 most hotels, so those mechanical units are
10 rather small but it also houses electrical
11 meters, gas meters, other utilities, you know,
12 some of the, some of the uglies of the project
13 but, in order to screen them, but they're not
14 noisy, they're not, it's not something that
15 will make noise.

16 COMMISSIONER AMYX: Well, follow up to
17 that is is as I look at the factors the only
18 factors as your counsel said that we could only
19 consider in this and those being design issues.
20 I assume that this is a design issue or
21 technical issue of the project, so --

22 MR. KIMBALL: It's both. It's something
23 that we had to do. We did discuss with the
24 neighborhood extensively about the mechanical
25 noise and the concern of the mechanical noise,

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1 talked about when we, looking at the hotel
2 units with the P-TAC unit itself, one, first of
3 all, that has to be the quietest possible unit
4 we can spec because that is three feet from a
5 person's head when they're sleeping and as a
6 guest at the hotel if that is any louder on,
7 which typically they're about the same noise on

8 the inside as they are on the outside, if that
9 is too loud to the person that is three feet
10 from it our guest satisfaction is going to
11 plummet and we're going to lose occupancy, so
12 one, we have to maintain that for ourselves, as
13 well as respect out of the neighbors, and then
14 also we've placed as much of the mechanical on
15 the roof as we can in order to isolate the
16 noise to the roof and then push it also to the
17 center and keep it away from the alley.

18 MAYOR SCHUMM: Anything else?

19 Okay. Continue, please.

20 MR. KIMBALL: Thank you.

21 MR. WATKINS: I think Micah's --

22 MAYOR SCHUMM: Each time you speak will
23 you please state your name for the court
24 reporter.

25 MR. WATKINS: Dan Watkins.

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1 MAYOR SCHUMM: Thank you.

2 MR. WATKINS: Micah's presentation
3 demonstrates why this project, why this site
4 has been difficult to develop over the last 12
5 years. It is hard to make work from design,
6 technical, planning districts, as well as the
7 economics.

8 Next we would like to have the architect
9 and developer, Mike Treanor, talk about the

10 community planning issues as well as economic
11 issues that go into this, and I would point out
12 that both his affidavit and Micah's affidavit
13 go into much more detail, as do the minutes and
14 all the material that you have from the
15 meetings that took place as this project
16 evolved over the last several months.

17 MAYOR SCHUMM: Dan, is that the last
18 speaker for the applicant?

19 MR. WATKINS: Yes.

20 MAYOR SCHUMM: Okay.

21 MR. WATKINS: Except for in rebuttal.

22 MAYOR SCHUMM: Rebuttal at the end, yes.

23 MR. TREANOR: Michael Treanor, Treanor
24 Architects. Although I have wanted to a lot of
25 times, this is the first time I have talked

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1 publicly about this project and I want to point
2 out a few things. I've got a four-page
3 affidavit that I have submitted to you guys
4 that basically all says the same thing, that
5 with all of the kind of comprehensive
6 guidelines that we have for downtown, that our
7 project helps support those comprehensive
8 guidelines, which is to increase density, to
9 increase the number of people that are downtown
10 spending money. We're going to have people,

11 out-of-town guests at the hotel. The north
12 project anticipates more apartments. It has a
13 synergy with the downtown which I think is what
14 the City is looking for.

15 It has been stated in your public policies
16 that having this kind of development in
17 downtown is a good thing. It is good to have
18 people on the ground, visiting the shops,
19 visiting restaurants, and this kind of
20 long-term stay product that is probably the
21 highest quality long-term stay product out
22 there, that's the Marriott, will be very
23 successful at getting people to spend money and
24 stay downtown for longer periods of time.

25 The affidavit goes into Horizon 2020 and

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1 the downtown comprehensive plan and it speaks
2 for itself but, you know, the point being is
3 that this is a very good project from that
4 side.

5 If we as architects could do a project
6 that is prudent and feasible for the investors
7 and for our clients and to be, make all of our
8 neighbors completely happy of course we would
9 do that and we would want to do that. This
10 project changed in the middle when the north
11 project became available and it looks like that
12 we could build some apartments in that location

13 and not have to have the density that we have
14 here.

15 We do a lot of analysis with Doug Compton,
16 his company. They have a team of managers that
17 we meet with to define what the project needs
18 to be, the way the project, the unit types need
19 to be. We meet with Chuck Mackey and his team
20 that are the hotel developers and their defined
21 needs of they have prototype drawings from
22 Marriott. Marriott themselves will eventually
23 get this plan once we settle on the plan and
24 then do their own vetting of the project, but
25 we are not there yet.

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1 The feasible and prudent from our side of
2 the table is is it financeable? Is it a
3 project that is attractive to banks? Is it
4 attractive to our investors so that they can
5 put up those large numbers you've seen on the
6 screen? You know, who, our group that we have
7 put together and others are the ones that are
8 going to put the money up and have the return.
9 You know, that takes trust and it is trust
10 built over time with our developers and their
11 track records and us as an architectural firm.
12 We have had, you know, my personal experience
13 is over 30 years in Lawrence. We sort of know

14 the ropes and what needs to happen.

15 In looking at the retail in this project,
16 could we build a retail all first floor and
17 then build office or apartments up above? Of
18 course we could. Would it be prudent for us?
19 No. To put more retail down there besides this
20 very defined retail that we are hoping to put
21 in there, which is a marketplace, as we get
22 more apartments down there that is going to be
23 in demand. That, we tried to narrow the amount
24 of retail we have on the first floor.

25 We have our first floor hotel lobby, which

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1 takes up about half, and then we have, or
2 little more than half, and then we have our
3 retail that takes up about 7,000 square feet.
4 We are trying to be very focused on that 7,000
5 square feet to provide a market in that area.
6 Do we have it yet? No. Will we? I think we
7 will. We're talking to some people now and
8 making progress on that. And our developer,
9 Doug, and Chuck are both enthusiastic about
10 that and when they get enthusiastic with those
11 users it seems to happen.

12 The 901 building is a great example of
13 being very judicious and what we have is a spec
14 space. We had very little risk on that
15 project. We had the apartments with a very

16 proven apartment developer that his track
17 record said that we would have great occupancy.
18 It's full. We have an office space on the
19 second floor that was planned for First
20 Management, Doug Compton's office. It's full.
21 The first floor was planned for our gym and
22 restaurant. The restaurant is not quite in
23 yet, not quite a done deal yet but that is the
24 last 1,500 square feet in the building, and the
25 idea there is to, by preleasing and getting our

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1 people involved it takes the risk out of the
2 deal, and that is where we, if, when we look at
3 other projects, you know, we're not going to
4 spec some office space, that just isn't going
5 to work, it's not going to be financeable.
6 It's going to be hard to spec much more retail
7 than what we have in our building. You know,
8 our retail is down to, you know, 10 to
9 12 percent of the overall of the building and,
10 you know, that is a reasonable risk, we're
11 going to get somebody in there if it's not the
12 market. We really want the market, you know,
13 it is an exciting prospect to have that down
14 there.

15 If we could have made all of our neighbors
16 happy with, you know, we would love to. We are

17 not going to ever do that. We've got a
18 building that transitions nicely to the
19 neighborhood. We haven't mentioned this but
20 the Social Service League will, if they accept
21 our help will get a new structure for their
22 sales floor in the back, not the old historic
23 building but the building that was built right
24 after World War II, I believe that's when it
25 was, which is in dire need of some energy

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1 efficiency and rebuilding, needs to be
2 replaced, and we plan on doing that as part of
3 our project.

4 We are enormously excited about this and,
5 you know, it's dragged on, it's been one whale
6 of a process here. Hugh mentioned back nine
7 months ago that this would be, this would
8 result in a better building. It has resulted
9 in a better building. I think we're there. I
10 don't think we're going to go any further.
11 This is a formal appeal, obviously, and we are
12 putting a lot of things in the record, but we
13 are there, we're ready to go and we're excited.

14 If you guys have questions I'm here.

15 MAYOR SCHUMM: Questions?

16 COMMISSIONER DEVER: Can you address some
17 statements that I have read, I think in a
18 couple e-mails in a formal submission to the

19 City regarding the large lobby area that
20 occupied the first floor retail section of the
21 building and the excessive use of that space
22 for lobby? Can you explain to myself and the
23 other commissioners why we have such a large
24 lobby relative to the size of the building?

25 MR. TREANOR: That lobby comes to us from

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1 Marriott. That design comes to us from
2 Marriott. We adapt it to our building. That
3 is within what they see as what is needed as
4 lobby for the building so that's where it came
5 from.

6 MAYOR SCHUMM: How many square feet is the
7 --

8 MR. TREANOR: The rooms are the same, same
9 thing.

10 MAYOR SCHUMM: How many square feet is the
11 lobby?

12 MR. TREANOR: It's about nine, 9,000.

13 Excuse me, 6,500. The retail is 7,000.

14 COMMISSIONER DEVER: Thank you.

15 MAYOR SCHUMM: Other questions? Thank
16 you.

17 MR. TREANOR: Thank you.

18 MAYOR SCHUMM: Your presentation has been
19 concluded at this point, is that correct?

20 MR. WATKINS: (Nods head).
21 MAYOR SCHUMM: We are going to take a
22 ten-minute break at this time.
23 (A recess was taken.)
24 MAYOR SCHUMM: Everybody please take a
25 seat. Okay, we are to proceed with the

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1 presentation from the attorney that represents
2 nearby landowners and homeowners.
3 You can state your name, please, sir.
4 MR. SCHNEIDER: Sure. My name is Ronald
5 Schneider. As you stated, mayor, I represent a
6 number of homeowners in the neighborhood and I
7 thank you for the opportunity to address you,
8 mayor, and the rest of the commissioners.
9 Before I begin --
10 COMMISSIONER DEVER: Go to the mic.
11 MR. SCHNEIDER: I'm sorry. Can you hear
12 me better?
13 COMMISSIONER DEVER: Yes.
14 MR. SCHNEIDER: Okay. Before I begin I
15 would like to give each one of you a packet and
16 the packet is numbered in the form of exhibits,
17 which I will be presenting on the overhead and
18 that makes it easier for you to read versus
19 trying to understand what is up there.
20 MR. WATKINS: Do you have an extra one?
21 MR. SCHNEIDER: No, but I can give you

22 one.

23 MR. WATKINS: Is it stuff that's been
24 submitted before?

25 MR. SCHNEIDER: No, it hasn't. Some of it

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1 has, some of it hasn't.

2 First I would like to address -- and I
3 will try to stay in the order that you received
4 presentations. Of course, not knowing exactly
5 how it would go, my assumptions may or may not
6 have been correct on what was presented. I
7 will also try to stay within the 20-minute
8 frame. There was a lot of information
9 presented beforehand by the proponents. To get
10 into a detailed analysis of that would take an
11 extreme amount of time. I don't intend to do
12 that, and frankly some of the information I
13 don't think was relevant and appropriate for
14 consideration today so I won't rebut that or
15 attempt to.

16 First and foremost, dealing with counsel's
17 understanding, your City's counsel's
18 understanding of and presentation of the
19 applicable law, I generally agree with almost
20 everything. The only exception I take with the
21 finding by counsel is No. 14, and that is
22 marked as Exhibit No. 1 in your file, and No.

23 14 deals with whether or not sale of the land
24 is pertinent or relevant, and I am providing
25 you a copy of the decision rendered in Allen

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1 property which involved the City a number of
2 years ago and the court stated that a genuine
3 offer to purchase and preserve the property,
4 particularly by a government entity or a
5 historic preservation organization, could
6 indeed be a relevant factor for consideration
7 depending on the terms, offer, and other
8 circumstances.

9 Clearly the statute does not require the
10 sale. This will become pertinent and relevant
11 as I proceed and you will see information
12 regarding that subject as well.

13 The next item I would like to address is
14 the statute itself. We have heard discussions
15 about what you are supposed to be doing here
16 today and you have received quotes about the
17 statute. Statute's right there. That is what
18 is controlling these proceedings today, KSA
19 75-2724. This project should, or shall not
20 proceed until the governing body of a political
21 subdivision, that's you, in the case of a
22 project of a political subdivision or
23 instrumentality thereof, the City of Lawrence,
24 the city commissioners, has made a

25 determination, based on the consideration of

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1 all relevant factors, that there is no feasible
2 and prudent alternative to the proposal and
3 that the program includes all possible planning
4 to minimize harm to such historic property
5 resulting from such use.

6 That's it. One paragraph tells you what's
7 going on. That tells you what the law is. You
8 may not like it but it is the law.

9 I suggest to you that you are facing a
10 unique situation in the sense that you are
11 sitting as a quasi-judicial body. You do this
12 almost all the time when you hear zoning
13 matters for individual pieces of property and I
14 know as elected officials you like to have more
15 flexibility than probably quasi-judicial
16 proceedings grant you. You are probably more
17 used to acting as a legislator, with the
18 ability to confer with anyone you think is
19 important in the sense of getting their input,
20 getting their feedback and getting their
21 analysis, and doing what you think is in the
22 best interests of the community.

23 This law doesn't say that's what you
24 should do. It says you need to look at these
25 specific questions and these specific issues

1 must be decided by you in your quasi-judicial
2 capacity and determine that there is no
3 feasible and prudent alternative to the
4 proposal and that the program includes all
5 possible planning to minimize harm to such
6 historic property resulting from such use.

7 Therefore, but, therefore, what does the
8 law require? This project cannot proceed and
9 the inquiry cannot, should not go any further
10 if you determine that there is a feasible and
11 prudent alternative to the proposed project.

12 Now, as I've sat here for the past hour or
13 two listening to the proponents their
14 proposition and argument is essentially this
15 simple: That there is no feasible and prudent
16 alternative other than the project proposed to
17 you. They are saying that the only project
18 that is feasible and prudent is a hotel as they
19 presented it, which is a four or five-story
20 hotel, with a rooftop restaurant, with a
21 rooftop swimming pool, 124 space underground
22 parking, and in addition, to top it all off, it
23 requires public financing to make it
24 financially feasible. Now, if you accept that
25 proposition, then you are saying and you must

1 say in order for this to go forward that there
2 is nothing else that is feasible or prudent as
3 an alternative to the project.

4 And I want to emphasize it is an
5 alternative to the project, as Commissioner
6 Dever inquired, not an alternative design for a
7 hotel. It is any use, any use that is
8 permitted under the law that could be
9 considered evaluating all relevant factors.

10 If you conclude there is no reasonable and
11 feasible, feasible and prudent alternative,
12 then the second component is that you must find
13 that the proposal includes all possible
14 planning to minimize harm to the historic
15 property. That's been addressed. That's what
16 the statute says.

17 Can a reasonable person conclude that this
18 is the only option, this is the only feasible
19 and prudent project available at that corner?
20 I would suggest to you just on its face common
21 sense says of course not.

22 What you are not here to consider and
23 determine is whether the project will encroach
24 upon, damage or destroy historic property. The
25 HRC has made that determination. That's final.

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1 You may disagree with it but you are not

2 authorized to overturn their decision on that
3 subject.

4 Frankly, the presentation from Micah was
5 quite interesting, I've seen it before,
6 unfortunately, but it's quite interesting and I
7 think the whole presentation was somewhat
8 irrelevant because that dealt with the project
9 itself and that was the presentation that went
10 before HRC. Your challenge tonight is to look
11 at alternatives, all relevant factors.

12 No. 2. You are not to determine if you
13 like the project as presented; that's not your
14 role here tonight. It is not your obligation
15 or responsibility or even consideration that if
16 you want another hotel downtown. It is not for
17 you to decide if this constitutes a good
18 project. It is not for you to question whether
19 or not it is good use for the property
20 regardless of its impact on historic
21 properties. You are required to determine
22 feasible and prudent alternatives to the
23 project.

24 Now, the way it is presented tonight, at
25 least by the proponent, the feasible and

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1 prudent alternatives they want you to consider
2 or in that context is what is feasible and
3 prudent to them as the developer. The law is

4 not that. The law is what are the feasible and
5 prudent alternatives to the landowner? What
6 can they do that is feasible and prudent
7 concerning all relevant factors?

8 When considering feasible and prudent
9 alternatives I ask you to look at what I have
10 marked as Exhibit 3.

11 Wrong direction. There we go.

12 COMMISSIONER DEVER: Can you tell us where
13 this came from, Exhibit 3, please?

14 MR. SCHNEIDER: Sure, be happy to identify
15 it. Exhibit 3 is staff report and I am making
16 reference to, first to page 4 from the staff
17 report and I think that is a staff report of --
18 okay. There we go. Okay, thank you.

19 The staff report that was done in April of
20 this year and this is page 4 and this is from
21 the staff report and the reason I bring this
22 up, not only is it contained in the staff
23 report but this is a summary and a statement of
24 what has already been discussed, what you
25 should be considering, what are feasible and

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1 prudent alternatives.

2 The feasible and prudent alternatives are
3 defined on what factors you should consider,
4 and there has been a discussion of this

5 already. I believe there has been a mis-, a
6 wrong focus on the application of these. There
7 has been a focus on how these apply to the
8 proposed project. These in fact, if you read
9 the rules, it is how they apply to feasible and
10 prudent alternatives, technical issues, design
11 issues, the project's relationship to the
12 community-wide plan, if any, and economic
13 issues. In other words, every time you look at
14 this proposed project what are the alternative,
15 feasible and prudent alternatives and what is
16 relevant in determining whether or not those
17 are feasible and prudent? Then we have the
18 definition and discussion about the program
19 including all possible planning to minimize
20 harm.

21 The point I wanted to make out also in the
22 staff analysis is that the Historic Resources
23 staff is of the opinion that there are feasible
24 and prudent alternatives to the proposed
25 project and that there is additional planning

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1 that should be undertaken to minimize the harm
2 to the listed properties. That was before the
3 final draft that you have.

4 On the next page the staff concluded, and
5 they couldn't do a better job than I could.
6 But before I get into that I would like to

7 address these issues a little more clearly.
8 Recall that or realize that you have these
9 guidelines that apply state-wide to the review
10 process. As you may assume, the vast majority
11 of times you're dealing with existing
12 structures. It is rare to have vacant lots
13 that are being evaluated, and to understand
14 this is easier when you understand it within
15 that context, so if you have an existing
16 structure, and let's say you have a grand old
17 mansion that has not received proper attention
18 over the years and it is ready to fall down,
19 the question is then what are the feasible and
20 prudent alternatives, and as you know, just
21 about any structure can be renovated or
22 rebuilt. There are a number of factors that
23 should be taken into consideration.

24 So you look at the technical issues: How
25 bad is the structure? How much money does it

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1 take to make sure that the property is stable
2 and doesn't fall down?

3 Design issues: If it's a house can it be
4 redesigned to accommodate retail, commercial?
5 Does the project relationship to the
6 community-wide plan, what is it? If there is a
7 proposed option that is feasible and prudent,

8 if someone is proposing to put a wine house or
9 a wine shop in a beautiful old house in a small
10 village in western Kansas there's a good chance
11 that that doesn't meet with community-wide
12 project planning or other uses, and maybe I'm
13 being a little too sarcastic on such a subject,
14 but there is a particular use that is being
15 proposed and how does it correlate and relate
16 to the community-wide plan.

