

PLANNING COMMISSION REPORT

Regular Agenda -- Public Hearing Item

PC Staff Report
March 25, 2013

ITEM NO. 7 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; DEVELOPMENT PROJECTS REQUIRED TO COMPLY WITH H2020 (MJL)

TA-12-00206: Consider Text Amendments to the City of Lawrence Land Development Code, Chapter 20, various articles, to change the requirement that development projects be required to comply with *Horizon 2020*. Initiated by City Commission on 8/21/12.

RECOMMENDATION: Receive the staff report and direct staff as appropriate.
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Reason for Request: For rezoning applications, the Development Code requires compliance with *Horizon 2020*, yet the state statutes and case law views the comprehensive plan as a guide document. Removing the requirement for comprehensive plan compliance for rezoning requests would streamline the application process while maintaining the integrity of the adopted plans as one of the Golden Factors by which to analyze a request.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- Email communication from Elizabeth Hatchett dated March 17, 2013

DISCUSSION OF PROPOSED AMENDMENT

The proposed amendment to the *Land Development Code* was initiated by the City Commission in August 2012 in response to a memo (see attached) seeking code amendments to ensure business-friendly, responsive, and efficient processes for development. This is one of seven amendments identified and initiated in order to continue to see improvements to enable and encourage development while ensuring that such development continues to enhance neighborhoods.

State Statutes

Kansas state statutes give the Planning Commission authority to make a comprehensive plan (KSA12-747). This section outlines elements to be included in the plan, the process for approval of the plan, and annual review of the plan. KSA 12-747, "Such plan or part thereof shall constitute the basis or guide for public action to insure a coordinated and harmonious development or redevelopment which will best promote the health, safety, morals, order, convenience, prosperity and general welfare as well as wise and efficient expenditure of public funds".

Specifically for zoning amendments, state statute KSA 12-757 states, "Any such amendment, if in accordance with the land use plan or the land use element of a comprehensive plan, shall be presumed to be reasonable". Case law has also added the Golden Factors for review of rezoning requests which takes into consideration other factors such as:

- the character of the neighborhood
- the zoning and uses of properties nearby
- the suitability of the subject property for the uses to which it has been restricted

- the extent to which removal of the restrictions will detrimentally affect nearby property
- the length of time the subject property has remained vacant as zoned
- the relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner
- professional staff recommendation

