City of Lawrence

CITY COMMISSION

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MICHAEL DEVER

COMMISSIONERS
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June 18, 2013

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 Dever presiding and members Amyx, Farmer, Riordan and Schumm present.

A. RECOGNITION/PROCLAMATION/PRESENTATION: None

B. CONSENT AGENDA

James Dunn requested that item 7a Ordinance No. 8873, regarding the environmental and property maintenance codes, be removed from consent agenda for separate discussion.

It was moved by Amyx, seconded by Farmer, to approve the consent agenda as below, minus item 7a. Motion carried unanimously.

1. Approved City Commission meeting minutes from 06/04/13.

2. Received minutes from various boards and commissions:

   Cultural District Task Force meeting of 05/21/13
   Public Health Board meeting of 04/15/13

3. Approved claims to 200 vendors in the amount of $3,131,381.83 and payroll from June 2, 2013 to June 15, 2013, in the amount of $2,024,637.11.

4. Approved the drinking establishment license for The Roost, 920 Massachusetts Street, and the Retail Liquor License for Barley's Retail Liquor, 1805 West 2nd Street.

5. Approved the appointment of Brenda Nunez to the Cultural District Task Force as recommended by the Mayor.

6. Bid and purchase item:

   a) Set a bid opening date of July 2, 2013, for Bid Number B1339, Bus Stop Signs and Installation.

7. Adopted on first reading the following ordinances:

a) THIS ITEM WAS REMOVED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. Ordinance No. 8873, merging the current Environmental Code into the Property Maintenance Code at Chapter IX, Article 6 of the City Code, as amended, and which would also provide for the promulgation of regulations governing the treatment and eradication of bedbug infestations.

b) Ordinance No. 8874, establishing a 55 MPH speed limit on 23rd Street (K-10 Highway), between FF Street and Franklin Road.

c) Ordinance No. 8875, establishing a 40mph Speed Limit on Peterson Road between Kasold Drive and Monterey Way (approved by Traffic Safety Commission on 5/6/13 and by the City Commission on 6/11/13).

d) Ordinance No. 8876, allowing the possession and consumption of alcoholic liquor on 7th Street, from Kentucky Street to Tennessee Street, from 9:00 a.m. - midnight on 07/04/13, associated with the Lawrence Originals 4th of July event.

8. Adopted on second and final reading, Ordinance No. 8872, authorizing the issuance of up to $6,686,000 in Hospital Revenue Bonds for Lawrence Memorial Hospital for the purpose of financing, refinancing and reimbursing the costs of certain equipment and facilities to support hospital operations.

9. Approved the Special Event, SE-13-00211, for a Night at the Movies by the Lawrence Arts Center located on Salvation Army property at 946 New Hampshire Street on July 12, 2013. Submitted by Ric Averill, Lawrence Arts Center with permission of the Salvation Army, property owner of record.

10. Approved the Special Event, SE-13-00221, for a weekend market by Lawrence Flea Market located on Mount Oread Aerie 309 FOE Inc. property at 1803 W. 6th St on June 22, 2013. Submitted by Danielle Rittenhouse, Lawrence Flea Market, with permission from Mount Oread Aerie 309 FOE Inc., property owner of record.

11. Authorized the Mayor to execute a City/State Agreement with the Kansas Department of Transportation for reimbursement to city for Construction Engineering and Inspection Services on the 9th Street, Tennessee Street to Kentucky Street improvements, Project No. PW1212.

12. Authorized the City Manager to execute the Engineering Services Agreement for the Maple Street Pump Station with Bartlett & West in an amount of $399,370.

13. Authorized staff to bind coverage for property and casualty insurance ($125,920) and fire and medical auto/professional liability insurance ($56,784) for the insurance period of July 1, 2013 through July 1, 2014.

14. Approved as “signs of community interest”, a request from the Lawrence Farmers’ Market to install a permanent sign in the right-of-way at 824 New Hampshire Street, near the west entrance to Lot #8, advertising the downtown Farmers’ Market.