17 And the economic issues, which all too
18 often are a controlling factor. Even though we
19 can restore just about any house, any structure
20 or any building, does it make sense? Does it
21 cash flow? I can restore a gorgeous house for
22 \$1.5 million but if I have cash flow of only a
23 hundred thousand dollars a year clearly it's
24 not economically feasible.

25 In relationship to this project we have a

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1 vacant lot and those analysis take place in the
2 staff's report on page 5. I won't go into the
3 detail of them but in essence the staff report
4 stated, which still holds true now, even though
5 we have a somewhat modified project, that a
6 smaller structure with fewer amenities, parking
7 and pool, would be less expensive to construct.
8 There are economically viable two and
9 three-story buildings in downtown Lawrence. A

10 smaller project.

11 No. 2.

12 COMMISSIONER DEVER: Can I interrupt? I'm
13 just confused. How come you're using this
14 information from the previous submittal when
15 there is a more current report from the staff?

16 MR. SCHNEIDER: Because it doesn't address
17 these issues.

18 COMMISSIONER DEVER: Oh, it doesn't?

19 MR. SCHNEIDER: No, it doesn't.

20 COMMISSIONER DEVER: At all?

21 MR. SCHNEIDER: Not this, no, it doesn't.

22 COMMISSIONER DEVER: Okay.

23 MR. SCHNEIDER: And it's essentially the
24 same issue.

25 COMMISSIONER DEVER: Okay.

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1 MR. SCHNEIDER: And then the, to address
2 you specifically, Commissioner Dever, because
3 the HRC --

4 MAYOR SCHUMM: Just to clarify all this,
5 I'll let you continue in a second, but after
6 Ron makes his presentation we'll ask staff to
7 address some of these issues that you raise.

8 COMMISSIONER DEVER: Okay, I just am
9 trying to track any that we have and it's
10 confusing me when we're looking at --

11 MR. SCHNEIDER: Sure. If you look at --
12 COMMISSIONER DEVER: The project was
13 changed substantially from the first time. I
14 mean, you're quoting information on a project
15 which I respect and want to listen to but it is
16 relative to a project that has changed in size
17 from the first time.
18 MR. SCHNEIDER: No, this isn't the first
19 report, this isn't the first report, and I
20 apologize.
21 COMMISSIONER DEVER: Oh, this isn't?
22 MR. SCHNEIDER: No, it is not.
23 COMMISSIONER DEVER: The first page was,
24 though?
25 MAYOR SCHUMM: All right, let --

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1 MR. SCHNEIDER: No, it wasn't. I should
2 have the date.
3 MAYOR SCHUMM: All right, hold on just a
4 minute.
5 MR. CORLISS: I hate to interrupt but I
6 think staff needs to explain.
7 MAYOR SCHUMM: Whoa, whoa, whoa, whoa.
8 One at a time now. I'll direct traffic here.
9 Dave Corliss, please, your comment.
10 MR. CORLISS: I'd ask Scott to comment on
11 what report Mr. Schneider is reading from
12 because he is stating that this is from a staff

13 report. This is not, at least to my
14 understanding, from the current staff report.

15 MR. SCHNEIDER: That is correct. That's
16 correct. I don't want to misrepresent that and
17 I've never tried to.

18 MAYOR SCHUMM: Okay, which -- all right,
19 now I'm confused. Which report is this coming
20 from that Ron Schneider is reading from?

21 MR. McCULLOUGH: Scott McCullough with the
22 Planning Office. Mayor, there were, as you may
23 recall, two instances where a project came to
24 the City Commission upon HRC determination and
25 I don't remember if this was the first one or

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1 the second one but each time that application,
2 the applicant had revised the project and
3 essentially completed an alternative or showed,
4 reflected a feasible and prudent alternative.
5 This was a report on one of those times where
6 we believed there was a feasible and prudent
7 alternative.

8 The project before you today was revised
9 from one of these former times, went through
10 the HRC process, came back on appeal. This is
11 not our current staff report on the appeal.
12 The current staff report is posted in the
13 packet, which has different conclusion,

14 different conclusions than what we had at a
15 different time in the process.

16 COMMISSIONER DEVER: Okay, good. I just
17 wanted to make sure.

18 MR. SCHNEIDER: That's correct, and I'm
19 not trying -- if I've mis-, if I've confused
20 you that was not my intent. This represents
21 the last, the previous proposal that was coming
22 before the City Commission that was withdrawn.
23 The only difference between that and the
24 current proposal is that it was reduced by one
25 story. The current staff report, in my

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1 opinion, does not address these details even
2 though all of this is still relevant. That was
3 addressed at the HRC and at the HRC the members
4 of that Commission stated that you still have
5 these problems of mass, size and height. Those
6 are the same issues that they addressed and I
7 am bringing it up because at that time, even
8 though it was a story higher and it was
9 unacceptable, it's a story lower now and it was
10 still determined to be unacceptable to the HRC
11 according to the applicable law.

12 The HRC determined then, which is
13 applicable now, that there are alternatives,
14 that there are feasible and prudent
15 alternatives. One, a smaller project that

16 would be similar in, be smaller in scale and
17 massing in the Lawrence, to the Lawrence Arts
18 Center building is what they are recognizing.
19 No. 2, a project with fewer uses that would
20 require a smaller building.

21 Economic issues are the same thing. The
22 reduction of uses for the proposed construction
23 at this site will reduce the initial cost of
24 construction. A project without the costs
25 associated without the underground parking is

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1 possible.

2 That is extremely important because
3 consistently everything that you have received
4 regarding this project for analysis and
5 otherwise includes a parking garage of 124
6 underground spaces. The current zoning, CD,
7 does not require any off-street parking. It is
8 a choice made by the property, or the
9 developers, for reasons that are probably
10 sensible, probably mandated by Marriott that
11 they have to have parking on site.

12 The issue then, what else other than a
13 hotel or another project that does not require
14 underground parking? What can be considered?
15 In doing so I would like you to look at Exhibit
16 4, which I have given you, and I will read it

17 because this does not come across well but it
18 is all the nonresidential district uses
19 available for CD. There are numerous uses,
20 including household living, there are community
21 facilities, there are medical facilities, there
22 are recreational facilities, there are
23 religious assemblies, animal services, eating
24 and drinking establishments, offices, parking
25 facilities, retail sales and services, does not

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1 permit sexually oriented businesses, though,
2 transient accommodations, and some vehicle
3 sales and services under special use permit,
4 same for industrial facilities, and then there
5 are other uses on the second page which include
6 some form of recycling facilities,
7 communications facilities, and special uses for
8 adaptive reuse which really don't apply here.

9 The point I'm presenting that is that
10 there are almost an infinite number of uses
11 permitted within this district. What is
12 feasible? That's what -- and if you look at
13 the statute and you look at the rules and the
14 information given to you by counsel, feasible,
15 what is suitable, what is possible, what is
16 capable of being accomplished; prudent, good
17 judgment, exercising common sense when you go
18 about a project, determining whether or not it

19 is prudent.

20 Based upon the developer's proposal, the
21 most apparent uses are residential, office, and
22 retail. Now, the office is not included in
23 this particular project but based upon what
24 they've done across the street and what they
25 are proposing to the north they apparently

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1 think that some office space is still needed.
2 I think it is obvious to most of us that office
3 space throughout the community of Lawrence is
4 not in huge demand. Downtown Lawrence seems to
5 be demanding, from everything the studies show
6 us and what the proponents suggest, residential
7 is in big demand and that there is still a need
8 for the right type of retail.

9 The residential that has been discussed
10 are apartments and residential in the form of
11 hotels or long stay. There has not been a
12 discussion of condominiums. That is an
13 alternative that could be considered here and
14 has not been analyzed as far as I can see.

15 The cost analysis that the proponent has
16 used for the various projects for a retail use
17 range from 10 to \$14 a square foot. I would
18 like to show you some rough calculations, and
19 by rough I mean I have crunched numbers using

20 the figures given by the proponent in their
21 analysis, and you have that in your packet. It
22 is referred to as Exhibit 5. The basic land
23 and structure cost, the land acquisition,
24 according to the proponent, is almost \$700,000.
25 We have space of 43,393 square feet at \$133

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1 development cost according to their
2 projections.

3 There was a conflict that I did not
4 understand and that is on page 2 of Exhibit 5.
5 I've calculated that figure at \$5,771,000 and
6 change. The developers had calculated it at
7 6,981,000, almost 653 -- \$953. The difference
8 was explained earlier in their presentation.
9 The figure that I used for calculating the
10 43,393 did not take into consideration common
11 space, such as stairwells and all that, so the
12 apparent conflict has been answered by them.
13 The total cost, and if their figures are in
14 fact correct, I would add approximately a
15 million dollars to that so it's about 7,500.
16 Those are basic land and structure costs.

17 The other costs identified by the
18 developer are site improvement costs, and as
19 one of the analysts pointed out who represents
20 the consultants you've hired, these costs are
21 subject to change. We don't know really how

22 they are calculated and how accurate they are
23 but site improvement costs of nearly \$850,000
24 is questionable. In order to determine the
25 validity of those and the accuracy of those we

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1 need to see the documents to calculate those.
2 Maybe they are in that packet of information
3 you have been presented earlier, I don't know.

4 Development fees of four percent,
5 \$413,000. I don't know if that is reasonable
6 or typical or customary but that is a fee that
7 the developer is going to get.

8 Contingency fund of 6.5 percent. As I
9 understand this, this figure, this is a
10 standard protocol that the investors or the
11 lenders are going to require to have sitting on
12 the sideline almost as an escrow account if any
13 of the estimates are off and that they have
14 resources to make a correction.

15 And now the parking garage. It says 114
16 spaces. I think it is actually -- no, that's
17 correct. I was going to say 124. It's 114
18 spaces. That's \$2,500,000. If you look at the
19 actual hard cost that accounts for almost a
20 quarter of the total cost of this project.

21 I suggest the very top figures are certain
22 based upon the figures they had given us for

23 land acquisition and cost of construction. The
24 other costs identified by developer I believe
25 need further analysis and scrutiny.

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1 Having given you that information, I would
2 encourage you to consider the optional uses
3 that should be considered based upon not only
4 what many may believe are options but are
5 options based upon the applicant's own
6 consideration of various needs and uses
7 necessary for downtown. I have used a
8 conservative figure of \$14.50 a square foot for
9 office space and a conservative figure for
10 retail of \$10 a square foot. For those of you
11 who know downtown Lawrence, I think you will
12 have to agree that these figures are
13 conservative. The reason I am giving you these
14 figures is to get a good sense of what the
15 projected annual income is for each such
16 combination of uses with their proposal of a
17 three-story building.

18 First we have office/retail, office two
19 floors, retail one floor. That comes out to
20 about \$566,000. If you use a figure that I
21 think is probably more realistic to the value
22 of office space, which is \$19.50 a square foot,
23 that figure actually comes out to \$711,500.

24 No. 2, apartments/office/retail

25 combination. The document speaks for itself.

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1 You have a total of three floors, one each,
2 554,250. Add another 73,000 if you are
3 calculating office, excuse me, apartments at --
4 I misstated. If you are evaluating offices at
5 19.50 a square foot it's \$627,000.

6 No. 3, all offices, if you add a figure of
7 19.50 a square foot it comes out to 850,000. I
8 again have a conservative figure at 14.50 a
9 square foot.

10 Apartments, two floors, retail, 542,000.

11 And the final figures of office/apartments
12 combination, six hundred eighteen five, if you
13 change that office space from 14.50 a square
14 foot to 19.50 a square foot it comes out to
15 763,500. That is for a three-floor building
16 using the square footage proposals that the
17 proponents have asked for.

18 The developer's total projection for
19 two-story apartments floors less a parking
20 garage is \$9,607,384. If you finance that at
21 80 percent of the developer's total projection
22 that is \$7,685,000 -- nine hundred and seven
23 dollars, excuse me, and twenty cents, financed
24 at 5.25 for 25 years the annual debt service is
25 \$501,000.

1 I am giving you that information so you
2 can compare that to the potential income on the
3 three-story commercial building that is either
4 residential, office or retail or a combination
5 thereof.

6 Alternative projections rely upon only the
7 cost of the land acquisition and construction
8 of the structure and site improvement costs.
9 That's \$7,311,550. That does not include the
10 other costs that are questionable. Site
11 improvement costs also probably require
12 dramatic changes because I perceive that the
13 majority of those have to deal with building a
14 two-story underground parking lot, so if that
15 is not done those figures would go much lower.
16 If you finance that you get an 80 percent of
17 that figure comes out to an annual debt service
18 of \$431,000; again, an alternative projection
19 for viewing feasible and prudent alternatives
20 to the project as presented and considered.

21 You have before you a presentation that
22 Town Peterson, who is one of my clients,
23 presented to you by e-mail. I don't know if
24 that is formally part of the record or not.

25 COMMISSIONER CROMWELL: Yeah.

1 MR. SCHNEIDER: Is it? If it isn't I
2 would like to make sure it is and I have an
3 extra copy.

4 MAYOR SCHUMM: We will accept it as part
5 of the record.

6 MR. SCHNEIDER: Thank you.

7 MAYOR SCHUMM: It is in digital form.

8 MR. SCHNEIDER: Thank you, mayor. I would
9 suggest to you that you are going to also hear
10 additional information from Kirk McClure, who
11 does a similar analysis of a building that is
12 substantially smaller in size, 10,000 square
13 feet per floor, retail, residential, some
14 off-street parking, not an underground parking
15 lot. The off-street parking will probably
16 provide anywhere from 15 to 22 spaces. Both
17 his analysis and Town Peterson's show that
18 there is a rate of return, estimated rate of
19 return of 10 to 18 percent, on the high end of
20 what is acceptable by industry standards.

21 I have made reference to sale of the
22 property. The record should reflect that I in
23 fact on behalf of my clients inquired to see if
24 the property owners, who are known as 9-10,
25 L.C., were interested in selling the property.

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1 That letter was sent to them and they responded

2 to me, kindly they responded and basically
3 said, no, thank you, and that letter is
4 attached also where they advise that they have
5 a current purchaser, and that, of course, is
6 the developers.

7 The only reason I bring that up, because
8 under the law I believe it is relevant because
9 now we have the Lawrence Arts Center interested
10 in purchasing a lot to the south which is much
11 smaller than this particular project. One of
12 the alternative feasible and prudent uses here
13 is clearly using this site for the Lawrence
14 Arts Center's needs. It's larger, it's going
15 to provide the same needs they need as an open
16 space to do outside art projects, but the thing
17 that's even more attractive, it's less than the
18 purchase price, as I understand it, from what
19 is being considered for the building currently
20 owned by the Salvation Army, and there is no
21 cost of demolition.

22 In order to know how profitable that is to
23 the owner right now we are told that the owner
24 is selling it to the developer for \$700,000.
25 Even at that price it is a feasible and prudent

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1 alternative to the Lawrence Arts Center and the
2 City Commission to consider. We may learn that
3 the purchase price of this particular property,

4 which is relevant, in my opinion, is so much
5 lower than \$700,000 that a feasible and prudent
6 option could be far less than a \$700,000 sale
7 price. I am not suggesting, however, that the
8 law requires the property owner to have to sell
9 it but the law does say if it is going to be
10 used by a government agency or something
11 comparable that will consider historic
12 preservation considerations that is a relevant
13 factor.

14 I will try to wrap this up pretty quickly
15 because I know you have a lot of people to
16 listen to. You have before you the obligation
17 to determine if there are feasible and prudent
18 alternatives. You have information that shows
19 you that there are feasible and prudent
20 alternatives. You have information that
21 indicates without a doubt, and the staff has
22 recognized, that those feasible and prudent
23 alternatives are most importantly considered
24 when you realize the underground parking lot is
25 not necessary. When you take that out of

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1 consideration, when you take out the costs
2 associated with a pool and a restaurant on top
3 of the roof the costs go way down.

4 The feasible and prudent alternatives are

5 not what is available to a hotel developer or a
6 developer who wants to build a hotel, it is the
7 feasible and prudent alternatives that are
8 available to the owner of the property.

9 The developer argues that there are no
10 feasible and prudent alternatives, that the
11 only alternative, the only option that they
12 have and that the owner has is to build this
13 hotel as presented. That is on its face
14 irrational, improper, and just can't be found
15 to be a realistic conclusion.

16 I would like to address a couple other
17 issues that were brought up tonight that were
18 not previously presented. First and foremost,
19 you have in front of you a large packet of
20 information that counsel presented to you and
21 Commissioner Cromwell inquired sarcastically,
22 "Do we have to read that tonight?"

23 I don't know what's in that. I know there
24 are some affidavits that I've never seen.
25 Under the circumstances I believe I have an

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1 absolute right to review those things in order
2 to respond accordingly and if need to
3 supplement my response to tonight I need that
4 opportunity. How much time that will take I
5 don't know until I see the documents.

6 The other point is you have hired

7 Springsted, as I understand it, to determine if
8 it is feasible or prudent to construct a
9 three-story apartment building. Unfortunately,
10 the burden to prove that is with the developer.
11 I don't think it is the City's obligation to
12 prove that one way or the other. However,
13 since you have chosen that I suggest to you it
14 would also be appropriate to consider the
15 alternatives that are also out there, most
16 importantly to consider an alternative that
17 includes, as your own staff recognized, could
18 be constructed as a smaller project, a project
19 that did not include two stories of underground
20 parking and other uses that were adaptable to
21 the project, including, and the staff didn't
22 say this, but what is apparent to me is
23 condominiums.

24 When Springsted looked at this for
25 alternative, feasible and prudent alternatives

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1 they should have been directed, if you were
2 truly looking for feasible and prudent
3 alternatives they should have been directed to
4 say what can be built on this site that is
5 three stories or less and meets the criteria
6 identified by the Historic Resource Commission
7 concerning space, size and mass? They were not

8 asked to do that and I think that is a mistake.

9 Also, based upon the information given by
10 Springsted, and I must confess I had trouble
11 understanding everything that was going on with
12 all the financing and if you understood that
13 substantially well and understood the
14 implications between the north-south project
15 and the whole district I congratulate you but I
16 question if anyone is able to understand all of
17 the implications of that at this time. Whether
18 or not it is relevant is another question.

19 But having said that, what I was able to
20 gather from that presentation is that this
21 project as presented cannot go on its own with
22 private funding, that it absolutely positively
23 as presented requires public funding and
24 assistance -- public financing, I shouldn't say
25 funding, public financing and assistance to

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1 make it go, that the north project is more
2 feasible and prudent economically than the
3 south project and the south project probably
4 wouldn't go even with public assistance but for
5 the north project.

6 Based upon everything I heard, one has to
7 ask, is the project as presented to you
8 tonight, with all the amenities, underground
9 parking, the roof and the need for public

10 assistance, feasible and prudent on its own? I
11 suggest it does not appear to be so.