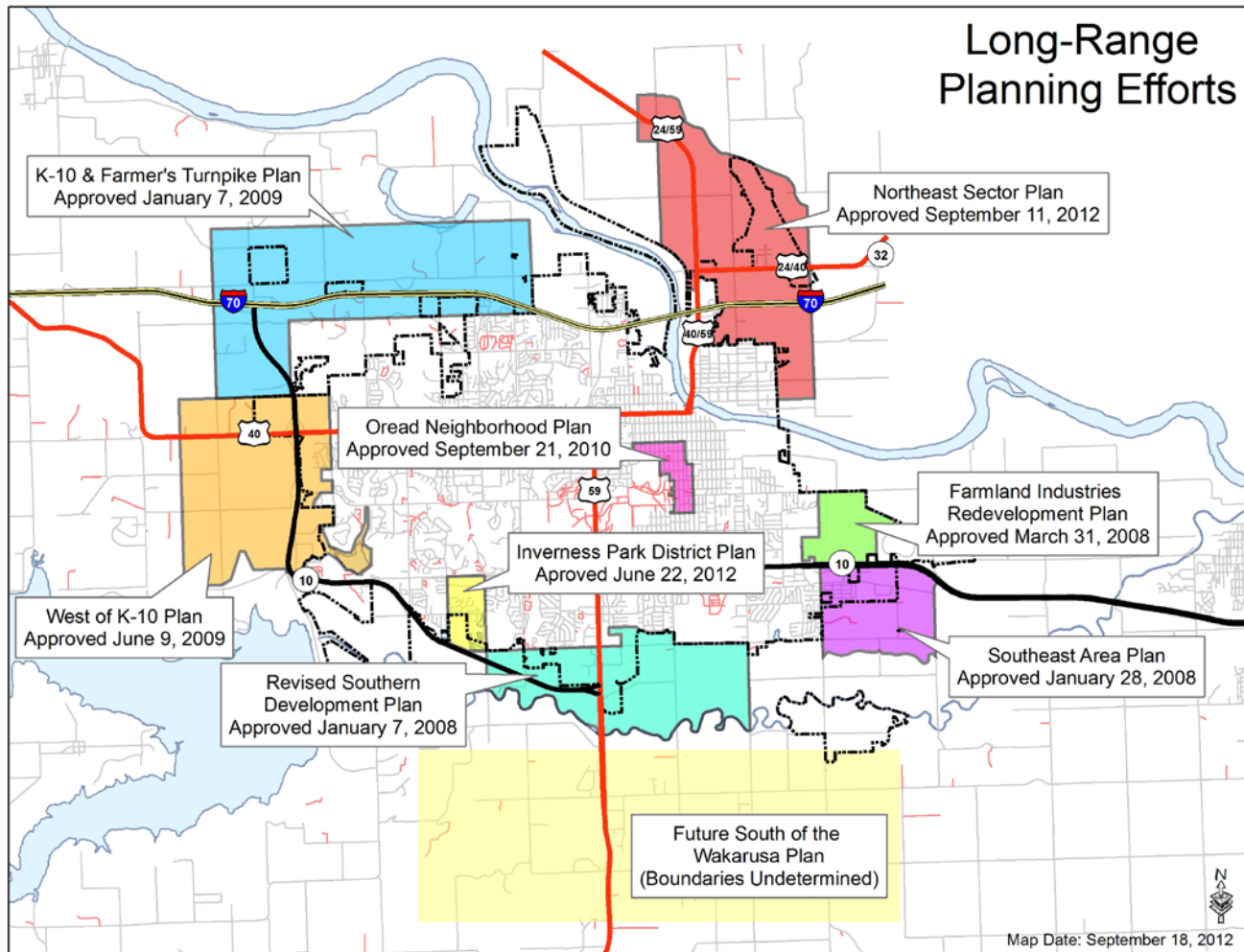
While state statute and case law do not require the project to be consistent with the comprehensive plan, cities and municipalities have the authority to enact regulations that are stricter than state statutes. Lawrence and Douglas County have chosen to have stronger code language.

Horizon 2020

Horizon 2020, the comprehensive plan for the City of Lawrence and unincorporated Douglas County was adopted in 1998 after many years of public involvement in drafting the plan. The plan has had many amendments, updates, and chapters added since adoption in order to keep the document a relevant, living document. Chapter One provides a basic description of how the plan is used:

The Comprehensive Plan provides a vision for the community. It is used as a policy guide that identifies the community's goals for directing future land use decisions. The Plan is also used by property owners to identify where and how development should occur; by residents to understand what the city and county anticipates for future land uses within the community; and by the city, county and other public agencies to plan for future improvements to serve the growing population of the community.

The community has also supported and participated in the preparation of various sector and neighborhood plans for development and redevelopment in and around Lawrence. The community and landowners rely on these plans to forecast how the community will develop in the future. Below is a map showing the sector plans that have been completed and adopted by the community.



The processes for amendments to the plan that are development driven typically begin in preliminary meetings with an applicant. If it is identified that the proposed project is not in conformance with the comprehensive plan, the applicant is directed to submit a comprehensive plan amendment (CPA) with development applications. Examples where projects have been accompanied by a comprehensive plan amendment included:

- Lowe's proposal on W. 6th Street; not approved
- CC600 proposal at the NWC of W. 6th and SLT; PC approved
- Walgreens/HyVee Gas at Clinton Pkwy and Crossgate Dr.; first application denied, second approved after the completion of a sector plan
- North Mass Development in North Lawrence; approved
- Menards; W. 31st St; pending

All of the CPA's went through a public hearing process resulting in a recommendation by the Planning Commission and ultimately a decision by the governing body.