15. Authorized the Mayor to sign a Subordination Agreement for Linda J. Trent (Linda J. Reynolds), 1041 Home Circle.

16. Authorized the Mayor to sign a Release of Mortgage for Alouise R. Brain, 2315 Orchard Lane.

Regarding item number 7a, Ordinance No. 8873, merging the current Environmental Code into the Property Maintenance Code at Chapter IX, Article 6 of the City Code, as amended, and which would also provide for the promulgation of regulations governing the treatment and eradication of bedbug infestations, James Dunn asked for elaboration on the plan and problems on the bedbug issue.

Dever asked if there were specific questions.

Dunn said the regulations themselves weren't outlined and he was curious how complaints and violations would be handled.

Randy Larkin, Assistant City Attorney, said recently there had been issues with bedbugs in apartments around town and code enforcement staff had trouble getting some landlords to take effective steps in handling those issues. This would allow staff to create and post regulations dealing with bedbugs.

Dever said the plan was to promulgate rules and regulations and have those approved by the City Commission.

Larkin said yes. It was a matter of recognizing that there was a potential issue and allowing staff time, in the future, to come up with a plan to eradicate the bed bug situation.

Dever said from a procedural standpoint it looked as though the City was merging the current Environmental Code into the Property Maintenance Code, Chapter 9.

Larkin said yes. The Environmental Code dated back to the late 60's early 70's and was the code the City used in beautifying neighborhoods as well as helping with the health, safety, and welfare of this community. In 2007, the City adopted the International Property Maintenance Code which covered the same things as the Environmental code. Some issues were arising related to the enforcement such as which code staff should proceed under as well as the penalties and procedures being different. Combining the two codes would eliminate redundancies which would make it easier for staff and citizens to know the standards.

Dever asked if there was a timeline or major issues in merging the codes, and if there were advantages to merging the codes.

Scott McCullough, Planning and Development Services Director, said staff had some experience in managing a few of those cases, sometimes with the County Health Department. He said they believed the components for the regulations that would be promulgated would include education of landlords and property managers as well as training of their staff in certain instances and the enforcement mechanism to exterminate the property. Those were some of the basic components of what staff was likely to provide for City Commission review in the future. He said an exact timeline hadn't been laid out, but it would be as soon as possible because staff had some recent cases where they wanted to get this issue on the books and the regulations established.

Dever asked if that answered Dunn's questions.

Dunn said might be fruitful to look at how other communities had dealt with this issue. He said it was his experience that this was an expensive procedure, and it was tenant driven. The landlord was caught dealing with someone's bad behaviors, and the question was whether the landlord could do anything to deal with those behaviors.

Dever said this evening the City would be merging the codes. This would help from an administrative standpoint. Secondly, the Commission would provide for promulgating regulations governing the treatment and eradication of bedbug and presenting those regulations to the public before moving forward.

Schumm said since this was an ordinance, it would require two readings. He said he would like to see what other communities were doing. The costs were high and he would like to decide up front how things would be paid for.

Amyx asked if Schumm would like to adopt the ordinance on first reading and hold the second reading until they had those regulations in place.

Larkin said the new City Code would be effective July 1 and staff was hoping to have those two codes combined.

Corliss said staff wouldn't promulgate the bedbug regulations until staff had done what the Commission had asked in terms of presenting information on other communities and engaging the landlord community, which had always been their plan. Staff would like to have this basic ordinance in place for the codification.

Moved by Schumm, seconded by Riordan, to adopt on first reading Ordinance No. 8873, merging the current Environmental Code into the Property Maintenance Code at Chapter IX, Article 6 of the City Code, as amended, and which would also provide for the promulgation of regulations governing the treatment and eradication of bedbug infestations. Motion carried unanimously.

C. CITY MANAGER'S REPORT:

David Corliss, City Manager, presented the report.

D. REGULAR AGENDA ITEMS:

1. ***Received staff memo regarding an alternate site for the temporary transit hub***.

Robert Nugent, Public Transit Administrator, presented the staff report.

Farmer asked how many spots would be taken from the lot behind the Eldridge.

Nugent said none from the parking lot.

Amyx asked about the 4 spaces at the corner and would there be busses at that location.

Nugent said no.