12 So having said that, I'd previously
13 addressed either the HRC or this Commission
14 stating that in many ways this reminds me of
15 someone trying to put an elephant in the back
16 yard of a residential neighborhood yard, that
17 the owner wants to have a pet elephant but
18 their yard is just too small so they trim, clip
19 the toenails, cut the hair back, cut the tail
20 back and the ears and say now it meets it.
21 Well, everyone knows you still have an elephant
22 in the back yard so by analogy we still have an
23 elephant in this back yard. There are
24 alternatives to the pet owner, as there are to
25 the property owner here. To the pet owner the

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1 alternatives are the obvious: Have something
2 that fits your back yard, a dog, a couple dogs
3 even. To the property developers here an
4 elephant doesn't fit in this yard and there are
5 alternatives, which include a three-story or
6 smaller building, smaller size and it will fit
7 the needs of the community and meet the
8 benefits of the historic district.

9 Happy to answer any questions. How much
10 time did I take, I'm curious?

11 MAYOR SCHUMM: We lost track.
12 MR. SCHNEIDER: More than 20 minutes?
13 COMMISSIONER DEVER: We don't pay
14 attention.
15 MR. SCHNEIDER: You don't pay attention?
16 Okay.
17 COMMISSIONER DEVER: Only when the shock
18 clock's set.
19 (Laughter)
20 MR. SCHNEIDER: Okay. I tried to cut it
21 down. Be happy to answer any questions.
22 MAYOR SCHUMM: Any questions at this time?
23 Okay.
24 MR. SCHNEIDER: Thank you.
25 MAYOR SCHUMM: Don't go away, I mean don't

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1 leave the meeting room.
2 We have public comment next. How many
3 people, would you raise your hand, how many
4 people want to comment just so I get a --
5 (There was a show of hands.)
6 Okay, so we've got about 12 or 15.
7 Okay, the sign-up sheet is in the back at
8 the table alongside the door. I want you to
9 sign in there first. When you come up to the
10 podium, for the pleasure of our court reporter,
11 I want you to say your name and spell your last
12 name. Please talk distinctly and slowly so

13 that she's able to write everything down that
14 you want to say. And there is a limitation of
15 five minutes, if you can say it quicker than
16 that we'd appreciate it, so all right.
17 Proceed, please.

18 MS. SODEN: I am Leslie Soden, president
19 of the East Lawrence Neighborhood Association.
20 Here we are, light at the end of the tunnel
21 maybe. Anyways, earlier I felt like I was kind
22 of at the PERC hearing already and not a public
23 hearing on 900 New Hampshire, which was a
24 little confusing. Somehow everything has
25 blossomed tonight into a conversation about

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1 three separate projects, 900 New Hampshire, 100
2 East Ninth, and the Lawrence Arts Center
3 Commons. Frankly, this was kind of a
4 disturbing amount of time spent talking about
5 two other projects when we are here to talk
6 about 900 New Hampshire, I'm not sure that was
7 entirely appropriate, so anyways, I have a few
8 questions that occurred to me during the
9 earlier testimony.

10 The first one is since the developer is
11 also using his own construction company for the
12 construction and thus presumably making a
13 profit that way wouldn't that be considered in

14 the feasibility study? Is that a relevant
15 factor?

16 Speaking, No. 2, speaking of the community
17 plan, wasn't the original TIF plan for that
18 corner for a three-story building?

19 And No. 3, Mike Treanor in his testimony
20 mentioned that retail on the first story is
21 iffy so perhaps if, instead of a market space
22 on the first floor they should consider moving
23 the restaurant space to the first floor from
24 the roof, that way maybe they could completely
25 remove the fifth floor. Wouldn't that be a

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1 feasible and prudent alternative for the
2 developer?

3 Thank you for your time and consideration.

4 MAYOR SCHUMM: Thank you.

5 MR. DANNENBERG: Dan Dannenberg, 2702
6 University Drive. Last name is
7 D-a-n-n-e-n-b-e-r-g.

8 Just a quick point. We have heard the
9 term "affidavit" several times tonight, and
10 seeing this many suits lined up on the row here
11 takes us back to the days of the Watergate
12 scandal where the joke was "What do you call a
13 man in a suit? A defendant."

14 No charge for the attempted humor.

15 (Laughter)

16 From 2002 to 2012 what was the number of
17 hotel-motel rooms added in Lawrence and what
18 was the occupancy during that time of those
19 rooms? From 2012 to 2022 what is the estimated
20 or anticipated need for hotel-motel rooms
21 during that time and what will the anticipated
22 occupancy be? It would be interesting to know
23 what those statistics are.

24 I don't want to pay for a parking garage.
25 There are other hotels that are proposed in

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1 North Lawrence and out at the Sports Village.
2 Going to have to pay for parking out there,
3 too? I was just looking here. As a taxpayer
4 I'm tapped out. I don't want to pay for
5 anything else. If the developer can make it
6 work, fine, they should do it with their own
7 financing.

8 MAYOR SCHUMM: Thank you.

9 MR. BUHLER: Somebody jumped in front of
10 me. I'm Mark Buhler. I live at 1000 Sunset
11 Drive. I've been around here awhile and I just
12 thought I'd come down tonight, even though I
13 don't have any money in this game and I don't
14 think I have a cat in the fight, but thought
15 I'd come down tonight because a whole bunch of
16 my people that I think are like minded to me

17 don't and they never do and I doubt it's a
18 silent majority but I want to support the
19 project, I want to support the appeal, whatever
20 is technically in front of you, and I figure
21 you will determine what you can and cannot make
22 a decision on tonight and I do support it.

23 We have needed for almost all my life a
24 way to make downtown more significant than it
25 is and this is a great opportunity. I would

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1 not have a nickel in this game. I'm proud he's
2 doing it, he or the group of hes that are, he
3 or shes that are doing it, and it is a great
4 risk and I think we will all win if it occurs.
5 Thanks very much. Good luck.

6 MAYOR SCHUMM: Thank you.

7 That needs to go back to the back table
8 again.

9 MR. BUHLER: I brought to it her because
10 somebody jumped in front of me so we need a
11 monitor back here, mayor.

12 THE SPEAKER: You're elected.

13 MR. BUHLER: No, I'm not.

14 MAYOR SCHUMM: Next, please. No, you have
15 to sign in first. Did you sign in?

16 MR. DELANEY: Yeah.

17 MAYOR SCHUMM: Okay, please. Your name
18 and spell it, the last name.

19 MR. DELANEY: My name is Alex Delaney,
20 D-e-l-a-n-e-y. I live at 2724 Ann Court.

21 I am here to offer my support of the
22 development at Ninth and New Hampshire. I
23 think that it is very important for the
24 Commission to remember that while the history
25 of Lawrence is important to all, important to

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1 us all, what has been decided in the HRC ruling
2 is directly relevant to only a small proportion
3 of the whole Lawrence citizenship, much like
4 what Mr. Buhler just said.

5 Although this change will have an impact
6 on the East Lawrence neighborhood, what I feel
7 is being forgotten is the impact it could have
8 on the rest of Lawrence. This presents a
9 prudent and feasible opportunity right now to
10 develop this property and show Lawrence as the
11 forward-looking community that we all consider
12 ourselves in front of a world looking to
13 develop our land and economy. I agree that we
14 must protect Lawrence's past, but not at the
15 sake of its future.

16 Let's also consider the case of the
17 tangible facts in this decision. Regardless of
18 the findings of the HRC, the 900 block of New
19 Hampshire is simply not protected according to

20 the guidelines of the National Register of
21 Historic Places. As far as its use is
22 concerned, I believe the vast majority of
23 Lawrence residents would prefer to offer
24 themselves and visitors that go downtown a new
25 hotel to look at rather than a vacant lot.

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1 Finally, according to the 2010 U.S. Census
2 Report there are currently 34,319 households in
3 Lawrence and the city is 33.56 square miles but
4 the complaint that could end this project is to
5 save an area of less than .03 square miles the
6 North Rhode Island Street National Historic
7 District encompasses. I strongly urge you to
8 reconsider your previous decisions that could
9 let such a small part of Lawrencians' interests
10 carry more weight than everybody else's. Thank
11 you for your time.

12 MAYOR SCHUMM: Thank you. Next speaker,
13 please.

14 MR. RILING: I'm Mike Riling. I am an
15 attorney in Lawrence. I have an office at 808
16 Mass.

17 MAYOR SCHUMM: Will you spell your last
18 name, sir, please.

19 MR. RILING: Oh, Candy knows me but it's
20 R-i-l-i-n-g.

21 MAYOR SCHUMM: Thank you.

22 MR. RILING: I am a member of the Downtown
23 Lawrence board of directors and I was drawing
24 the short straw tonight to come down here and
25 read a short statement that was approved by the

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1 DLI.

2 The Downtown Lawrence, Inc., board of
3 directors supports the development of a hotel
4 on the southeast corner of Ninth and New
5 Hampshire. The board believes that adding
6 population density is critical to the survival
7 of downtown Lawrence. The more people living
8 in the area, short term or long term, the
9 better it will be for downtown. The hotel will
10 bring more customers for downtown businesses,
11 generating increased sales tax revenue for the
12 city at large. The hotel is an important
13 addition to downtown that will help accomplish
14 this goal.

15 We do, however, understand the concerns of
16 the neighborhood and the developers regarding
17 the height of the building but defer to the
18 judgment of the City Commission on that issue.

19 If you have any questions I would be happy
20 to answer them, otherwise thank you.

21 MAYOR SCHUMM: Thank you, Mr. Riling.

22 Next, please.

23 MR. McCLURE: Good evening. Kirk McClure,
24 M-c-C-l-u-r-e. I apologize, got a cold; my
25 voice is a little off from its usual.

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1 I am here to speak on the narrow issue of
2 is there a prudent and feasible alternative.
3 The staff has given you a variety of analyses.
4 What they have not provided for you is a
5 financial analysis. The most common use of the
6 word "feasible" in real estate development and
7 in planning is does a project generate
8 sufficient net operating income, income after
9 operating expenses, to pay the debt service on
10 the loan and cover the cash flow that will
11 provide a competitive return to the investors'
12 equity. All right, what that means is you've
13 got to have the internal rate of return that
14 meets a standard. That's what Springsted
15 showed to you.

16 What has not happened thus far is to give
17 you an analysis of whether or not the project
18 can meet that standard and what I am trying to
19 demonstrate is that in fact it is very easy to
20 meet that standard.

21 I took a project, ran a simple ten-year
22 pro forma, modeled it similar to the way
23 Springsted said so we wouldn't, Springsted did
24 so we wouldn't have alternative formats out

25 there. I used construction and development

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1 assumptions from the developer so we wouldn't
2 have any questions about whether or not those
3 are reasonable, and I simply looked at a
4 smaller property, 10,000 square feet per floor,
5 three floors, 30,000 square feet. That means
6 even on that small property we would have
7 retention for parking.

8 I used the same land acquisition, the same
9 site improvements, which I couldn't find from
10 the materials whether or not those site
11 improvements were generated by the underground
12 parking, which I suspect they were, but even
13 so, I looked at a 30,000 square foot property,
14 same land acquisition, same site, same
15 construction cost per square foot, same
16 developers and developer's fee, contingency
17 fee. Basically I generate a \$6.1 million
18 property. That property, with the same
19 financing terms that we have been looking at on
20 this proposal, will generate a ten-year
21 internal rate of return of over 12 percent.

22 How do you know that 12 percent is a good
23 number or a bad number? You use a threshold,
24 as Springsted did. Now I used -- they
25 obviously pay for Price Waterhouse, I only have

1 access to the free one, so I used the National
2 Association of Real Estate Investment Trusts,
3 it's free. They said 10 percent. Simple point
4 here is that this project at 30,000 square feet
5 exceeds the threshold of 10 percent.

6 I might point out a little note that I
7 hope you got the signal from Springsted when
8 they said general commercial was 8.3 percent
9 but when you go into specialized space like
10 hotel it jumps to 11.6 percent threshold. That
11 is a 330 basis point jump in the threshold for
12 payment. Why is it that big? Hotels are
13 risky. You should make a fair amount of money,
14 they indicated an average of 11.6. But why are
15 they risky? You guessed it. Communities have
16 a habit of building too many hotels. What
17 happens when you have too many hotels? They
18 all start underperforming.

19 We really can't afford to make the same
20 mistake on hotels that we have made in retail
21 in this community. We need to be careful. Dan
22 gave you a plea earlier. I want to reiterate,
23 we need to know the capacity of this community
24 to absorb new hotel space.

25 But the point tonight is not to make a

1 decision on validity of the TIF, it's really do
2 we have a viable alternative and in fact what
3 we have is a good viable alternative. The
4 interesting point is that it does not contain a
5 parking garage. What is causing the
6 feasibility problems here and the need for the
7 public subsidy is the underground parking. Two
8 and a half to \$2.9 million is one expensive
9 purchase by the taxpayers. If we look at a
10 property of 30,000 square feet in fact it will
11 operate the combination retail/residential. If
12 in fact it has no parking requirement on site
13 we can go to 14,000 square feet per site,
14 triple that, add three stories and in fact the
15 property returns a higher amount and the reason
16 is because the land acquisition and the site
17 development costs are now spread over more
18 square footage.

19 So the point is that you cannot in good
20 conscience say there is no feasible, prudent
21 alternative. The alternative I gave you is
22 feasible, it's prudent in that it will meet the
23 plans and the downtown guidelines. Thank you.

24 MAYOR SCHUMM: I have a question, please.

25 MR. McCLURE: Yes, sir.

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1 MAYOR SCHUMM: In your analysis, I printed

2 it off, I have it here, --

3 MR. McCLURE: Yeah.

4 MAYOR SCHUMM: -- in the sixth year you

5 show a 10 percent, I believe it's a 10 percent

6 increase in rent revenue. Is that comparative

7 to what Springsted does?

8 MR. McCLURE: Yeah, yeah. We're looking

9 at five-year flat rate triple net leases so I

10 took it, took it out of their operation.

11 MAYOR SCHUMM: So the assumption, then, in

12 the sixth year you can raise those leases

13 10 percent?

14 MR. McCLURE: Yeah, yeah. Or if it's

15 residential there will be an annual adjustment

16 but we're looking at generally that kind of

17 adjustment over a ten-year process.

18 MAYOR SCHUMM: Okay. Thank you.

19 Any other questions?

20 COMMISSIONER CARTER: A couple, Kirk.

21 MR. McCLURE: Yes, sir.

22 COMMISSIONER CARTER: When looking at this

23 and talking about occupancy rates and whatnot,

24 feasibility of this project, I had asked about

25 occupancy rates in the town and whatnot and I

1 know that's kind of what you're getting at as

2 well as what's already out there in their

3 current occupancy rates. One of the most

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4 critical things about this is going to be the
5 flag because it won't be comparable to local
6 independent hotel occupancy rates. Marriotts
7 Rewards program and their reservation system
8 and whatnot will not only capture market share
9 but potentially even bring people that might
10 stay near Lawrence to Lawrence because they get
11 their Reward points. I say all that only
12 because your comparison when you're comparing
13 this to another footprint that could be put on
14 that property, as far as me, my considering
15 whether that is feasible or not is more whether
16 or not a, who, is there a flag that is
17 committed to that model that would not require
18 an underground parking that would have that
19 kind of reservation system pull or is that a
20 theoretical or hypothetical building?

21 MR. McCLURE: This is a mixture of retail
22 and residential, this is not necessarily a
23 hotel.

24 COMMISSIONER CARTER: Thank you.

25 MR. McCLURE: All right.

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1 MAYOR SCHUMM: Next speaker.

2 MR. RASMUSSEN: Good evening,
3 commissioners. My name is Stanley Rasmussen,
4 R-a-s-m-u-s-s-e-n. I live at 4701 Turnberry

5 Drive.

6 Thank you all for being here. I wanted to
7 point out that I submitted written testimony on
8 this that is in your packet and I am going to
9 elaborate on that. What I want to focus in on
10 tonight is your quasi-judicial role tonight and
11 what you are trying to decide in this appeal.
12 I want to encourage you to grant the appeal.

13 There are two key elements that you need
14 to focus on and unfortunately I think
15 Mr. McClure, Counselor Schneider, the East
16 Lawrence Neighborhood Association letter from
17 25 June and other commenters have made a fatal
18 error in their analysis of the state statute.

19 The state statute says that you have to
20 base your consideration on all relevant factors
21 that there is no feasible and prudent
22 alternative to the proposal. You have to focus
23 on the proposal that is before you tonight. It
24 does not say, the statute does not say that
25 there are no feasible or prudent alternatives,

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1 it's alternatives to the proposal.

2 So with that I would say that the
3 applicant has met that statutory requirement.
4 Focusing on the proposal, you don't look at
5 alternatives for the property owner or
6 alternatives for the city or alternatives for

7 the developer, you look at the proposal that is
8 before you; that's what the statute says.

9 This applicant has made numerous changes,
10 alterations, amendments, tweaks, concessions,
11 and through that they have been able to present
12 a project where there is no better, no more
13 sensible, no more realistic alternative than
14 the proposed project before you tonight.

15 The second part of your standard on which
16 you have to base your decision is a reasonable
17 man standard that says the program includes all
18 possible planning to minimize harm. When you
19 look at that you look at the design and
20 technical issues. They have taken steps to
21 address such things, and I'm not going to get
22 them all, but things like lighting impact,
23 traffic and parking impacts from the property,
24 the proposal, let's be real clear, traffic and
25 parking impacts from the proposal, noise

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1 impacts from the proposal, water drainage,
2 vandalism issues, the height, scale and mass of
3 the facility, they have proposed to reduce
4 artificially the height of this thing, I think
5 it is an unreasonable restriction that they
6 have agreed to but they've chosen to do that,
7 and by doing all of that they have done

8 everything they possibly can, all possible
9 planning to minimize harm on the surrounding
10 community and the neighbors.

11 Also I think you should look at what is
12 the relation of this project to the overall
13 community and the community-wide plan. I can't
14 think of a better transition from a residential
15 to a commercial zone than having this situation
16 where you go from a residential zone to a
17 commercial residential structure to a strictly
18 commercial zone in the downtown area. I think
19 it's great.

20 And then I think as part of that
21 evaluation you do look at economic issues. I
22 was shocked by the number of comments that I
23 read in the packet tonight, the public comments
24 that you received that suggested that making a
25 profit was a bad thing. There's nothing wrong

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1 with making a profit. At least four of you
2 commissioners up here are private business
3 owners and I would venture to say that all of
4 you have to make a profit so that you keep your
5 employees employed and your doors open. And
6 Commissioner Carter, if I was to come to you
7 for financial advice I darn sure would expect
8 you to give me advice that is going to make me
9 a profit. There's nothing wrong with making a

10 profit and I don't think it should be demonized
11 and I am shocked to see that there are so many
12 comments demonizing making a profit.

13 So with that tonight I want to get you to
14 focus on the two criteria that are here before
15 you, no feasible or prudent alternative to the
16 proposal, not just feasible or prudent
17 alternatives, it's to the proposal, that's what
18 the statute says, and I think the project has
19 met its requirements to minimize all possible
20 harm through the planning that they've gone
21 through, so thank you for your time tonight and
22 thank you for your service. I'd stand for any
23 questions.

24 MAYOR SCHUMM: Question?
25 Commissioner Carter.

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1 COMMISSIONER CARTER: Actually I guess
2 could we have staff comment on that
3 interpretation?

4 MAYOR SCHUMM: What if we wait until the
5 end and -- or do you want to ask it right now?

6 COMMISSIONER CARTER: Just -- that's fine.

7 MAYOR SCHUMM: I was going to, at the end
8 of the public comment I was going to ask any
9 staff person that we want to ask a question of
10 to come forward and we can ask questions at

11 that time. Thank you.