Several projects have been approved even though the requests were not entirely consistent with the land use map and policies in *Horizon 2020*. These projects were approved without comprehensive plan amendments. These projects include:

- The Links; *Horizon 2020* calls for low-density (6 or fewer dwelling units per acre) residential and the project proposed apartments typically requiring a medium density zoning. The overall density of the project met the low-density calculation with the amount of open space in the project but the structure type would not be permitted in a low-density district.
- Langston Heights; Overall density met the plan though individually a portion of the structure types did not.
- Fairfield Farms; Overall density met the plan, the proposal shifted the location of the medium density to a different part of the neighborhood.

These projects proposed re-distribution of residential density. Proposals that included CPA's were for commercial development in locations not identified in *Horizon 2020*. The commercial development changes tend to have a larger impact on the community as a whole when compared to residential shifts in density within neighborhoods.

Land Development Code

Horizon 2020 is the foundation and framework for land use policies. The tools used to implement the plan include the *Subdivision Regulations*, *Development Code* and the *Community Design Manual* in the community. The comprehensive plan is largely embedded into the fabric of the *Development Code*. Section 20-104 and 20-105 explicitly state that the code is intended to implement and is prepared in accordance with the plan.

20-104 Purpose

This Development Code is intended to implement the Lawrence/Douglas County Comprehensive Land Use Plan and other applicable plans adopted by the City Commission, hereinafter collectively referred to as the "Comprehensive Plan" – in a manner that protects, enhances and promotes the health, safety, and general welfare of the citizens of Lawrence.

20-105 Implementation of the Comprehensive Plan

This Development Code has been prepared in accordance with the Comprehensive Plan. It is intended that decisions made pursuant to the Development Code will implement and be consistent with the Comprehensive Plan and with the stated purpose of this Development Code (See Section 20-104).

The majority of the zoning districts in the Land Development Code are derived directly from the comprehensive plan. This is demonstrated in Section 20-201 of the code which identifies the zoning district and corresponding comprehensive plan designations, in accordance with the plan.

Article 13 Development Review Procedures outlines review procedures for each type of project. The review for a text amendment, rezoning, planned development, institutional development plan, zoning variance and written interpretations of the code require evaluation of the application regarding various factors including compliance with the comprehensive plan. Examples from this article language include:

- Article 20-1302 Text Amendments

- (g) Review and Decision-Making Criteria

- In reviewing and making decisions on proposed zoning text amendments, review bodies shall consider at least the following factors:

- (1) whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition; and

- (2) whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of this Development Code (See Section 20-104).
- Article 20-1303 Zoning Map Amendments (Rezoning)
 - (g) Review and Decision-Making Criteria
In reviewing and making decisions on proposed zoning map amendments, review and decision-making bodies shall consider at least the following factors:
 - (1) conformance with the Comprehensive Plan;
 - (2) zoning and use of nearby property, including any overlay zoning;
 - (3) character of the neighborhood;
 - (4) plans for the area or neighborhood, as reflected in adopted area and/or sector plans including the property or adjoining property;
 - (5) suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations;
 - (6) length of time the subject property has remained vacant as zoned;
 - (7) the extent to which approving the rezoning will detrimentally affect nearby properties;
 - (8) the gain, if any, to the public health, safety and welfare due to denial of the application, as compared to the hardship imposed upon the Landowner, if any, as a result of denial of the application; and
 - (9) the recommendation of the City's professional staff.

If the *Land Development Code* is amended to remove the requirement that decisions be consistent with the comprehensive plan, other article of the code may need to be revised. These include but not limited to Article 1 Introductory Provisions, Article 2 Base Districts, Article 7 Planned Developments, Article 8 Subdivision Regulations, Article 9 Parking, Loading and Access, Article 11 General Development Standards, Article 12 Floodplain Management Regulations, and Article 13 Development Review Procedures.

Kansas Communities

Other communities in Kansas do not have language as strong in their zoning ordinances requiring conformance with the comprehensive plan. Below are some policies from other Kansas communities:

- Olathe, KS

18.04.040 Relationship to Comprehensive Plan and Other Policies

It is the intention of the City that this ordinance implement the goals, objectives and policies adopted for the City, as reflected in the Comprehensive Plan and other planning documents. While the City reaffirms its commitment that this ordinance and any amendment thereto be in conformity with adopted planning policies, the City hereby expresses its intent that neither this ordinance nor any amendment thereto may be challenged merely on the basis of an alleged nonconformity with the Comprehensive Plan or other planning policy.