Amyx asked what the concern about blocking the driveway was.

Nugent said it was the property owner's concern, but he wasn't concerned about it.

Dever asked where busses would be parked.

Nugent displayed a map. He said it was about 310 feet.

Farmer asked if the Local Burger building was being used for anything.

Nugent said they were doing some cabinet and table top work for the building behind. There were stacked marble and other materials that were in that building.

Mayor Dever called for public comment.

Brian Wilkerson, downtown business owner, said they had a serious parking problem already in the 800 block. Adding long term parking at that location would actually make it worse. He said there was not a single parking space in their parking lot or on the street when he checked today. In the winter time especially elderly people would not be able to walk. It's a major cut through street and very busy. They had a problem already. When Carnegie was expanded, they lost a third of that lot. He said he opposed to using the 800 block of Vermont.

Farmer asked if Wilkerson would support busses in the 700 block of Vermont.

Wilkerson said he absolutely would.

Schumm said it looked like it was a handy solution, but they were extremely tight on parking in that block too. It was a relatively short time though, so he said he was willing to support the 700 block location. There were conflicts with the construction and he hoped there wouldn't be safety issues.

Dever said he would see getting out of the parking lot and heading north could be tough.

Schumm said it could be difficult for people backing out of the post office too.

Corliss said soon the City Commission would have a status report on the permanent location of the transit facility. They hoped to have some spaces available at the end of July in the garage and the rest of the parking spaces in September. It would provide twice as many spots as were there before, and the library won't be there until next year. Hopefully they'll have the permanent location for transit ready by the time the library returns.

Amyx said Schumm had given the Commission a lot of things to think about. The only reason this worked was that the garage was opening soon. He said Wilkerson was right about senior citizens getting around safely.

Riordan said every one of those spaces had problems but the 700 block seemed to have the fewest. It seemed fairly straightforward.

Farmer asked if the spaces in the garage were going to be open by the end of July.

Corliss said some of the spaces. He was hoping some spaces could be opened by the sidewalk sale day, and most of those spaces by the end of August.

Farmer asked if those spaces would be two hour parking.

Corliss said the Commission would decide that. Staff was looking at a system like KU had at their garages, where a person would pay to leave. There would be a mix of two hour and ten hour parking, at least that's the way he saw it.

Moved by Schumm, seconded by Amyx, to direct staff to move the temporary transit hub to the 700 block of Vermont. Motion carried unanimously.

2. ***Considered authorizing staff to negotiate an Engineering Services Agreement with Black & Veatch Corporation for Project UT1304 Wakarusa Wastewater Treatment Plant and Project UT1306 Wakarusa Conveyance Corridor Facilities.***

David Corliss, City Manager, introduced the item.

Mike Orth, Black and Veatch, presented their report.

Amyx said when the Commission originally looked at the plant 6-8 years ago; he asked what the anticipated costs was then versus now.

Orth said it was over 100 million dollars then and somewhere around 55 million now.

Riordan said he appreciated the quality groups involved in this project and that they were looking at some innovative designs to save some money. He said he was very pleased with what he was seeing.

Mayor Dever called for public comment. None was received.

Amyx said they were at a ground breaking the other day, and if they didn't proceed soon they wouldn't be going to any other groundbreakings. He said they had put this project off as long as they could.

Moved by Amyx, seconded by Riordan, to authorize staff to negotiate an Engineering Services Agreement with Black & Veatch Corporation for Project UT1304 Wakarusa Wastewater Treatment Plant and Project UT1306 Wakarusa Conveyance Corridor Facilities. Motion carried unanimously.