12 MR. RASMUSSEN: All right, thank you.

13 MAYOR SCHUMM: Any other questions for
14 this gentleman? Thank you.

15 MR. RASMUSSEN: Do I need to remain for
16 that portion of it?

17 MAYOR SCHUMM: I think it's probably going
18 to be a staff question.

19 MR. RASMUSSEN: Okay, thank you.

20 MAYOR SCHUMM: You're welcome to if you
21 like.

22 MR. RASMUSSEN: I don't know, I might.

23 MR. BROWN: Good evening, commissioners.

24 Dennis Brown, president of the Lawrence
25 Preservation Alliance, B-r-o-w-n. We stand by

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1 our written testimony for this hearing that we
2 delivered to City staff on June the 1st, and I
3 do have to make a correction as this is a legal
4 proceeding, I think on that letter I had
5 misdated it May 1st but it was June 1st.

6 This project proposal has changed enough
7 during the Historic Resources Commission
8 process as the applicant attempted to respond
9 to concerns brought by HRC, LPA and the
10 neighbors you may be able to make a finding
11 that all possible planning to mitigate damage
12 to the historic district has taken place but as

13 to the question central to this hearing, and I
14 will disagree with the interpretation with the
15 previous speaker, is there a feasible and
16 prudent alternative to this proposal, we have
17 stated from the beginning that as the site in
18 question is a vacant lot it is very likely that
19 a multitude of mixed use projects would be
20 possible here that would be profitable,
21 feasible, and would pass historic environs
22 review. In our written testimony we presented
23 six relevant factors for you to consider in
24 your deliberation on this matter and we do
25 believe there has been other testimony

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1 presented, a lot of testimony, with relevant
2 factors very specific to the question you are
3 being asked to resolve.

4 You are being asked to consider a totally
5 different question than the HRC considered.
6 The question for HRC was would the project as
7 proposed damage and encroach upon the listed
8 property and their determination was that it
9 would. Now the next question falls to you.
10 Given that the proposed project, if built,
11 would damage the listed property is there
12 anything else or multiple things that could be
13 built as an alternative that would meet current

14 zoning, pass historic review, contribute to the
15 community good, and be profitable to the
16 property owner? If a combination of pertinent,
17 relevant factors suggest to you that there are
18 one or more feasible likely alternatives, then
19 you need to make that finding that there are
20 feasible alternatives to the proposed project.

21 You are currently being asked to support a
22 development that itself is not feasible without
23 public assistance. This vacant lot needs a
24 project that generates tax revenue without
25 public assistance. Can you really make the

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1 determination that that outcome is not possible
2 here?

3 Much is also being made of the extra cost
4 generated for this project by underground
5 parking but I also want to emphasize the
6 rooftop restaurant and the swimming pool, maybe
7 not really needed at the corner of 900 New
8 Hampshire and certainly large cost additions to
9 the current project.

10 We believe that Town Peterson's
11 three-story study, the optional uses study
12 provided by Ron Schneider, and Kirk McClure's
13 study of alternatives deserves very careful
14 consideration by this Commission before you
15 make your determination. It may be that you

16 need to take this under advisement and spend a
17 week, as an appellate court would do, going
18 over all of the affidavits and relevant factors
19 before you really make this determination,
20 because it is so important, the process of
21 preservation law is so important. We
22 respectfully encourage you to diligently follow
23 the process provided by Kansas historic
24 preservation law regardless of any personal
25 opinion for or against you may have regarding

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1 this project. Thank you.

2 MAYOR SCHUMM: Questions? Thank you.

3 MR. HITCHCOCK: Good evening. I am Steve
4 Hitchcock, H-i-t-c-h-c-o-c-k, speaking on
5 behalf of Town Peterson. Town is a resident of
6 900 block of Rhode Island but currently he is a
7 resident of Brazil for several weeks so he
8 asked me to step in and present just a few of
9 his thoughts on the issue.

10 His take on a feasible and prudent
11 alternative at 900 New Hampshire comes from his
12 proximity to the project and he provided us
13 with four reasons not to approve the hotel
14 project. No. 1, the visual impact on a
15 residential neighborhood. It doesn't show up
16 real well but on the left is Town's front porch

17 and the roofline of 901 New Hampshire. One
18 advantage, 900 New Hampshire would block Town's
19 view of 901 New Hampshire but I'm not sure if
20 he considers that in the plus column.

21 As others have noted, office space is
22 available and retail space is available in
23 Lawrence at this time and in danger of being
24 perhaps overbuilt.

25 He is not convinced that the development

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1 will produce the quality jobs that Lawrence
2 would like to have, both in the construction
3 and then in the retail and services sector
4 afterward.

5 And compatibility with the east side
6 creative arts style of East Lawrence as it's
7 developed over the past few years, so those are
8 four factors that he considers to be kind of
9 mitigating against the project.

10 An alternative that he would propose that
11 is both feasible and prudent is grocery, market
12 oriented. Looking on the U.S.D.A. site and
13 their definition of food deserts Town was
14 surprised, as were several others of us, that
15 our picture of a food desert is usually an
16 urban area, a large urban metropolitan area,
17 but according to the U.S.D.A. Lawrence has
18 areas of food deserts, a low income tract,

19 census tract with less than ideal accessibility
20 to fresh produce and high quality grocery
21 services.

22 Now, if you look, Ninth and New Hampshire
23 is there in a yellow star and this would be
24 identified there. One of the stumbling blocks
25 of an urban lifestyle in Lawrence where you

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1 would choose to live without a car is your
2 ability to take care of basic tasks such as
3 food shopping without the use of a car.

4 This is, Town pointed out to me an earlier
5 proposal, he didn't have access to the later
6 proposals of the 900 New Hampshire building,
7 reducing it to three stories and turning it
8 into a 30,000 square foot building without the
9 need for an underground parking garage, a
10 surface lot in the available space on that lot
11 is his proposal here, with a variable use of
12 apartments, office space and a grocery store.

13 Now, the key, as Town pointed out, is the
14 income from the upper stories subsidizing the
15 cost of a grocery store which would meet the
16 needs of the urban core of Lawrence and he used
17 a residual approach. He's turned in a white
18 paper that goes into much detail that I won't
19 go into here but the key numbers he saw were an

20 overall lease rate of 10.50, his total
21 development costs, and these were using the
22 residual approach, using the numbers provided
23 by the developers, and so that is the feasible
24 nature of a grocery store project, and that's
25 the Town Peterson proposal, and I thank you for

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1 your attention.

2 MAYOR SCHUMM: I have a question, please.

3 MR. HITCHCOCK: Yes, sir.

4 MAYOR SCHUMM: In his proposal he
5 indicates that he's using \$133 per square foot
6 building cost --

7 MR. HITCHCOCK: Yes.

8 MAYOR SCHUMM: -- because that was what
9 the cost was for a 70,000 square foot building
10 across the street and yet he's only going to
11 build a 30,000 square foot building. Would
12 that number stand up for a smaller structure as
13 compared to a larger structure? Usually there
14 is an economy of scale, the larger you build
15 something the cheaper per square foot it gets.
16 So do you have any --

17 MR. HITCHCOCK: I wouldn't be able to
18 answer that specific question, sir.

19 MAYOR SCHUMM: Okay. I had read this and
20 I had a number of specific questions. It's
21 going to be a shame that nobody is going to be

22 able to answer them because we have admitted it
23 into the public record. One of the other
24 things that I note in here is that there is no
25 provision for property tax and so I don't know

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1 if he's talking about net leases or if he's
2 talking about a net-net or triple net, it's
3 hard to say.

4 MR. HITCHCOCK: Okay.

5 MAYOR SCHUMM: That's all right.

6 MR. HITCHCOCK: I'll try to get him to
7 address that.

8 MAYOR SCHUMM: Okay. Thank you very much.

9 MR. HITCHCOCK: Thank you.

10 MR. BOLICK: My name is Zak Bolick,
11 B-o-l-i-c-k.

12 MAYOR SCHUMM: Excuse me just a minute.
13 Let's take that slide down, please. Okay,
14 thank you. All right, Mr. Bolick.

15 MR. BOLICK: My name is Zak Bolick,
16 B-o-l-i-c-k. I am here tonight to publicly
17 pronounce my support for this project as
18 proposed and do ask that you approve the appeal
19 of the HRC this evening.

20 Much like an earlier speaker, I don't have
21 any money or vested interest in this project.
22 However, I am a homeowner, a father, a husband

23 and a devoted employee of a 60-year-old locally
24 owned and operated business here in Lawrence
25 and I do care about the health and prosperity

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1 of this city. I understand the concerns of the
2 neighbors and the East Lawrence Neighborhood
3 Association as a former homeowner on the Rhode
4 Island block but I disagree that 900 New
5 Hampshire will encroach upon the historic
6 environment that's present downtown. What I do
7 think 900 New Hampshire will do will support
8 the local downtown merchants. I think it will
9 bring people downtown and I think it will
10 provide an atmosphere of urban density and I
11 think this is what the city, what the heart of
12 our city needs.

13 I think one thing that everybody in this
14 room can agree upon is that we don't want
15 downtown to just survive but we need it to
16 thrive. We have to put the things in place
17 that bring people downtown. It has been argued
18 tonight and prior to tonight that downtown does
19 not need another hotel. However, I trust that
20 Marriott and the developers have done their due
21 diligence and they are still, thankfully,
22 willing to pour their investment dollars into
23 our downtown. I have not also seen opposition
24 from the downtown hoteliers themselves.

25 I believe 900 New Hampshire can serve as a

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1 nice transition from downtown to the most
2 immediate neighbors to the east, certainly more
3 so than the empty and unsightly lot that we
4 currently see in this downtown location.
5 Originally proposed was a taller structure. It
6 is clear that the development team has made
7 changes to complement the environment. A
8 smaller project than what is proposed this
9 evening is not financially feasible, as stated
10 by the City's contracted consultant, and I
11 believe that this is clear free market evidence
12 that there exists no feasible and prudent
13 alternative than the proposal which is 900 New
14 Hampshire as we see tonight. If there were why
15 haven't we seen development on this lot prior
16 to now? If this project is done right it can
17 be good for the arts community immediately to
18 the east and to the south of this project, it
19 can be good for downtown Lawrence and it can be
20 good for Lawrence as a whole.

21 In closing I would like to take this
22 moment to thank you for your servitude and your
23 leadership in our community and for stepping up
24 on nights like tonight and staying up late to
25 make the right decision. I implore you again,

1 please approve the appeal of the HRC this
2 evening and give 900 New Hampshire the
3 endorsement it needs to move forward. Thank
4 you.

5 MAYOR SCHUMM: Thank you. Any questions?

6

7 MR. BATEMAN: I'm Tim Bateman,
8 B-a-t-e-m-a-n. I live at 3013 Flint Drive.
9 I'm here to support the appeal. I believe that
10 no feasible and prudent alternative exists for
11 this particular spot. One of the main things I
12 base that on is how long that lot has been
13 vacant. That lot has been vacant for over a
14 decade and if there were lots of alternatives I
15 figure by now somebody would have figured it
16 out and developed that land.

17 Also, the developer has already
18 compromised on the height to help ameliorate
19 the concerns of the neighbors and I think he's
20 done an excellent job at that, and from the
21 City's consultants they hired this project is
22 already on the low edge of financial
23 feasibility so I think reducing the size or the
24 height of the building any more is not feasible
25 or prudent.

1 In addition, I would like to say this, I
2 believe this will benefit downtown greatly.
3 Like they said, the more foot traffic and
4 people in the downtown area, long term or short
5 term, will definitely help out the community
6 and make and help keep downtown vibrant. Thank
7 you.

8 MAYOR SCHUMM: Thank you. Next speaker.

9 MR. REXROAD: Good evening. Gary Rexroad,
10 R-e-x-r-o-a-d, 2824 Gill avenue.

11 Good evening, mayor and commissioners. I
12 am here today to support this project and ask
13 for a decision to overturn the HRC
14 determination regards to the Ninth and New
15 Hampshire project. While I believe the HRC
16 acted in good faith, I do respectfully disagree
17 with the decision that they have made and I
18 believe that this project, if it is allowed to
19 go forward, will be a positive attribute for
20 not just that area but for the neighbors on
21 both sides of that street and for Lawrence at
22 whole.

23 While I believe this is a -- my position
24 on this regards the HRC determination is to
25 look at the transition that they have designed,

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1 the work that's gone into this transition, and

2 I believe that to be a very good transition
3 from residential to commercial, and in fact,
4 it's in scope of the property's design as
5 evidenced by the zoning.

6 I also believe, it's my observation that
7 no prudent or feasible alternatives exist at
8 this time, as evidenced by a couple of things:
9 One, the number of years the lot has remained
10 empty and without development; the second
11 point, the degree and the depth of discussion
12 and compromise on all sides of this equation.
13 I think it is a good indication that the
14 process that we have in place works, that it's
15 helped bring this design to a state that meets
16 both the concerns that were expressed by the
17 neighbors, by the HRC, and also up to the edge
18 of feasibility for the developers.

19 The other point that suggests no other
20 feasible options exist is that the feasibility
21 study itself suggests that we are at a minimum
22 in terms of what financial returns are for a
23 property of this type.

24 And then last, the lack of other real
25 proposals on the table. We have heard tonight

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1 from a number of folks a lot of different ideas
2 that are there and some of those sound very
3 intriguing, some of them less so, but the fact

4 is there's only one proposal that's been
5 brought forward today, to date that's funded,
6 that's backed by developers with experience,
7 that's backed by a hotelier such as Marriott,
8 that's backed by an architect with a track
9 record of success and because of all those
10 factors I honestly believe that there is no
11 feasible, prudent alternative to the proposal
12 that they have today and I encourage you to
13 adopt it. Thank you.

14 MAYOR SCHUMM: Thank you. Next speaker,
15 please. Have you signed in, sir.

16 MR. FARMER: Jeremy Farmer. Yes.
17 F-a-r-m-e-r, 1135 Randall Road.

18 I just want to point out a couple of
19 things. First of all, my family has had a
20 home, two homes in East Lawrence, and they sold
21 the third one a few years ago, for the better
22 part of 50 years and I can say certainly that
23 the counsel for the neighborhood and members of
24 neighborhood does not certainly have a voice
25 for everyone in the neighborhood. Many folks

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1 in that community of residents are very much
2 for this project and what it felt like to me
3 was the gentleman who came up here muddied the
4 waters and then was talking to you like you

5 were a bunch of third graders and it reminded
6 me of a quote in Billy Madison that I just
7 wanted to share: Mr. Madison, what you have
8 said is one of the most insanely idiotic things
9 I've ever heard. At no point in your rambling,
10 incoherent response were you even close to
11 anything that could be considered a rational
12 thought.

13 And that's really, that is really kind of
14 the consensus of everybody is just up here
15 muddying the waters and I think we've lost
16 sight of the facts. And what are the facts of
17 this is that does a prudent and feasible
18 alternative exist to this proposal? The
19 current use of the corner, it's been vacant for
20 a significantly long time. It's not generating
21 any money. It's not generating any tax
22 revenue, and as a matter of fact many of the
23 same folks that are upset about this project
24 are the same folks that are upset that there
25 are no jobs in our community, and we have a

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1 developer who lives in our community who wants
2 to spend money in our community to improve the
3 economy of our community, to create jobs for
4 folks who don't have it in our community, as
5 many residents are traveling out of town
6 currently looking for employment, buying gas in

7 other counties, spending money for lunch and
8 dinner in other counties, and we have a
9 developer who wants to come here and to help
10 solve and provide solvency for some of those
11 issues, and I think, especially in relationship
12 to the feasible and prudent alternative, if
13 there will be one or if there has been one
14 there should have been something that would
15 have been brought up by this point. I think it
16 is significant to remember that.

17 I just wanted to speak very briefly to the
18 U.S.D.A. food deserts thing and the need for a
19 grocery store in there since I kind of work in
20 that arena. There are -- East Lawrence is a
21 food desert and for, if you don't know what it
22 is, it basically is somebody who lives within a
23 mile of a grocery store. But what we don't
24 need is a store to go in that particular arena
25 that provides access to expensive, nutritious

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1 foods, because a lot of folks in that area are
2 folks who are clients of ours and who certainly
3 could not afford really expensive foods in that
4 particular arena, so I think that, you know,
5 like in the 7,000 feet of retail space, I mean,
6 there could be a little market that could go in
7 there, you know, a little roadside, little

8 roadside market that could go in there that
9 could certainly fit within the scope of what
10 the developers have proposed, and I got an
11 e-mail just as this were going and I just
12 wanted to reiterate what Mr. Schneider said,
13 that it in fact does say that the local
14 political subdivision involved has determined,
15 after consideration of all relevant factors,
16 that no feasible and prudent alternative exists
17 to the proposed project.

18 Developers have taken prudent and
19 alternative actions at the request of
20 Commissioner Carter and the rest of you to make
21 sure this was done right and those feasible and
22 prudent alternatives up to this point, they've
23 done that to make sure that from right now
24 forward that there are no other feasible and
25 prudent alternatives for you.

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1 We need to separate I think emotion from
2 facts, and a lot of people in Lawrence have
3 skin in the game, lot of people in Lawrence are
4 very passionate about this, but I go back to
5 two things that I try to remember all the time:
6 No. 1, one we don't have to see eye to eye to
7 walk hand in hand; and No. 2, our competition
8 should not be each other, our competition
9 should be other communities that are vying for

10 the same jobs, vying for the same tax dollars,
11 vying for the same developers. Johnson County
12 would kill to have somebody come in and put in
13 a project like this and we are very fortunate
14 that we have people in this community that are
15 willing to sink money and dollars into this
16 community to create jobs for people that don't
17 have them.

18 And I just wanted to close with what I
19 closed in my e-mail to you, that I'm not
20 sitting in your seat but I'm cheering you on as
21 you make this decision. Roy Disney made a very
22 profound quote. He said: It's not hard to
23 make decisions when you know what your values
24 are. May you choose what matters tonight.

25 MAYOR SCHUMM: Thank you. Next, please.

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1 MR. FLANNERY: Joe Flannery,
2 F-l-a-n-n-e-r-y, 1316 Raintree Place. Lawrence
3 has known since the 1980s that if downtown is
4 to grow it has to be vertically. Any time we
5 can add infil development in the city core that
6 benefits the community as a whole. We need to
7 take advantage of adding residences and
8 services to our downtown while increasing our
9 tax base. This is an opportunity that we
10 should not let us pass by. I hope you support

11 this proposal. Thank you.

12 MAYOR SCHUMM: Thank you very much. Next
13 speaker. Next speaker, please.

14 MS. ALDERSON: I'm Betty Alderson, it's
15 A-l-d-e-r-s-o-n. I currently live at 1400
16 Lilac Lane. Lilac Lane, like the flower.

17 I have been sitting here wondering if I
18 should speak to this issue or not. It's not an
19 easy decision for any of you to have to make
20 and I am not going to pass judgment on what you
21 do or do not.