- Overland Park, KS

Why the Plan Changes

The Planning Commission and City Council use 15 factors, including conformance with the city's Comprehensive Plan, when reviewing the appropriateness of a development proposal for rezoning or a special use permit. Other factors may weigh equally in the decision and result in approval of a proposal that conflicts with the Comprehensive Plan. Kansas state statutes recognize that changes in anticipated development will take place and provide for an annual review of the Comprehensive Plan by the Planning Commission and City Council to ensure it does not become obsolete. The annual review of the Comprehensive Plan involves updating all changes in land use, goal statements, and city policies that have occurred during the previous year as a result of rezoning, special use permits, other plan approvals or special studies

- Kansas City, KS

Sec. 27-341. - Purpose.

This article is enacted to conserve the value of property in the city and to assure that adequate light, air, convenience of access and safety from fire and other dangers may be secured, that congestion of the public streets may be lessen or avoided, and that the public health, safety, comfort, convenience, morals and general welfare may otherwise be promoted in accordance with a well considered and comprehensive plan for the use and development and redevelopment of all property throughout the city.

Since developers and builders are the ones who build cities, and since their projects must be responsive to a changing and unpredictable market, comprehensive plans likewise must change from time to time if they are to be effective and have credibility. However, because the Master Plan represents continuity between the past, present, and future, reflecting underlying change, while desirable, must only be accomplished after thorough scrutiny. Otherwise, too much sensitivity to change would render the plan not a plan, but simply a reflection of today's development fashion and point in the economic cycle. Thus, the Master or Comprehensive Plan must strike a balance which acknowledges and promotes flexibility, yet retains its long range sense of direction and purpose.

- Leawood, KS

16-1-2.1 Purpose

The provisions of this Ordinance have been established for the purpose of promoting the health, safety, and general welfare of the community and for maintaining a high quality living environment. The zoning regulations and districts have been designed and developed to lessen congestion in the streets; to secure safety from fire and other hazards; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewage, schools, parks, and other public requirements; to maintain the aesthetics of development and redevelopment; to conserve property value; to promote innovative and energy conscious design, and ensure efficient and effective circulation systems; to encourage the conservation of land resources, minimization of auto travel; and to promote orderly economic growth. The zoning regulations and districts have been made with reasonable consideration of the character of the district, the suitability and aesthetic quality for the particular uses, and with a view of conserving the value of buildings and encouraging the most appropriate use of land throughout the community in accordance with the City's Comprehensive Plan. This Ordinance is adopted under the authority of Kansas Statutes and any amendments thereto and other applicable authority.

Impacts of This Amendment

The proposed text change to remove the requirement to be consistent with the comprehensive plan could save time and money for applicants and developers by removing a potential process of initiating

and completing a comprehensive plan amendment if the proposed project is not in conformance with the comprehensive plan. If proposals are not required to be consistent with the comprehensive plan and are approved, the annual review could be used to update the plan to reflect the approved changes. This could be seen as development friendly by streamlining the development process in the community.

The proposed text change could also be seen as a decision to downgrade the community vision and fabric of the plan, and discount the time and effort the community has put into the development of *Horizon 2020*, adopted future land use plans and other documents based on the comprehensive plan. Removing the requirement could also reduce the certainty and predictability the plan provides to citizens and property owners making improvements in the community.

Summary

Kansas state statutes gives municipalities the authority to prepare a comprehensive plan for future development in the community but also allows a municipality to adopt stronger regulations. Lawrence has a long history of reliance on the comprehensive plan including past plans such as *Plan 95* and the *Comprehensive Downtown Plan*. This community has put more weight in the comprehensive plan than other communities and the citizens have been very involved in the future land use planning. Citizens and landowner rely on these plans for a certain amount of predictability and guidance in the growth of the community.

Staff Recommendation

Staff recommends receiving the staff report, holding the public hearing and providing staff with direction on this proposal.