3. ***Considered a Comprehensive Plan Amendment, CPA-13-00067, to Horizon 2020 Chapter 6 Commercial Land Use and Chapter 14 Specific Plans, Revised Southern Development Plan, to expand the S. Iowa Street commercial corridor east along W. 31st Street to include 1900 W 31st Street and identify the area as a Regional Commercial Center. Submitted by Menard, Inc. Adopt on first reading, Joint City Ordinance No. 8869/County Resolution No. ____, for Comprehensive Plan Amendment (CPA-13-00067) to Horizon 2020 Chapter 6 Commercial Land Use and Chapter 14 Specific Plans, Revised Southern Development Plan, to expand the S. Iowa Street commercial corridor east along W. 31st Street to include 1900 W 31st Street and identify the area as a Regional Commercial Center. (PC Item 4; approved 6-3-1 on 5/20/13)***

4. ***Considered a request to rezone, Z-13-00071, approximately 41.15 acres from RM12 (Multi-Dwelling Residential) to CR (Regional Commercial), located at 1900 W 31st Street. Submitted by Menard, Inc., for Mid-American Manufactured Housing, Inc., property owner of record. Deferred by Planning Commission on 4/22/13. Adopted on first reading, Ordinance No. 8870, to rezone (Z-13-00071) approximately 41.15 acres from RM12 (Multi-Dwelling Residential) to CR (Regional Commercial), located at 1900 W 31st Street. (PC Item 5; approved 6-3-1 on 5/20/13)***

Scott McCullough, Planning and Development Services Director, presented the staff report for items 3 and 4.

Amyx asked how much developable ground was at the Snodgrass property.

McCullough said about 5 acres.

Amyx asked about the bike path and if the path connected at the north edge of the property.

McCullough said they wouldn't have that detail until the site plan stage, but that was the concept.

Dever said asked about the apartment complex located on the south side of the street and if the owner of the apartment complex still had the parcel south of that drainage area available for development.

McCullough said yes.

Dever asked if that area was still zoned and platted for multi-family.

McCullough said yes.

Farmer asked if the City Commission had the new out lot size in their City Commission packets.

McCullough said no. In their power-point they had a new graphic that they just received yesterday. He said all lot sizes were less than 2 acres.

Schumm said prior to this revision there was going to be 8 out pads. He asked if this plan was revised as of today or yesterday.

McCullough said this revision was shown to the Planning Commission, with the 200 foot buffer.

Schumm said the agenda indicated that it was to expand the South Iowa Street commercial corridor east along West 31st Street to include 1900 West 31st Street and identify the area as a Regional Commercial Center. He asked if that was a new designation.

McCullough said no. It was currently in Horizon 2020 and South Iowa Street was one of their two regional centers.

Schumm asked what the maximum amount of commercial property was that could be had in a regional center.

McCullough said the Comprehensive Plan Policy was 1.5 million square feet. He said it was about 1.8 million square feet to accommodate this request.

Schumm asked if they were going over the designation if the City Commission approves this plan.

McCullough said the City would be going over the Comprehensive Plan Policy designation. It was not a code requirement, but a policy.

Schumm said would staff change the definition in the plan to a higher number.

McCullough said not necessarily. He said those developments worked differently than the City's new nodal development in that there primarily existing commercial corridors. Historically, the city stripped out commercial along 23rd Street, 6th Street, and South Iowa. He said with the latest comprehensive plan they went more to the nodal plan development for commercial and was a little more stringent and strict with the amount of commercial retail in those nodes. This likely has exceeded their policy for some time now, but would exacerbate that exceeding with this request.

Schumm said the presentation begs the question, when K-10 was completed, the City had already heard from people looking for more commercial property at that location. He asked where the limit was and how that worked.

McCullough said that's a fair statement. He said at some point they amend the policy to raise the limit. The policy was established when the SLT was more a pipe dream than reality. It might be a future comprehensive plan amendments that the City might want to take up at some point.

Dever said they were over the limit currently.

McCullough said yes.

Dever said this development adds 250,000 square feet of retail.

McCullough said the policy stated 1.5 million and they were currently at 2 million square feet so they were 500,000 over.

Dever said without the addition of 250,000.

McCullough said yes.

Riordan said regarding the square footage, that's not including what could go on Snodgrass.

McCullough said correct.

Schumm asked how much could go at that location.

McCullough said between 50,000 and 100,000.

Dever said they were at 2 million, the policy stated 1.5 million square feet, and they were looking at adding 300,000 square feet by this action.

Riordan said in going down 31st Street, he was concerned with stripping this out. The floodplain limits moving further toward Louisiana.