22 Several of my questions are, being a
23 little gray haired more so than some of the
24 prior speakers, we have just had one TIF
25 project that didn't go in that area, and I'm

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1 not critical of that kind of a project but that
2 particular project came in, as I recall, at
3 about the time there was a downturn in the
4 economy. There were structures on that lot
5 that were torn down for something that was
6 going to happen. Well, there wasn't any money
7 to make anything happen and we know that our
8 tax dollars had to pick up what didn't happen
9 in that 10,000, 10,000 block of, whatever it
10 was called, project.

11 I also know that repeatedly our city
12 commissioners have said one of their goals is

13 to protect our core neighborhoods. This will
14 damage the historic district on Rhode Island
15 Street; it can't help but do that. All the
16 mitigation possible isn't going to take away
17 all the noise from the patio that's on the back
18 of that development right directly across a
19 very narrow alley and that noise will continue
20 and it will impact that, and I know there are
21 some times we have to do things that are
22 detrimental to some people for the greater good
23 but there are also times when we used to talk
24 about the rights of minorities and we need to
25 be concerned about the people who are going to

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1 be taxed, because this project will need public
2 financing, and it is going to hit the people
3 who are the least able to pay for it under our,
4 some of our current taxing laws, and that also
5 is a consideration if there are other
6 alternatives that could be approached. There
7 may not be at this particular time in our
8 economy, I don't know, but thank you for
9 considering it. It's not easy and I do think
10 that there are these other things that may not
11 fall within the jurisdiction of what you have
12 to decide. Thank you.

13 MAYOR SCHUMM: Thank you very much. Next

14 speaker.

15 MS. HARRIS: Good evening. My name is
16 Katherine Harris, H-a-r-r-i-s. I live at 916
17 Rhode Island. Directly across the street from
18 me and through the houses I'll see what goes
19 on, so, you know, I understand that this is a
20 state law-guided process tonight where HRC has
21 already made their determination based on the
22 interpretation of state law and state statutes.
23 Tonight this Commission is looking at whether
24 feasible and prudent alternatives exist.

25 You have heard others tonight present

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1 ideas for sensible and reasonable alternatives.
2 Obviously development on that corner makes
3 sense if it respects the historic district it
4 abuts. Protection of -- and in fact, you know,
5 people are talking about economic drivers and
6 things like that. There's a lot of city
7 documents that can be read that show in fact
8 that protection of historic properties and
9 historic districts are recognized as economic
10 drivers for cities. Lawrence's own 2020 report
11 has a section on the benefits of preservation,
12 so this isn't just we're against any
13 development, we're wanting something that
14 really continues to drive the city but doesn't
15 disrupt this historic area.

16 While we may represent .1 percent of the
17 total size of the city, that is because
18 historically the historic part of town was
19 smaller. When there were, you know, 10,000
20 people they didn't have as many houses as there
21 are now, obviously. Historically development
22 in relation to small lot residential areas have
23 been small service businesses used by the
24 neighbors. I think that is one of the, one of
25 the threads you might have seen in many of the

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1 alternative ideas that have been presented this
2 evening, repeated desires for a fresh food
3 market, and not to be too crass but something I
4 hear people say all the time is "I wish there
5 was someplace just to get some toilet paper
6 near downtown or in our neighborhood without
7 having to drive across town."

8 So something that is really needed in the
9 area, obviously, would present a better
10 alternative. And certainly we, other speakers
11 have shown that there are lots of other
12 profitable and sustainable businesses that
13 could go in there. When you talk to the
14 neighborhood and you talk to the neighbors and
15 when you talk about the people who use the
16 services at downtown or near downtown on a

17 regular basis, because we're just a couple
18 blocks away, you hear very strong desires for a
19 pharmacy, day care center, which if the art
20 garden moved to the north end of the lot, then
21 the Salvation Army building could be used for a
22 very lovely day care, fresh food, small
23 business incubators, something that drives more
24 economic development, and obviously the arts.

25 The arts are a really big part of economic

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1 drivers in the city. I know you've seen recent
2 reports on Final Fridays and how many outside
3 people come to town for that one event a month,
4 bringing money into the city, and, you know, we
5 have this historic district, or this heritage
6 district that we worked very hard to procure
7 and not to have it go to another community in
8 Lawrence, that's at the Carnegie Hotel -- I
9 mean, I'm sorry, hotels on the mind; the
10 Carnegie Library and that's just a few blocks
11 from this lot, where obviously, because of the
12 discussion about possible archeological site
13 there, obviously a lot of this heritage
14 district history happened in that area,
15 something -- and that's, the goal is to have
16 the heritage district bring tourism dollars to
17 town, so there are so many alternatives for
18 what can go into that space.

19 And in fact, Commissioner Carter, earlier
20 when you asked about flag hotels not requiring
21 underground parking you in fact provided even
22 one more alternative to the proposed project
23 for that site.

24 So thank you very much for your service to
25 the city and for hanging out with us and

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1 putting up with us, but obviously I hope that
2 you find that there are prudent and feasible
3 alternatives for the site. Thank you.

4 MAYOR SCHUMM: Thank you. Other speakers?

5 Okay. As we so stated, we're going to
6 give the applicant time for rebuttal to any
7 information presented or any statements made,
8 after which I will return the favor to the
9 attorney for the property owners.

10 MR. WATKINS: Mayor and commissioners, the
11 hour is getting late. Many of my comments are
12 summarized in the memo I just handed you but I
13 do believe we need to cover some ground related
14 to some of the testimony regarding what the
15 standard is and other comments related to the
16 findings that you are to make tonight or at
17 some point.

18 Mr. Schneider states a standard and asks
19 for a literal reading of the statute and a

20 standard that is impossible to meet, but a list
21 of uses and a couple of pages of statistics are
22 not proposals for alternatives. They're lists.
23 They're ideas. And he said that he took issue
24 with one thing in the staff counsel's report
25 related to the standard here and that was about

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1 a sale issue but that doesn't seem to be at
2 issue here but what he didn't talk about, what
3 he didn't take issue with is what the staff
4 said the standard is.

5 This is paragraph 12 in Randall Larkin's
6 memo. As it relates to the Commission's no
7 feasible and prudent alternatives
8 determination, a relevant factor is something
9 more than a mere suggestion as to a possible
10 alternative. A proposed alternative is only a
11 relevant factor, which is what you are to
12 consider, if it includes sufficient factual
13 information that would support a conclusion
14 that such proposed alternative is not only
15 feasible but prudent. Has to be both. A
16 suggested alternative use lacking factual
17 support is not a relevant factor. It's
18 irrelevant and must be ignored by the
19 Commission in making its determination.

20 So what does make it relevant? Paragraph
21 13 says a suggested alternative use constitutes

22 a relevant factor if in the City Commission's
23 view the suggestion addresses technical, design
24 and economic issues related to the proposed
25 project as well as the project's relationship

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1 to any community-wide plan.

2 Now, so you are to determine if there is a
3 proposal in front of you that is a feasible and
4 prudent alternative other than the one that has
5 been presented by the applicant. Now, that, if
6 a suggested alternative isn't relevant the
7 applicant is not required to refute it.
8 However, I think we need to get into some
9 detail about what's been presented.

10 There were three proposals submitted to
11 you in writing. Mr. Ralston submitted a
12 proposal that had a nine-line pro forma. It
13 calculates that designing 34 percent more rooms
14 per floor in an all-apartment building
15 utilizing the whole lot will generate some
16 \$400,000 a year, but Mr. Ralston's proposal
17 includes no cost for the lot, his analysis of
18 this, no operating expenses, no outside windows
19 in some of the first floor units in violation
20 of City Code, no building value or loan to
21 value analysis, no courtyard for buffer to the
22 historic area, no off-street parking, and loan

23 interest at four percent. This is one that you
24 don't have to rebut because it's not relevant
25 and it's not credible, let alone feasible or

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1 prudent.

2 So the next proposal is Mr. Peterson's
3 alternative proposal, calls for a 10,000 square
4 foot grocery on the ground floor, 10,000 square
5 feet of office space on the second floor, and
6 10,000 feet of apartments on the third floor.
7 It calls for no parking and provides no design
8 documentation showing a lot or building layout,
9 delivery, off-street parking, perhaps 14 to 22
10 on-site parking spaces. No common area is
11 included in the calculations of rent, which
12 assumes that all 10,000 feet on each floor
13 constitutes leasable space. Now this
14 definitely impacts when you take 25 percent of
15 the leasable proposed space out of your
16 calculation on profit or feasibility, it skews
17 that calculation.

18 There is no assessment of the impact of
19 tenant finish on office space. One of the --
20 that practically can double the cost of a lease
21 space, a new space. There is an affidavit
22 submitted in the materials tonight from
23 commercial realtor Allison Moore that details
24 that there's 115,000 square feet of office

25 space available for lease in the downtown area.

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1 Most of this, of course, is not new, so it
2 doesn't necessarily have a tenant finish
3 component to it. It could if you improved it.
4 But the fact of the matter is that there is a
5 lot of space available for less than what it
6 would cost for office space. Her affidavit
7 goes on to talk about the fact that getting
8 financing for speculative office space is
9 difficult, if not impossible, so you need large
10 users ready to occupy space if you're going to
11 rent office space. That was the case at 901
12 where First Management was ready to lease eight
13 or 9,000 square feet. She's not aware of any
14 users in the marketplace that are looking for
15 5,000 or more square feet.

16 There is no valuation calculation to
17 determine the loan to value amount and the low
18 debt coverage ratios aren't really market rate,
19 1 to 1, 1.1 to 1, it's usually 1.25 to 1, and
20 that's also included in both Bill Fleming's
21 affidavit to you and Allison Moore's. Again,
22 there is no evidence to support a market demand
23 or financing availability for 10,000 square
24 feet of speculative office space. All those
25 factors I believe indicate that that proposal

1 does not address technical, design or economic
2 issues that are required to become a relevant
3 factor.

4 Third proposal is Mr. McClure's for a
5 building similar to that proposed by Peterson
6 but with retail and office development, no
7 apartments. It used a lot of the figures from
8 the applicant's proposal and he states as a
9 given that his proposal is economically
10 feasible. Conclusion of economic feasibility
11 is not a given for this proposed office space.
12 The proposal has no design details providing
13 anything regarding parking, deliveries, site
14 layout, any proposed mitigating measures. No
15 expenses are included for apartment operations
16 in calculating how much you're going to make on
17 this. No building valuation calculation is
18 provided and no analysis of tenant finish costs
19 and its impact on marketability, et cetera,
20 just like in the other one, so this proposal
21 has significant gaps in presenting and
22 analyzing design and technical and economic
23 issues.

24 Now, who's going to build 30 or 45,000
25 square feet of building downtown and not

1 provide parking? Better question is who's
2 going to rent it? What tenant wants a place
3 with no parking? What office wants a place
4 with no parking?

5 When you get into the tax issues, the
6 taxes paid by this project support parking that
7 support a project. If there's no project
8 there's no taxes. These taxes, by the way,
9 will go help pay for an existing TIF project
10 across the street that the City's supporting
11 largely now for public parking. This will
12 provide additional support for that. Without a
13 project you don't have anything there in terms
14 of supporting the payments for it.

15 There's no taxpayer money from others that
16 goes into this project. The taxes that are
17 generated to pay for the TIF come out of the
18 project and the public's not at risk. That was
19 in the testimony from Springsted earlier.

20 So the role is to determine if the
21 alternative proposals you have heard are
22 feasible and prudent using the relevant
23 factors, and the relevant factors are technical
24 and design and economic issues, of which you
25 see, and I think the testimony tonight

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1 supports, are complex and multiple and I don't

2 think any of these proposals you have heard
3 tonight address any of those.

4 This is not a rehab project that was
5 talked about by Mr. Schneider, it's not a
6 restoration, it's a vacant place that would be
7 new space.

8 Rough calculations are not relevant
9 factors. Eighty percent financing is not what
10 the market is right now, it's 75 percent,
11 25 percent equity. All these proposals talk
12 about 80 percent financing; again, not
13 economically feasible, so you do not have a
14 proposal in front of you tonight that meets the
15 relevant factors for being a feasible and
16 prudent alternative to what is on the table
17 tonight.

18 We have people here who could answer
19 questions. Mr. Fleming is here, who can answer
20 questions about his affidavit regarding the
21 financial calculations, market issues; Chuck
22 Mackey is here, who can answer questions about
23 his affidavit regarding hotel space, and Mike
24 Treanor, and Mike and I are also available to
25 answer any questions you might have.

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1 MAYOR SCHUMM: Complete? Any questions
2 for the applicant? Meaning any person of the
3 applicant team. Thank you very much.

4 Mr. Schneider.

5 MR. SCHNEIDER: Thank you, Mayor Schumm
6 and commissioners.

7 Commissioner Dever, I fumbled around
8 trying to find the answer to your question
9 about when that staff memo was given and I can
10 give that information to you. That is a memo
11 to David Corliss from Planning staff dated
12 June 18th, 2012, regarding the consideration
13 for an April 24th meeting, and I have the
14 entire memorandum, if you want that I can
15 submit that, but that is the date of it, and I
16 think it is already in the record.

17 In response to Mr. Watkins' statements, I
18 agree with his assessment and I want to
19 emphasize that, again, that no feasible and
20 prudent alternatives determination must be
21 based upon a relevant factor, which is
22 something more than a mere suggestion as to a
23 possible alternative. We are in agreement on
24 that. City counsel is in agreement on it.

25 A proposed alternative is only a relevant

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1 factor if it includes sufficient factual
2 information that would support a conclusion
3 that such proposed alternative is not only
4 feasible but prudent. A suggested alternative

5 use lacking factual support is not a relevant
6 factor and is irrelevant.

7 The case law in Kansas also recognized
8 that individuals or opponents to a proposed
9 project do not have the resources that most
10 developers have. The case law in Kansas states
11 specifically that the sophistication and scope
12 and depth of such analysis should not be on the
13 level that we have seen, for instance, from
14 Springsted, truly accomplished professional
15 financial consultants who have resources that
16 it is not expected the individuals to have.

17 I suggest to you that alternatives have
18 been presented that are more than sufficient
19 and are in fact relevant for your
20 consideration. Most importantly, the case law
21 states, and as your own counsel identified in
22 No. 6 paragraph of his memorandum, the burden
23 of establishing that there is no feasible and
24 prudent alternative to the proposal and that
25 the program includes all possible planning to

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1 minimize harm to such historic property
2 resulting from said use is borne by the
3 proponent of the project. It is borne by the
4 applicants here.

5 The only effort that we have that is on
6 part of the record -- not on part of the record

7 but is part of the record is in fact the
8 Springsted evaluation of a three-story
9 building, as I understand it, that is composed
10 of apartments and one floor of retail. There
11 is not, and as I stated early, it does not
12 address the alternatives that have been placed
13 upon the proponent to show that a smaller
14 project, more so a project with no parking,
15 underground garage, and alternative uses is
16 feasible and prudent. I don't think they have
17 met their burden.

18 I know you have a rough job here. I know
19 this is a project that many of you like. I
20 know this is a project that we've heard some
21 friends of mine support, people that we
22 generally agree upon on most things. I remind
23 you, though, you have a very specific limited
24 task here. It is a task and a result you may
25 not like but you are bound by law to consider,

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1 one, is there a feasible and prudent
2 alternative to the project? Now there has been
3 a suggestion by a gentleman, and I regret I
4 forget his name, I know he's been on the
5 Planning Commission and he's a well studied
6 person of zoning uses, there is a suggestion by
7 him that you should only look for alternatives,

8 feasible and prudent alternatives to the
9 project as presented for a hotel. It is my
10 understanding he is suggesting and arguing that
11 the case law says you only and must look at the
12 hotel, at the project as a hotel and are there
13 any feasible and prudent alternatives for
14 development of a hotel. If you look at the
15 case law, and there are three or four cases and
16 they have been identified by legal counsel for
17 the City, that's not what it says. It's
18 alternatives to the proposal.

19 If you looked at it otherwise someone
20 could come up with a project, it could be
21 determined to be adverse and harmful to the
22 historic properties but given the project that
23 they want to do, the single project that they
24 want to do there would be no other alternatives
25 so it must be approved, so logically it just

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1 doesn't work. This is a classic example where
2 that kind of analysis of feasible and prudent
3 doesn't work because there's got to be,
4 according to the hotel owners, the name of the
5 hotel, they want underground parking and they
6 want off-street parking, they are determining
7 the size of the units, they are determining the
8 number of the units and they are determining
9 the size of the lobby, so for them there is no

10 other alternatives. They have no feasible and
11 prudent alternatives except to do some
12 attention to the outside and cutting some
13 things down.

14 I believe that you have a challenge in
15 front of you. I know it won't be easy but I
16 believe that the law says under the
17 circumstances it just isn't reasonable to
18 conclude there are no feasible and prudent
19 alternatives other than this hotel as presented
20 and I think the evidence has been presented and
21 I think the applicant has not met their burden.

22 I would be happy to answer any questions.

23 COMMISSIONER AMYX: Mr. Schneider, in the
24 information that you provided for us that
25 pertains to the law and it says that there is

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1 no feasible and prudent alternative to the
2 proposal and that the program includes all
3 possible planning to minimize harm, then on
4 another sheet of paper that you provided to us
5 it talks about the program means the proposed
6 project, --

7 MR. SCHNEIDER: Yes.

8 COMMISSIONER AMYX: -- and this is as
9 defined by Allen, Allen Realty, Incorporated,
10 v. City of Lawrence.

11 MR. SCHNEIDER: The first document you
12 read was the statute itself, wasn't it?

13 COMMISSIONER AMYX: Right, correct. But
14 this piece of paper here, you provide, the case
15 law you provided to us talks about the program
16 and the program and the proposal, aren't they
17 one and the same?

18 MR. SCHNEIDER: They're essentially one
19 and the same, yeah. I don't know why the
20 statute was drafted that way but the Allen case
21 clarifies and subsequent cases clarify, so
22 they're saying if you find that there are no
23 feasible and prudent alternatives to the
24 proposed project you must find that the
25 proposed project or program considers all

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1 possible opportunities to minimize harm, so in
2 this situation if you were to find that there
3 are no feasible and prudent alternatives to the
4 hotel project you must then determine, No. 2,
5 that all possible planning has been considered
6 to minimize and reduce harm to the historic
7 properties or the historic neighborhood. Does
8 that make sense, Mr. Amyx?

9 COMMISSIONER AMYX: It does. Thank you.

10 MAYOR SCHUMM: Further questions?

11 Thank you very much.

12 MR. SCHNEIDER: Thank you very much.

13 MAYOR SCHUMM: Would any of the
14 commissioners like to ask our legal counsel any
15 questions or clarifications from what we've
16 heard tonight?
17 COMMISSIONER CARTER: I would, couple.
18 MAYOR SCHUMM: Wait a minute. Is this for
19 our legal counsel or is this --
20 COMMISSIONER CARTER: Yes.
21 MAYOR SCHUMM: Wait until he gets up here.
22 THE REPORTER: Speak into the mic, please.
23 COMMISSIONER CARTER: Mine is turned down
24 pretty low. I'm in it.
25 COMMISSIONER CROMWELL: We don't have very

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1 good audiovisual.
2 THE SPEAKER: Yeah, we have a low budget.
3 COMMISSIONER CARTER: Okay.
4 MAYOR SCHUMM: Put it in the TIF.
5 (Laughter)
6 COMMISSIONER CARTER: You could weigh in,
7 if you could weigh in on that question of
8 alternatives to the proposal or all
9 alternatives, Mr. Rasmussen's point earlier
10 tonight.
11 MR. LARKIN: Yes, I understand what he
12 said after Mr. Schneider kind of explained it
13 in his. A proposed alternative can only be

14 considered by you if it's a relevant factor so
15 if a proposal has sufficient support, factual
16 support that could establish that it could go
17 on that property, then it's a relevant factor
18 that could be considered and then you can
19 consider and weigh the options at that point,
20 so it is not limited to the proposed hotel per
21 se, there could be other uses that might fit
22 under the zoning category, for example, but
23 those are open for consideration.

24 COMMISSIONER CARTER: Okay. I've actually
25 got three.

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1 COMMISSIONER DEVER: Can I follow up on a
2 question?

3 MAYOR SCHUMM: Let's keep going on this
4 question. I'll let you go next, then I've
5 got --

6 COMMISSIONER DEVER: So the narrow
7 interpretation by Mr. Rasmussen isn't
8 necessarily wrong, it is just it can be a wider
9 interpretation?

10 MR. LARKIN: It can be wider than that,
11 right. I didn't want to --

12 COMMISSIONER DEVER: Not narrowing our
13 scope, as he inferred, but it could be one way
14 to evaluate the proposal, which is what he did
15 state that it may be incorrect for us to

16 consider other but -- because I wrote some of
17 that down and make sure I understand that.

18 MR. LARKIN: Right, and I think the case
19 law backs it up. There's some quot -- there's
20 no case law exactly on that point --

21 COMMISSIONER DEVER: Right.

22 MR. LARKIN: -- but there are a couple
23 cases that talk about a suggested alternative
24 use, which suggests that they're talking about
25 other things other than, you know, a specific

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1 hotel or a specific grocery store or specific
2 whatever, so --

3 COMMISSIONER DEVER: It could be -- sorry.
4 But is there any specific case law that
5 narrows, that defines or narrows this question
6 in such a way that it would be wrong for us to
7 interpret this definition using that
8 interpretation?

9 MR. LARKIN: There's nothing that narrows
10 it down to that degree, no.

11 COMMISSIONER DEVER: I think I got that
12 answer, I'm not sure. You go ahead.

13 MAYOR SCHUMM: In your initial explanation
14 you used your hands as like a weighing scale,
15 you said, yes, if there's, if one of the
16 proposals met the test of the information that

17 is required, in other words, it looks like a
18 valid alternative of a business model or a
19 business opportunity that could be viable, then
20 you could weigh it one against the other, so we
21 have the right to deliberate to prefer based on
22 our judgment which, which model would be the
23 most appropriate?

24 MR. LARKIN: Right. You are to consider
25 all the relevant factors and based upon the

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1 credible evidence that's presented here you can
2 make a decision as to whether or not there is
3 any feasible or prudent alternative and whether
4 all harm -- all planning has been done to
5 mitigate the harm, yes. That's your job
6 sitting in the quasi-judicial function is to
7 look at the evidence and then apply the law to
8 it and make a decision.

9 MAYOR SCHUMM: And because there's been a
10 lot of testimony tonight as to what we, what we
11 should consider and what we shouldn't consider
12 and in this case you consider this, in this
13 case you consider something else, so I just
14 wanted to clarify that we have those options.

15 Commissioner.

16 COMMISSIONER CARTER: Yeah, I may be
17 asking the same thing again yet another way but
18 just want to -- Mr. Schneider had, you know,

19 early in his presentation mentioned how very
20 obvious it would be that there are
21 alternatives, prudent, feasible alternatives,
22 but my understanding from what I've read is
23 that we actually need to be presented with what
24 we deem to be a prudent, feasible alternative,
25 that means could be funded, it means all the

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1 factors there, it's not, it's not -- in other
2 words, it's what's presented to us, not what's
3 on the approved list of uses or imagined, it's
4 we need to actually be presented with a
5 prudent, feasible alternative, no?

6 MR. LARKIN: Correct, and I think the
7 Allen Realty case answers that question. A
8 relevant factor is something more than a mere
9 suggestion as to a possible alternative, so it
10 can't be something theoretical, it has to be
11 something that has some evidence to support it.

12 COMMISSIONER CARTER: Okay. And then one
13 last one, unless there's follow-up on that one.
14 In your, trying to remember what the number is
15 here but in what you gave us earlier here when
16 it does not involve the destruction of historic
17 property it says, in quotes, that the courts do
18 not construe the, quote, no feasible and
19 prudent alternative as tightly. Can you help

20 elaborate on what not construing it as tightly
21 actually means?

22 MR. LARKIN: This statute I think was
23 originally written and it was aimed at
24 properties, historic properties that were going
25 to be demolished so the no feasible and prudent

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1 standard makes sense to some degree when you
2 talk about the demolition of a structure. We
3 have a historic property; is there anything
4 else that we can do to save this property?

5 It's kind of been expanded, it may have
6 always been intended this way, but in this type
7 of situation. In that case, that was the
8 Reiter case out of the City of Beloit and you
9 had a historic structure and it bordered a main
10 street in Beloit and there was a vacant lot
11 next to it on the main street and Casey's
12 General Store came in to put in a property and
13 eventually that was approved and that language
14 comes from that case. You know, I don't know
15 exactly the details, I don't know the arguments
16 that were made, but the court said in
17 determining whether or not there was any
18 feasible or prudent alternative to the Casey's
19 General Store because it did not involve
20 destruction to the property they weren't going
21 to construe it as narrowly or read that so

22 tightly.

23 THE SPEAKER: That's a big deal.

24 MAYOR SCHUMM: Further questions?

25 COMMISSIONER AMYX: So, Randy, as we begin

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1 our deliberations and look at the stack of
2 paper that we have in front of us the question
3 that I would have is when it talks about, you
4 know, taking the hard look at all the relevant
5 factors is, okay, based on a comment or
6 question Mr. Carter just asked about we were to
7 take all the information from the public
8 hearing tonight and make a determination of
9 whether or not a feasible and prudent
10 alternative does in fact exist after all the
11 comment that we have received, should we make
12 that decision first or should we list all the
13 relevant factors as we see them at this point,
14 have that hard look at what we consider to be
15 all the relevant factors? What is the order,
16 what is the process here, I guess, where we go?

17 MR. LARKIN: Consider the evidence,
18 determine what you believe is a relevant
19 factor, and it might be, you know, what's
20 relevant, the relevant factors, and then from
21 those relevant factors, the weighing of the
22 evidence, like I said, to determine, take a

23 good hard look at it, and I think really this
24 may go to what Commissioner Carter was talking
25 about was, you know, when they don't look at it

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1 so tightly what they're really talking about is
2 they want the City Commission to take, look at
3 the evidence and make a decision based on that
4 evidence, and that's what they mean by a good
5 hard look and that's probably what they mean by
6 not construing it so tightly is they want the
7 common sense to rule.

8 MAYOR SCHUMM: Further questions?

9 COMMISSIONER DEVER: Yeah, and I think
10 before I let you go, part of what I'm having
11 trouble with is when you apply -- people like
12 to throw around reasonable and prudent
13 alternative and cite it out of content but
14 removing the modifier of "the project" or "the
15 program" from the language changes it
16 100 percent, in my book, because basically
17 removing that word "project" from the use, and
18 what's happened a lot tonight and happens a lot
19 when I talk to people, this is -- we're not
20 talking about demolishing a historical
21 structure and I think that's kind of what I was
22 reading into the case law that I read was
23 they're talking about projects of a magnitude
24 of either demolishing or adding onto or

25 altering a historic structure, a project or a

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1 program, and less about building in an area
2 that might be relative or related to historical
3 environs, so for me trying to, you know, figure
4 out what the project means, does it mean any
5 possible project? Does it mean any alternative
6 hotel? Does it mean any alternative commercial
7 land use?

8 You know, for me this is what's difficult
9 because I thought the language was targeted
10 towards the act of altering a historic project
11 or property and the act of impacting that
12 historical structure and now we're applying it
13 to a vacant piece of land and its ability to
14 render any project a reality and I'm having a
15 hard time understanding how you can narrowly or
16 broadly interpret that.

17 MR. LARKIN: The project that appears in
18 the statute, what they're talking about is the
19 proposed project and then whether or not there
20 is a feasible and prudent alternative to that
21 project is what you are deciding, so you do --

22 COMMISSIONER DEVER: But the project is
23 often times an existing structure that is
24 alternative to --

25 MR. LARKIN: Correct.

1 COMMISSIONER DEVER: -- fixing up an old
2 house, --

3 MR. LARKIN: Project may be --

4 COMMISSIONER DEVER: -- an alternative to
5 tearing down a building --

6 MR. LARKIN: -- an addition to a -- excuse
7 me.

8 COMMISSIONER DEVER: So that's what I'm
9 trying to wrap my arms around, because you can
10 throw all sorts of projects at us but the
11 question is is there case law that helps this
12 narrow us down, because I couldn't find
13 anything that makes this, the term "project"
14 relevant to this case and this situation.

15 MR. LARKIN: There is the case involving
16 the Casey's General Store, that's the only one
17 that's similar to this. The other ones involve
18 either demolition --

19 COMMISSIONER DEVER: Exactly.

20 MR. LARKIN: -- of the church down here on
21 11th and New Hampshire, there is the case at
22 Bethany Place in Topeka that had to do with
23 maybe taking a little bit of the property and
24 adding a parking lot, which may be relevant to
25 this, maybe not, but for the purposes of what

1 we are doing here tonight, how, in our opinion
2 how we define that statute as the project is
3 what is being proposed by the proponent and the
4 City Commission has to determine whether or not
5 there is any feasible, prudent alternative to
6 that, that project, whether it has been planned
7 to minimize harm to the protected neighborhood.

8 MAYOR SCHUMM: Other questions? Thank
9 you.

10 I've got a question for the Planning
11 Director. Can you cite the number of plans or
12 documents that recognize some kind of density
13 or some kind of project that ought to be or is
14 recommended to be taking place at this corner?
15 Start with the Horizon 2020, is there anything?

16 MR. McCULLOUGH: There's Horizon 2020,
17 mayor. The one we think is appropriate and
18 relevant in this case was outlined in your
19 staff report, find it, if I can, the Downtown
20 Urban Design Concept Plan, which has been
21 incorporated into the Downtown Design
22 Guidelines, which essentially speaks to how we
23 transition from commercial district to the
24 flanking residential district. But certainly
25 Horizon 2020 speaks to downtown as the

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1 entertainment and historic core of the city as

2 well, I mean, a commercial core of the city.

3 MAYOR SCHUMM: Okay. And then if my
4 memory serves me correctly, which doesn't do as
5 well as it used to do, but that project
6 originally was I think called Project 2000 and
7 so it started earlier than that, it started
8 probably a couple years ahead of that, and was
9 that land vacant for that length of, period of
10 time prior to 2000 or is it about 2000? Do you
11 know that?

12 COMMISSIONER DEVER: I can answer that
13 question, yeah. I looked into it and the site
14 has been vacant for almost 30 years, either as
15 a parking lot, there has been a structure on
16 the property, it was a historical gas station
17 on the northeastern part of that parcel, but
18 generally speaking it has been a parking lot
19 since at least 1981, for, the majority of the
20 property has been a parking lot or -- and that
21 small structure at the northeast, and then it
22 was cleared in like '99 from, based on aerial
23 photography that I looked at.

24 MAYOR SCHUMM: Okay. So it has been
25 without a use --

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1 COMMISSIONER DEVER: More than --

2 MAYOR SCHUMM: -- since '99?

3 COMMISSIONER DEVER: Yes, from what I can

4 tell.

5 MAYOR SCHUMM: And prior to that it had a
6 minimal use?

7 COMMISSIONER DEVER: Minimal. It was
8 mostly, 75 percent parking lot.

9 MAYOR SCHUMM: Okay.

10 COMMISSIONER AMYX: There was a parking
11 lot to the north side of where the Arts Center
12 stands, there was a house that was just to the
13 north of it and then the gas station, then
14 there was the parking lot, the larger parking
15 lot that was built north of where the smaller
16 parking lot was next to the Arts Center as they
17 expanded that, so yeah, there's a lot of vacant
18 through there.

19 MAYOR SCHUMM: Okay. Any other questions
20 for any member of staff?

21 Okay. Start the deliberation here. So
22 first of all, we've got to decide what are the
23 relevant factors in this case, and I will start
24 out by saying that the questions I just asked
25 the staff ought to be considered as relevant

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1 factors, number one, that there's planning
2 documentation that indicates there ought to be
3 something substantial at this location and it
4 ought to be a transitioning kind of option for

5 downtown into the neighborhoods, so I think we
6 have at least two planning documents that we've
7 cited, that were cited in terms of being a
8 relevant factor.

9 The next relevant factor I would suggest
10 is the other question I just asked about how
11 long it's been vacant and it's been vacant for,
12 according to Commissioner Dever, since '99 and
13 then had a minimal use prior to that for
14 several years so I think that is also a
15 relevant factor, so I'd ask that you consider
16 those two statements as the beginning of
17 generating the relevant factor list.

18 I'd be open to any other suggestions you
19 might have.

20 COMMISSIONER CARTER: Well, I had a couple
21 on here that, zoning/uses of nearby properties.
22 I understand it's transitional from the
23 neighborhood to the left but, you know, across
24 the street with 901, I mean up and down New
25 Hampshire this is certainly a compatible use

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1 with downtown zoning.

2 The detriment to nearby property, hearing
3 those arguments, I guess I'm looking at some
4 other detriments to some of the proposals. I
5 see the underground parking, you know, given
6 that the zoning is there for this type of

7 project, look at this particular project and
8 the, the traffic and other issues that are
9 dealt with with underground parking I think
10 are, do a lot to offset that detriment to the
11 nearby properties. I mean, if it was office
12 use or a hotel built without a parking lot I
13 don't even know if I could support that but,
14 downtown.

15 THE REPORTER: Talk a little louder for
16 me.

17 COMMISSIONER CARTER: All right, I'm just
18 going to talk to you, I don't need the mic.

19 (Laughter)

20 Right in her eyes. What else was the
21 other? Staff recommendation was one of the
22 relevant factors as well, take that into
23 account.

24 Is there a gain to the public by denying
25 this? There's another one that stood out to me

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1 and I'm not, I'm not seeing that at this point,
2 the public at large.

3 MAYOR SCHUMM: You're not saying that or
4 you are saying that?

5 COMMISSIONER CARTER: I'm not seeing a
6 gain to the public, --

7 MAYOR SCHUMM: By denying it?

8 COMMISSIONER CARTER: -- overall Lawrence,
9 by denying this, yes.

10 MAYOR SCHUMM: Oh, okay.

11 COMMISSIONER CARTER: Those are the others
12 I would add to that list.

13 MAYOR SCHUMM: Can I ask you a question of
14 probably your first statement there.

15 COMMISSIONER CARTER: Yes.

16 MAYOR SCHUMM: Relative to the parking,
17 there has been issue this evening that says the
18 parking adds cost to the structure, therefore
19 the structure is, the cost of the structure is
20 so large that it, it must be a larger structure
21 to support the economics of it but if you don't
22 have, I guess a relevant factor in my mind is
23 the fact that if you don't have, if you don't
24 have supporting parking in a number of these
25 new facilities you're going to overburden the

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1 parking system at some point in the future in
2 terms of how much parking is available, so
3 while it does increase the cost of the overall
4 structure, it's parking that is needed in order
5 to support this development so it's kind of a
6 circular argument so I really do believe the
7 fact that these, this project is going to add
8 parking to the system, it's adding spaces that
9 are going to get used as opposed to something

10 on the street or even something on Rhode Island
11 Street if the project were, if a project were
12 to come to fruition so I think that the very
13 fact that there is parking included in the
14 project is a relevant factor in terms of
15 supporting the overall downtown and the
16 project, so, I mean, you know, I know we've
17 kind of heard the negative of that but I
18 believe that it's, it's very important to
19 consider. I know you started on the parking
20 and I didn't quite understand.

21 COMMISSIONER CARTER: Well, you said it
22 better. I was struggling with it. What I was
23 trying to say was really exactly that, that as
24 far as a detriment to nearby properties because
25 this parking has been dealt with underground it

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1 really mitigates the issues. I'm not sure I'd
2 really be supportive of a significant
3 development there, even though the plans call
4 for it, if it didn't have its own parking, just
5 as you just said actually. I mean, you don't
6 want to exacerbate the problem with parking
7 downtown.

8 MAYOR SCHUMM: Because the speakers, I
9 don't know which one stated it but it's true,
10 you don't -- this lot, zoned lot does not

11 require any off-street parking and that's the
12 way a lot of downtown is zoned but if you
13 overburden what's already, what's already
14 there, then you create a negative to it so I
15 look at the underground parking as a
16 positive --

17 COMMISSIONER CARTER: Right.

18 MAYOR SCHUMM: -- relevant factor to be
19 considered in this case.

20 Aron.

21 COMMISSIONER CROMWELL: We're talking
22 about relevant factors between, as we compare
23 the project we have in front of us to any
24 feasible and prudent alternatives that we
25 judge, that is the extent of the relevant

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1 factors that we are discussing here; right?

2 THE SPEAKER: Yes.

3 COMMISSIONER CROMWELL: Okay. Yes,
4 parking is obviously a relevant factor. The
5 alternatives that we have don't address the
6 parking needs that we have downtown and so that
7 is a critical relevant factor.

8 I mean, other relevant factors I, you
9 know, when we compare these other alternatives
10 to the ones that we have include, you know, the
11 ability of, you know, downtown to accommodate
12 what in some cases here is 40,000 square feet

13 of additional office space right now, it's
14 just, I don't know that that, the capability is
15 there. I haven't seen any evidence of that.
16 In fact, we have some, we have received some
17 evidence that would suggest that we can't so I
18 think that is a relevant factor.

19 When we look at the possibilities of a
20 grocery store that further gets at the parking
21 issue and, you know, no matter what we're
22 talking about, hundreds of people in all of
23 these proposals, these alternative proposals we
24 have at least a hundred additional people
25 downtown. Without adequate parking it's not

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1 going to work.

2 There's no way that you could possibly
3 want to lease a space without adequate parking.
4 You can't be at a grocery store -- we've had
5 this issue numerous times now when we've looked
6 at grocery stores in downtown locations. There
7 is not enough parking. You have to have a
8 considerable amount of parking to handle a
9 grocery store. Although a grocery store is,
10 you know, a good idea I don't know that we've
11 had any grocery stores who are, who are
12 chomping at the bit to come downtown. We've
13 asked numerous times, we've encouraged, and in

14 fact I've looked at a report before that
15 suggests that this is not a good place for a
16 grocery store.

17 So some of these things I think are
18 really, I appreciate the efforts for the,
19 couple of folks have gone through to present to
20 us some alternatives to what we have. With the
21 extent of all we have heard and all of the
22 public input on this particular issue there's
23 only a couple of alternatives that have come
24 forward with any level of detail that I think
25 that we can expect to consider and those are

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1 the handful that we have here and that's it.

2 You know, the fact that it has sat for so
3 long, you know, I don't know that there's, I
4 don't that there's a lot of additional relevant
5 factors other than looking at, comparing the
6 economic analysis that we had prepared for us
7 by professionals today, you know, for the
8 particular site at three stories versus the
9 four plus that we had, you know, that they did
10 the comparison so there is a relevant, that
11 document I guess we have to -- do we have to
12 state that's a relevant factor?

13 COMMISSIONER DEVER: Yes.

14 COMMISSIONER CROMWELL: Is that -- I mean,
15 we really have to state all of these various,

16 everything that --

17 COMMISSIONER DEVER: Yes, yes.

18 MAYOR SCHUMM: Yes.

19 COMMISSIONER CROMWELL: Everything that's
20 in the staff report is a relevant factor, you
21 know.

22 COMMISSIONER AMYX: Well, they're possible
23 factors, I mean they're just possible factors.
24 One of the questions that I, I could have, if I
25 can jump in, is do the economic issues and the

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1 public incentives of, and comparing those, the
2 project that we have before us versus
3 Mr. Peterson's project that did not have a
4 public incentive requirement to it, is that a
5 relevant factor? Is that -- does that make
6 that project as an alternative or at least
7 feasible alternative? Just -- and that's a
8 question. Is that something that we need to
9 take that hard look at?

10 COMMISSIONER DEVER: Can I interrupt? I
11 would propose that I would throw out
12 Mr. Peterson's proposal on the basis that there
13 is information that was thrown at us and
14 utilized but yet Mr. Peterson was unavailable
15 to comment on the veracity of those claims, nor
16 did he provide anyone in his stead who was

17 capable of providing us any technical details
18 on this alternate proposal and in fact left out
19 what I believe is very important details about
20 the financial capability of this project to
21 survive. On the surface it looks great but
22 when you dig down to the details it, which I
23 had many questions and I wasn't able to ask the
24 author of this proposal and therefore I cannot
25 consider it relevant because I couldn't get my

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1 answers, my questions answered, and not to
2 mention but I wasn't able to meet the author of
3 this document.

4 COMMISSIONER AMYX: Okay. And then one
5 other one, if I could. The recommendation of
6 the HRC and the decision that they made, is
7 that a relevant factor here and to be
8 considered as such?

9 MAYOR SCHUMM: I think it is relevant if
10 you have a concern with how they reached that
11 issue, how they reached their conclusion. I
12 read through the minutes of the meeting and I
13 think they gave it a pretty good hearing and
14 they probably did a pretty good job of adhering
15 to the state law requirements and I don't, so I
16 don't think that that is a relevant factor. I
17 think that stands, that decision stands as how
18 they voted it and so I think it is only in the

19 reverse, if we found that there was grave error
20 in the way they determined that, then we could
21 use that as a relevant factor to overturn or to
22 allow the appeal, allow for the appeal.

23 COMMISSIONER AMYX: No, and I believe that
24 they used the standards of which they have to
25 use in making a decision on what, you know, on

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1 the environs and that question, you know,
2 that's not a question at all.

3 My question has to do with is a relevant
4 factor need to be included and discussion
5 happen and then, as we're doing right now, on
6 the decision and recommendation that, or
7 decision that they made on this project and
8 whether it needs to be included as part of the
9 debate that we have.

10 MR. LARKIN: In some cases the decision by
11 the HRC could be a relevant factor. I agree
12 with the mayor that in this case in my opinion
13 it's probably not. In the case where it was
14 involved there was some question regarding, I
15 think it was actually the state historical
16 preservation officer in that case, and what,
17 they may have applied the wrong standard so
18 there was some discussion of that during the
19 case and they said, well, possibly the

20 reasoning, or the lack of reasoning of the
21 state historic preservation officer may be a
22 relevant factor. In my opinion in this
23 situation that may not be the case.

24 MAYOR SCHUMM: Okay, thank you. Let me go
25 back to one thing here that's kind of, kind of

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1 the center part of this whole discussion
2 tonight and that was that we were presented
3 with three alternatives, and I agree with you,
4 Commissioner Dever, that the first one, I read
5 through it and I had, I probably have ten
6 questions and in that also it's, there's, to me
7 there's a flavor of social engineering going on
8 where you charge higher rents for the top two
9 floors and then subsidize a grocery store and
10 that's presupposing you can get higher rents,
11 that's presupposing you can even rent the
12 office space, and it's presupposing you'd still
13 get a grocery store, so if you call that a
14 feasible and prudent alternative it's pretty
15 far out there for me to grasp on and say, yeah,
16 that's a real deal, we've ought to go with
17 that.

18 Likewise the other two, the other two
19 sheets of generated numbers, yeah, they all --
20 I mean, I can show you how a restaurant will
21 make a lot of money, I can do it in about ten

22 minutes. I don't know that I'm going to find
23 an investor and I don't know that it's going to
24 make money but I can write it down on a piece
25 of paper and is that a viable alternative? Is

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1 that, is that something that you hang your hat
2 on at the end of the day? I don't know.

3 Now, the only thing, then when you couple
4 that with the fact that it's been vacant for
5 the number of years it has if one of those
6 alternatives would have been that good, where
7 you can make 10, 12, 15 percent someone would
8 have been in there and doing it. I mean, you
9 know, the Moores are in the development
10 business. They didn't sit on that land, in
11 fact I think they paid a sizable service charge
12 to the City because they didn't get it
13 developed in time.

14 COMMISSIONER DEVER: Right.

15 MAYOR SCHUMM: So I've got to believe that
16 it was not, these things are not reasonable
17 alternatives to the question tonight. I mean,
18 if it were it would have been done or you'd
19 have bunch of people down here saying, here,
20 you know, I've got a checkbook, I want to write
21 the check, I want to do it. I don't see that.
22 I see some papers with some ideas on them, but

23 there again, according to staff memo, we can
24 just disregard that if indeed we don't believe
25 that they are reasonable, prudent alternatives.

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1 I think the applicant did a good job with
2 debating and dismissing those as reasonable
3 alternatives, so that's kind of central for me
4 in this whole discussion tonight, is there
5 really someone out there that's going to write
6 a check and take this project, take a project
7 and make it something. I don't see them. I
8 mean, I just don't see them.

9 COMMISSIONER DEVER: Yeah, I think one
10 question we didn't address in this and probably
11 needs to since Mr. Schneider brought it up was
12 the question related to the request from
13 counsel on behalf of his clients to the owner
14 of record of the property, I think it's 9-10,
15 L.C., corporation, as, and in the letter he
16 simply asks what the price would be to buy it
17 and in my estimation in real estate
18 transactions I do not believe that if a sincere
19 effort was being put forth to purchase that
20 property, that the negotiations would start
21 with tell me how much you want to pay when you
22 know legally as a lawyer the project is under
23 contract and it would be a violation of
24 contract law to be negotiating, you know, on

25 this matter, and furthermore, if you're

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1 interested in buying the property you should
2 make an offer and frankly I don't see any
3 dollars mentioned in this offer and if this was
4 a sincere effort to acquire this property,
5 which is something we need to consider, I do
6 not believe that that was made clear, so if we
7 want to talk about the opportunity to buy this
8 and hold it as vacant land I believe it is
9 important that all of us understand that that
10 question as to the ability for an alternate
11 purchaser to come forward, I don't think that
12 was used, in my book.

13 MAYOR SCHUMM: Furthermore, it was, the
14 statement said, the response from the 9-10,
15 L.C., was it's under contract.

16 COMMISSIONER DEVER: Right.

17 MAYOR SCHUMM: So you can't sell it.

18 COMMISSIONER DEVER: Correct.

19 MAYOR SCHUMM: I mean, he would have to go
20 to whoever has the contract out, which I
21 presume is the developer, --

22 COMMISSIONER DEVER: Correct.

23 MAYOR SCHUMM: -- and offer to buy it
24 there.

25 COMMISSIONER DEVER: That would be the

1 next logical step so that's why I want to make
2 sure that --

3 MAYOR SCHUMM: So I don't see that as a
4 viable offer either, or --

5 COMMISSIONER DEVER: And that was
6 important for me because I think that has been
7 something that's been thrown out is the
8 no-build option, which is always an option, and
9 what happens next, so I wanted to make sure
10 that was brought forth in the record.

11 MAYOR SCHUMM: Very good. And I think we
12 could include that as a relevant factor, that
13 it's under contract, it's, there's not a option
14 available to purchase it.

15 COMMISSIONER DEVER: And maybe we can
16 inquire as to whether or not there has been any
17 inquiries to the current contract holder as to
18 what it would take to buy that from them.

19 MR. WATKINS: More than 650.

20 MAYOR SCHUMM: Going up.

21 THE SPEAKER: America.

22 MAYOR SCHUMM: Are there other relevant
23 factors to --

24 COMMISSIONER CARTER: I guess I would
25 wonder is it a relevant factor? Getting the

1 answer that we got there, that it does not
2 involve the destruction of historic property,
3 the courts don't construe that no feasible and
4 prudent alternative as tightly, I think that's
5 relevant. I mean, it's relevant to my thinking
6 but I don't know if that's -- it's not
7 described clearly enough to whether or not it
8 should be a relevant factor that we use.

9 COMMISSIONER DEVER: I just want to ask
10 Randy a question. While we were thinking about
11 it just came to my mind and I just want to make
12 sure I --

13 MAYOR SCHUMM: Let's have him comment
14 on --

15 COMMISSIONER DEVER: Who him?

16 MAYOR SCHUMM: -- Commissioner Carter's --

17 COMMISSIONER DEVER: Yes, please.

18 MAYOR SCHUMM: Randy, will you comment on
19 Commissioner Carter's last statement, please.
20 Can you repeat that, please.

21 MR. LARKIN: Could you repeat that.

22 COMMISSIONER CARTER: You bet. As a --
23 I'm wondering if it is appropriate to be a
24 relevant factor the fact that the statement
25 that when it does not involve destruction of

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1 historic property courts do not construe the no

2 feasible and prudent alternative as tightly.

3 MR. LARKIN: That's more of a statement of
4 law so that would be -- I don't know that's a
5 relevant factor. It's not really evidence in
6 this case from which you can make your
7 determination, it is more of law that would
8 guide the decision that is being made.

9 COMMISSIONER CARTER: It's more a fact
10 that it's not destroying historic property?

11 THE SPEAKER: That's the fact.

12 MR. LARKIN: Right, that that is a fact,
13 right, that would be a relevant factor, that
14 this is a project within the environs of a
15 historic district as opposed to demolition of a
16 historic building or something.

17 COMMISSIONER CARTER: Okay.

18 COMMISSIONER DEVER: May I?

19 COMMISSIONER CARTER: We wouldn't list it
20 as a relevant factor, then.

21 COMMISSIONER DEVER: Okay, may I, mayor,
22 may I ask him a question?

23 MAYOR SCHUMM: Yes.

24 COMMISSIONER DEVER: Something that came
25 to my mind in the event that I considered one

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1 of the alternative proposals a feasible and
2 prudent one would I also need to be considering
3 what information they provided to me as to the

4 all possible planning aspect of our decision to
5 be made? So in other words, is it a
6 two-pronged process, in my mind, as an
7 adjudicator, one would be to determine that
8 there is a feasible and prudent alternative but
9 in order for me to consider that do I need to
10 also consider is that feasible and prudent
11 alternative also address the question as to all
12 possible planning? In other words, did they
13 provide me drawings of what the back wall of
14 that building is going to look like and how
15 it's going to impact the neighborhood, what
16 it's going to, what kind of construction
17 methodology did they provide to do all possible
18 planning to minimize harm?

19 MR. LARKIN: Are you talking about a
20 proposed alternative use that's been presented?

21 COMMISSIONER DEVER: Yes, sir.

22 MR. LARKIN: I believe that if they show,
23 if it's shown by anybody that a alternative use
24 is a relevant factor and that it's feasible and
25 prudent, since the developer or the proponent

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1 of the project has to show both prongs, once
2 there is a feasible and prudent use or there is
3 another than that pretty much ends all analysis
4 and they don't really have to go any further I

5 don't believe.

6 COMMISSIONER DEVER: Well, the question
7 presupposes that if I find a feasible and
8 prudent alternative provided to me this
9 evening, option A, B, C, D, or some other
10 option, --

11 COMMISSIONER CROMWELL: Excuse me. Do
12 you? Or is this a hypothetical that's --

13 COMMISSIONER DEVER: No, I need to know
14 because in order -- because even if I did, if I
15 were to, if one of us was to find that, that it
16 needs to be discussed because the next prong is
17 has all possible planning been done in order to
18 minimize the impact and the question is does
19 that come forward after? If we were to find a
20 feasible and prudent alternative do we then
21 also have to evaluate that against the second
22 prong or would we have to wait for that
23 alternative to be sent to and evaluated by
24 Historical Resources Commission and then have
25 its own merit and basis?

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1 MR. LARKIN: Assuming that the feasible or
2 prudent alternative was going to actually be
3 built. I mean, the whole purpose is to
4 determine whether or not this project which was
5 determined by the HRC to damage, encroach upon
6 the environs of the historic district, your

7 review is whether or not, based on the relevant
8 factors, there is any -- there is no feasible
9 and prudent alternative to the project that the
10 HRC has determined would damage the
11 neighborhood. If there is a feasible and
12 prudent alternative and that's what you find,
13 then that's pretty much it.

14 COMMISSIONER DEVER: Okay.

15 MR. LARKIN: I mean, that's it.

16 COMMISSIONER DEVER: Thank you.

17 MAYOR SCHUMM: Excuse me for just a
18 minute, please.

19 COMMISSIONER DEVER: So your question was
20 it doesn't matter if we don't find one?

21 COMMISSIONER CROMWELL: I just, yeah, I
22 just -- if we, if there was no, if none of the
23 alternatives that have been presented to us, if
24 we don't deem that any of those are feasible or
25 prudent, then I don't know that we need to

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1 worry about what the next step --

2 COMMISSIONER DEVER: Well, we wouldn't
3 know.

4 COMMISSIONER CROMWELL: Maybe we need to
5 tackle that and then move from there possibly.

6 COMMISSIONER DEVER: Yeah.

7 MAYOR SCHUMM: Are there any other -- I

8 think the way we'll do this is if there's any
9 other relevant factors that we should list
10 here, I've been trying to keep a list of them,
11 then we need to have them now. I don't think
12 there are doesn't sound like, sounds like
13 everyone has everything on the table, then I
14 think we ought to decide first of all, like you
15 were just talking about, is there a reasonable
16 and prudent alternative, then we can talk about
17 has all the planning been done to mitigate any
18 kind of negative situation regarding the
19 project. Is that how you'd like to go?

20 COMMISSIONER DEVER: Yes.

21 MAYOR SCHUMM: Is that all right? Okay,
22 so are there any other factors to consider?
23 The ones I have written down, I might have
24 missed one or two, but the first one is that
25 there are plans, the Downtown Urban Design

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1 Guidelines is a plan that is a relevant factor.
2 Horizon 2020 with designating an entertainment
3 and commercial core in downtown Lawrence.

4 We're not, another factor is we're not
5 destroying historic property with our action.
6 It has been vacant for 30 years or it's been
7 vacant for, since '99 and it has a minimal use
8 for 30 years.

9 Underground parking is a merit to the

10 potential development.

11 The zoning is compatible, there's a
12 compatible use up and down the street.

13 There is a staff recommendation that is in
14 favor of moving forward.

15 There is a gain to the, well, we've talked
16 about a gain to the public. The gain to the
17 public I see is that it enhances downtown and
18 it provides for jobs, I mean, we've talked
19 about that tonight a little bit.

20 And I'm sorry, that's all, that's all the
21 ones I've written down, I don't know if there's
22 any others or not.

23 COMMISSIONER CROMWELL: There were, I
24 mean, there were others I think that were
25 brought up and I think those were, we entered

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1 those into the record so that's what we're,
2 they're here for. I don't know if a relevant
3 factor is the other proposals that we have with
4 numbers or not. I guess that's, the relevant
5 factors are those that we are considering those
6 against or, or not?

7 MAYOR SCHUMM: That's right, we talked
8 about that, the fact that there is a relevant
9 factor in that we don't, I mean, I said, I
10 don't know if you agree, but that I didn't

11 think they were a viable alternative at this
12 point because there's no -- they're just ideas
13 on paper, they're not really, they didn't have
14 enough substance.

15 COMMISSIONER CARTER: It did say that if
16 we determine those options to be feasible and
17 prudent, then they are a relevant factor; if we
18 don't determine any of those three we talked
19 about to be a feasible, prudent alternative,
20 then they are not a relevant factor.

21 COMMISSIONER DEVER: So do we need to go
22 on record just to state that, is that what you
23 were getting at?

24 COMMISSIONER CROMWELL: I think that we go
25 on record as saying it is a relevant factor

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1 that we have received these three alternatives
2 and only these three alternatives at this time
3 and it has been vacant for a very long period
4 of time and then we weigh our relevant factors
5 and we, you know, you know, when I'm weighing
6 the relevant factors that we have identified
7 thus far, and I think included in them has to
8 be some sort of, and I think we've talked a
9 little bit about the economics when we're
10 looking at the numbers of the alternatives
11 versus the numbers of the applicant's project,
12 that, that I, the confidence in the numbers

13 working of the alternatives, I don't have that,
14 the level of confidence in that working. I
15 think that is a relevant factor and I think we
16 enumerated some reasons for that.

17 I am at this point I think willing to say
18 that based on the relevant factors that we have
19 identified and that applying those to the
20 alternatives that we have been given I don't
21 find an alternative that is reasonable and
22 prudent.

23 MAYOR SCHUMM: Is that a motion?

24 COMMISSIONER CROMWELL: Yes, sir.

25 COMMISSIONER DEVER: City manager is

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1 signaling.

2 THE SPEAKER: Yeah, procedure.

3 MR. CORLISS: I want to have Randy come up
4 and guide a little bit on the motion because I
5 think what he's going to advise you to do is to
6 conclude your deliberations and then direct
7 staff to prepare certain findings for your
8 ultimate adoption. I want him to speak to
9 that.

10 MR. LARKIN: Right. There are, and I just
11 want to remind the City Commission there is two
12 findings or two conclusions, one is regarding
13 the feasible and prudent and the other one is

14 whether all planning programs have been done to
15 minimize harm and then after you have voted or
16 taken your vote, then we would like you to
17 direct staff to prepare findings of fact and
18 conclusions of law based upon your findings
19 here tonight.

20 MAYOR SCHUMM: Can we take two motions or
21 two --

22 MR. CORLISS: For ultimate review and
23 adoption by the Commission at a future meeting.

24 MR. LARKIN: Right, right. So there will
25 be, there will be two on the conclusions and

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1 then one to direct staff to prepare findings of
2 fact for your approval later.

3 MAYOR SCHUMM: So we can vote for the
4 reasonable and prudent alternative and then we
5 can vote on the planning, all planning has been
6 taken care of that addresses?

7 MR. LARKIN: You could do that in one, you
8 can do that together, and then a separate
9 motion in order to do the other one.

10 COMMISSIONER DEVER: Well, yeah, and I
11 don't think we had discussed or put on the
12 record our reasons why we believe all possible
13 planning to minimize --

14 MAYOR SCHUMM: No, we were going to get to
15 that --

16 COMMISSIONER DEVER: -- the impact we have
17 discussed so we should probably move --

18 MR. LARKIN: Right. You can do that all
19 together.

20 MAYOR SCHUMM: All right, let's talk about
21 the planning aspect of it. Well, let me just
22 start out because I was involved in this quite
23 a bit. I think we, I think we accept the
24 applicant's presentation tonight in terms of
25 the process of what it's gone through and to

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1 acknowledge the tremendous amount of change
2 that's taken place and that's been to
3 accommodate and make a better project available
4 to the adjacent neighborhood and including
5 taking off an entire floor in a meeting I was
6 at so I think just this document here
7 (indicating) demonstrates a substantial amount
8 of mitigation in terms of the impact of the
9 building project on the neighbor, on the
10 neighborhood and so things like moving the
11 higher part of the building from the interior
12 of the block to the intersection, there's a
13 space the Arts Center and the south wall of the
14 project, there is a pull-back of, from the
15 alley on the building at certain points, there
16 is a courtyard there, there is a stepping down

17 of the building as it proceeds from the west to
18 the east, and, you know, just as they have
19 examined, and including, including the parking
20 that is contained in the building so it doesn't
21 impact the neighborhood as well, the
22 soundproofing and the sound consideration for
23 the mechanical rooms and the air conditioning
24 systems, that to me says they've done
25 extraordinary amount of work to protect the

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1 environment and people around it.
2 COMMISSIONER CROMWELL: I guess looking at
3 it we have I think in front of us a project
4 that's been drastically improved from the
5 original iterations that came before us and the
6 reasons, a lot of the reasons for those
7 improvements are efforts to minimize the impact
8 to the historical neighborhood around the
9 property. We are now, at the alley they're
10 pretty close to half the height that it started
11 out originally. That is an example. The
12 historical features or design features of the
13 building are vastly improved and we have a much
14 more, a project which much, blends in much
15 better with the esthetic of our downtown, I
16 believe, and I think that that is very
17 important in minimizing the impact to, to the
18 neighborhood. The size reductions obviously

19 are very critical but also I think the design
20 elements, too.

21 Now, I believe that, you know, that the
22 HRC, the neighborhood groups, the neighbors,
23 the developer, architect, everybody working
24 together on this is what's led to this. When I
25 look at this I don't see -- I really do believe

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1 that the potential harm to the neighborhood has
2 been minimized by all that work and I
3 appreciate all that work that has been done by
4 all those people, including our staff, too.

5 MAYOR SCHUMM: Anybody else?

6 COMMISSIONER CARTER: I do want to, I
7 would say I think you all more than covered it
8 there, and I appreciate the applicant even
9 recognizing early on that, you know, this
10 process has made it a better project. It has
11 been a long time coming but it's been made a
12 better project for everyone concerned and it's
13 good to hear that acknowledgment.

14 The, you know, that said, I don't know,
15 I'm ready to make a motion, unless you want to
16 weigh in.

17 MAYOR SCHUMM: Commissioner Amyx.

18 COMMISSIONER AMYX: Just couple of things
19 real quick and for the public I want everybody

20 to understand that my connection to this
21 property has been something that has been very
22 tough for me. My grandparents owned the house
23 at 917 Rhode Island and the thing that's
24 happened is is that for quite a few weeks now I
25 think I have been taught and given an

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1 understanding of law says what my role is in
2 this particular matter and that, you know, the
3 determination that I have to make is based on
4 the consideration of all relevant factors and
5 that there is -- and that I am to make a
6 determination that there is no feasible and
7 prudent alternative that exists to the proposal
8 and that the program includes all possible
9 planning to minimize harm, you've heard that
10 several times tonight, and I want to thank our
11 legal staff and our staff and all the work and
12 all the information that they provided. I want
13 to thank the developer for all the work that
14 they've put into the proposal. Mr. Schneider
15 and to the neighbors, I want to thank everybody
16 for all the assistance that they've given me
17 because it is a tough decision.

18 As I said, I have set on the back porch of
19 917 Rhode Island quite a few, quite a few times
20 in my life, you know, talking to my grandmother
21 and, you know, this is a tough deal, I gotta

22 tell you, but that is not my decision here
23 tonight. My decision here is something totally
24 different. I sit here and I look and I admire
25 the amount of work of people that volunteer to

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1 serve on the HRC and other committees and to do
2 a lot of the work for us and they make good
3 decisions, they make great decisions based on
4 what they have to, what they have to make
5 decisions on and they did a very good job.

6 I look, at my business downtown I can look
7 out the back door and there is this site, I
8 mean, I could probably hit it with a rock if I
9 could throw it far enough, but, you know, here
10 again, you know, it is, it's a personal thing
11 to me but, you know, my job is not to just walk
12 in and make a decision that I would concur or
13 believe that HRC did right, my job is to make
14 sure that there is no feasible and prudent
15 alternatives that exist.

16 The only thing that I could think of this
17 morning, guys, was a miniature golf course on
18 that site and I was trying to figure out how I
19 could do the deal but that didn't -- you got
20 really lucky that I didn't (indicating), but
21 no, I didn't, that wasn't going to happen,
22 so -- but I believe that, as hard as it is for

23 me to think that, you know, that there's
24 something else, I believe that the applicant
25 has probably done the job and that I can

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1 support this project. I, like I said, it would
2 be easy for me to say that there's probably
3 other things that we can consider but based on
4 the information that I have before me, that I
5 truly believe that there's not a feasible and
6 prudent alternative and the best possible
7 planning has been done to minimize harm to the
8 historic property, so I will be supporting this
9 project.

10 COMMISSIONER DEVER: And I think it's one
11 thing we need to talk about that's, that all,
12 about all possible planning, one thing that
13 came to mind is the mitigation efforts that's
14 going to be put forth by the developer as
15 proposed to help protect and restore the Social
16 Service League building. I mean, that's
17 something that should not be overlooked as a
18 part of this because we are talking about
19 building for the future but preserving our past
20 and I think a project like this has to do both,
21 otherwise it won't pass my muster, let alone
22 some of the factors we have to consider here
23 this evening, if for no other reason but the
24 planning and the iterations and the process and

25 the meetings and the mitigation that has

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1 occurred as a part of this project, if this
2 isn't an example of all possible planning I
3 don't know what is. I can't remember a project
4 where we've seen literally a half dozen
5 iterations of the same project, and it's gotten
6 better every time and it's gotten better for
7 the community every time, not for the
8 developers and not necessarily for all the
9 neighbors but it's gotten better for both as we
10 move forward and for me that's what all
11 possible planning demonstrates and so the key
12 for me in this comment is that we are
13 protecting one of the oldest ongoing businesses
14 in our community, which is in a commercial zone
15 and abutting this property and helping preserve
16 that future and I think if HRC doesn't
17 recognize that or historical planning doesn't
18 recognize that factor I think we would be
19 remiss so I wanted to put that on the record
20 just saying that for me that is an example of
21 the planning efforts that have been, taken
22 place in this process.

23 MAYOR SCHUMM: Very good. Hugh.

24 COMMISSIONER CARTER: Mayor, I'd move that
25 we make a determination that the program

1 includes all possible planning to minimize harm
2 to the listed properties.

3 MAYOR SCHUMM: And?

4 COMMISSIONER CARTER: I was just going to
5 go with that one first, planning. You want to
6 combine them?

7 COMMISSIONER DEVER: Well, first you have
8 to do one, I think; right?

9 MAYOR SCHUMM: Well, we've got, we've got
10 two.

11 COMMISSIONER DEVER: We've got to make a
12 determination that --

13 MR. CORLISS: What's the preferred
14 procedure?

15 MR. LARKIN: Yes, I think since you've
16 discussed both of them do them both in one,
17 both findings in one motion and then do a
18 separate motion directing staff to prepare
19 findings of fact, so you might withdraw the
20 other motions and start over.

21 MAYOR SCHUMM: First of all,
22 Commissioner Cromwell, will you withdraw --

23 COMMISSIONER CROMWELL: Withdraw.

24 MAYOR SCHUMM: -- your original --

25 COMMISSIONER CROMWELL: Withdraw.

1 MAYOR SCHUMM: Okay. Commissioner Carter,
2 will you withdraw your motion?
3 COMMISSIONER CARTER: You made a motion
4 prior?
5 COMMISSIONER DEVER: He did previously and
6 he got shot down.
7 COMMISSIONER CROMWELL: It was prior to
8 the --
9 COMMISSIONER CARTER: I will withdraw my
10 motion as well, yes.
11 MAYOR SCHUMM: Okay. Now I'd entertain a
12 motion to put both parts of that in the same
13 sentence with an "and," conjunction.
14 COMMISSIONER CARTER: So moved.
15 COMMISSIONER CROMWELL: I'll support that.
16 Second.
17 THE SPEAKER: What was the motion?
18 COMMISSIONER DEVER: I'm not sure, what
19 was the motion?
20 MAYOR SCHUMM: Let's be clear. Let's be
21 clear on the motion.
22 COMMISSIONER CARTER: I'll just state it
23 here. Mayor, I would move that we make a
24 determination, based on the consideration of
25 all relevant factors, that there is not a

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1 feasible and prudent alternative to the

2 proposal and that the program includes all
3 possible planning to minimize harm to the
4 listed properties.

5 MAYOR SCHUMM: Moved.

6 COMMISSIONER CARTER: Yes.

7 COMMISSIONER CROMWELL: Second.

8 MAYOR SCHUMM: Second. Okay, moved
9 Carter, second Cromwell. All in favor say aye.
10 (There was a chorus of ayes.)
11 Opposed.
12 Carries five-zero.

13 Now we need a motion to have staff prepare
14 the findings of fact. And what was the second
15 part of that?

16 MR. CORLISS: And conclusions of law.

17 MAYOR SCHUMM: And conclusions of law.
18 Anyone like to move that?

19 COMMISSIONER AMYX: So moved.

20 MAYOR SCHUMM: Moved Amyx.

21 COMMISSIONER DEVER: Second.

22 MAYOR SCHUMM: Second Dever. Got
23 everybody in here.

24 COMMISSIONER DEVER: Teamwork.

25 MAYOR SCHUMM: All in favor say aye.

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1 (There was a chorus of ayes.)
2 Opposed.
3 Carries five-zero.

4 Thanks, everybody, for coming down. Sorry
5 it was, took so long but --

6 THE SPEAKER: Now we need to do --

7 MR. CORLISS: Need to proceed with 2 (b).

8 THE SPEAKER: -- 2 (b), which would be the
9 TIF issue.

10 MAYOR SCHUMM: Oh, maybe they'll want --

11 THE SPEAKER: That will be 1:00.

12 MR. CORLISS: Well, I don't think it's
13 going to take too long. Commissioners, item 2
14 (b) is for you to consider adopting on first
15 reading the ordinance that would remove the
16 east side of the 900 block of New Hampshire
17 from the current TIF district, being our plan
18 that then once the entire TIF hearing is
19 conducted, which is going to be on July the
20 24th, that you would then consider second
21 reading of that ordinance.

22 We also then want you to refer to this
23 item to the Public Incentive Review Committee.
24 Gary Anderson drafted the ordinance. If you
25 have any questions we'll be happy to respond to

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1 questions.

2 MAYOR SCHUMM: All right. So we are going
3 to be removing the property at 900 New
4 Hampshire from the original TIF district?

5 MR. CORLISS: You will be removing the
6 east side of the 900 block of New Hampshire
7 from the current TIF district, correct.

8 MAYOR SCHUMM: But in the new TIF that we
9 will create they are obligated to pay for their
10 original charges that they would have paid for
11 had we not removed them from that TIF district?

12 MR. CORLISS: What staff has prepared,
13 what Diane and Brit have prepared is a
14 memorandum that walks through the current
15 obligations for that parking garage TIF debt,
16 shows what we believe is the appropriate
17 allocation for the 900 New Hampshire site and
18 we have indicated that they will then pay, if
19 this project proceeds, with first dollar first
20 day TDD sales tax revenue to the City in an
21 amount of \$850,000, which we believe is the
22 appropriate amount for this project to pay for
23 the remaining debt on the 900 New Hampshire
24 parking garage.

25 MAYOR SCHUMM: Okay. So if all this comes

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1 to be as presented, then the City will recover
2 \$880,000 which we may not have recovered?

3 MR. CORLISS: \$850,000.

4 MAYOR SCHUMM: 850,000.

5 MR. CORLISS: That's our recommendation.

6 MAYOR SCHUMM: I like that.

7 COMMISSIONER AMYX: Mayor, question.
8 Dave, applicant made a statement during the
9 consideration of the last item that there would
10 not be any tax dollars that would be going into
11 this, into this new TIF district and that it
12 was, you know, from individual taxpayers, all
13 the money was going to be coming from this
14 district. Is there a guarantee to that?
15 Because the last TIF district in this area that
16 wasn't the case.

17 MR. CORLISS: Well, the proposal is for us
18 to have a development agreement with the
19 developers whereby they would pledge a number
20 of different things. They would do the
21 project, they would fill out all of the
22 appropriate forms as far as our ability to get
23 the property tax and the sales tax increment,
24 and then they would also agree to the placement
25 of a one percent TDD sales tax on their

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1 property, do all of the necessary procedures so
2 that that sales tax would be collected. We
3 then have estimates from Springsted as to how
4 much revenue that is going to generate.

5 This project, if this project proceeds,
6 then we have some idea as to whether or not
7 those revenues will come. We will then be able

8 to receive that sales tax from the TDD that
9 will come directly to the City. We estimate
10 that it will take some period of time but we
11 will eventually get our \$850,000, which we
12 believe this project, this site should
13 contribute toward the existing parking garage.
14 Am I answering your question?

15 COMMISSIONER AMYX: My question comes in,
16 my question comes in is that people don't want
17 to pay for this project. All the money that's
18 going to be generated to cover the costs of the
19 improvements on this site are coming from the
20 --

21 MR. CORLISS: From future --

22 COMMISSIONER AMYX: -- from the, from the
23 -- I'm sorry?

24 MAYOR SCHUMM: We are still trying to
25 record this so one at a time, please.

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1 COMMISSIONER AMYX: Pay as you go means
2 that it's only going to pay for the items from
3 the money that is generated from that site. Is
4 that correct? And we don't have an obligation?

5 MR. CORLISS: That is correct. As Diane
6 outlined several hours ago, the --

7 COMMISSIONER DEVER: Yesterday.

8 MR. CORLISS: -- only exception to that,
9 commissioner, is that we are also talking about

10 the Arts Common project for the Arts Center.
11 If that project proceeds, and we don't know if
12 that will proceed, it is really a separate
13 element, if we acquire that Salvation Army
14 property that will likely include city tax
15 dollars from the beginning to acquire that.
16 The Salvation Army will want to be paid all at
17 once. We are only going to get five percent of
18 the TIF revenue to help us with the Salvation
19 Army acquisition for, until certain obligations
20 are paid for the developer's TIF expenses.
21 After that is paid, then we'll be able to get
22 all of our costs up to -- \$900,000?

23 MS. STODDARD: Correct.

24 MR. CORLISS: For the acquisition of the
25 Salvation Army property. Other than that,

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1 commissioner, we don't have any City debt or
2 any City financial obligation for the proposed
3 project at 900 New Hampshire. It is a
4 pay-as-you-go TIF in that regard, with the
5 exception of the Arts Center element.

6 MAYOR SCHUMM: And furthermore, if the
7 project doesn't generate a hundred percent of
8 the costs that they incur there's no obligation
9 on the City to make up that amount of money,
10 they are just out the money; is that correct?

11 MR. CORLISS: That is correct, mayor.
12 MAYOR SCHUMM: Okay.
13 THE SPEAKER: We got it, then.
14 MAYOR SCHUMM: Any public comment on this
15 item?
16 Okay, commission discussion?
17 COMMISSIONER DEVER: Mayor, may I ask the
18 city manager a question?
19 MAYOR SCHUMM: Sure.
20 COMMISSIONER DEVER: I was not aware of or
21 did not find the exact language dictating how
22 or what legal means we were using to secure and
23 that in what order the funds to help us pay
24 down the parking garage.
25 MS. STODDARD: Commissioner --

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1 COMMISSIONER DEVER: Remove this from the
2 TIF district that's important because --
3 MS. STODDARD: Yes, and a couple of
4 things. This evening you are only, you would
5 only be considering action of first reading of
6 the ordinance to remove. That requires two
7 readings.
8 COMMISSIONER DEVER: Yes.
9 MS. STODDARD: So that action would not be
10 final this evening.
11 COMMISSIONER DEVER: Understood. So that
12 question needs to be answered before the second

13 reading, I believe, because we're removing it
14 from its obligation and therefore I think we
15 need to identify how that obligation is going
16 to be met.

17 MS. STODDARD: And with regard to that, we
18 were suggesting, again, as the city manager had
19 indicated, an \$850,000 sum that would be repaid
20 to the City with the TDD sales tax revenue that
21 is generated within the district. The first
22 \$850,000 of the approximately 1.1 million that
23 is projected to be generated in TDD sales tax
24 would be dedicated to the City toward the
25 parking garage expense.

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1 COMMISSIONER DEVER: Does that say that in
2 this memo?

3 MS. STODDARD: Yes.

4 COMMISSIONER DEVER: Okay, great. Thank
5 you for clarifying that.

6 MS. STODDARD: Sorry.

7 COMMISSIONER DEVER: I didn't see that
8 anywhere. It's the first \$850,000, first in?

9 MS. STODDARD: Correct, correct.

10 COMMISSIONER DEVER: Okay.

11 MS. STODDARD: Yes, and then any
12 additional revenue generated by the
13 transportation development district sales tax

14 would go then to reimburse the developer for
15 TDD eligible expenses.

16 COMMISSIONER DEVER: Okay, thank you.

17 MS. STODDARD: Uh-huh.

18 MAYOR SCHUMM: Anybody else, questions?
19 Commission discussion? As Diane points out,
20 we're just setting, this is the first reading
21 so there is another opportunity for the second
22 reading, becomes final.

23 COMMISSIONER CARTER: Mayor, I would move
24 to adopt on first reading Ordinance 8728 and
25 refer to the Public Incentive Review Committee

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1 to consider the proposed project if
2 appropriate.

3 COMMISSIONER DEVER: Second.

4 MAYOR SCHUMM: Moved Carter, second Dever.
5 All in favor say aye.

6 (There was a chorus of ayes.)

7 Opposed.

8 Carries five-zero.

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1 C E R T I F I C A T E
2 STATE OF KANSAS)
3 COUNTY OF JEFFERSON) SS:
4

5 I, Candace K. Braksick, a Certified
6 Shorthand Reporter in and for the State of
7 Kansas, certify that I reported in machine
8 shorthand the foregoing proceedings had on the
9 26th day of June, 2012.
10 I further certify that the foregoing transcript
11 is a true, correct and complete copy of all of
12 the proceedings of my shorthand notes as
13 reflected by this transcript.

14 IN WITNESS WHEREOF, I have hereunto set my
15 hand and seal this 2nd day of July, 2012.

16

Candace K. Braksick

17	Certified Shorthand
	Reporter
18	Kansas Supreme Court No.
	0386
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