McCullough it was very limited on the north side, until getting to Haskell Avenue, but there was a parcel on the south side of 31st between Louisiana and the future street. It's possible they could get a request for commercial but the apartment complex already set the pattern and the Planning Commission wasn't as concerned about that.

Riordan said as this naturally developed, he asked about the capacity of the street to carry all those structures and was it adequate.

McCullough said it's an arterial that would need some improvements like turn lanes and signals. It might diminish the service level at the Iowa intersection. There were likely to be some improvements along 31st Street.

Riordan asked who would be responsible for those improvements.

McCullough said by policy, the developer.

Amyx asked what McCullough anticipated the traffic from that lot as commercial versus the multi-family that existed at the location.

McCullough said it was a different behavior and peak hours. There might be more traffic but there was a difference because it was spread out over the week. He said it was likely to be more intense on the weekends.

Amyx asked if the multi-family residential would have the same effect on the peak demands at the intersection of 31st and Iowa and the number of trips that would be generated.

McCullough said it would certainly have an effect. If going from the current condition which was nothing and was low intensity, you would see that increase even from the use that was there previously.

Amyx asked if it would safe to say there would be equal pressure if it were multi-family or commercial.

McCullough said it would not be equal. It would be different times. The other unknown was the effect of the SLT.

Dever said he didn't see the request for Phase 1 and 2. He asked if there was discussion of only approving Phase 1 and not the additional 5 parcels.

McCullough said staff studied a lot of different options including conditioning this to be a one store project. The range was to accommodate the full request and down to one store and not having any out lots. He said staff presented the Planning Commission a proposal that would prohibit any out lots on the property and it would just be a Menard Store. He said this was a concept plan and the platting and site planning needed to come forward.

Schumm said there was commentary this week that indicated that Home Depot was restricted in size when they put in their establishment. He asked if that was true.

McCullough said he was not up to speed on the full history, but others might be able to speak to that question. He said as he understood, the Home Depot had an original request that was larger in scope and through the process it was reduced which then had the effect of having a smaller store.

Corliss said that was his recollection.

Schumm asked how big the Home Depot store was today.

McCullough said about 100,000 square feet.

Schumm asked if Menards was 189,000 square feet.

McCullough said with the open area and 96,000 with storage.

Amyx said when they discussed conditional zoning they didn't want to zone property and leave it out there for a long time. He asked if it was possible to condition it to a time limit when building permits had to be pulled.

McCullough said it was possible but that wasn't something they had done to date.

Amyx asked if the applicant was aware that they had commercial design guidelines.

McCullough said yes. He reminded the City Commission that since this was a rezoning request, to share ex parte communications for the record.

Amyx said he had received dozens of emails. He received an email yesterday from an individual named George with some articles from the paper.

Dever said he hadn't received anything that wasn't in the public realm.

Schumm said he had a conversation today with Dever about the retail market study. He received some emails, but no information that wasn't in the public realm already.

Riordan said he didn't have anything ex parte communications to report that included information that wasn't already available to the public.

Farmer said he had conversations with a couple people and asked them to send emails, which were in the public record.

Tyler Edwards, Menards, presented an overview of sites Menard's looked at in Lawrence. He showed a map with the sites noted.

Dever asked if Edwards was involved with the Garden City project.

Edwards said yes. They looked long and hard at that project because again, Home Depot was right next door. There had been no significant impact on Home Depot.

Dever said they had some additional land around that project to enlarge that development.

Edwards said with that project, Menard's did not own the additional parcels. That was a developer that came to Menard's and wanted Menard's to develop a portion and they would develop the rest. He said that wasn't the case here and Menard's was acting as the developer in this situation.

Dever asked if Menard's bought that land from the developer or leased that land.

Edwards said they only buy their land because they planned on operating their stores for 25 to 30 years and leasing did not make sense in that case.

Dever said Edwards talk about rooftops. He went to Menard's in Garden City and was shocked at the location. He was an advocate of the 6th Street location for a variety of reasons. In Garden City the store was at the edge of town and was confused about that location.

Edwards said if there had been a location inside the commercial area in Garden City they would have gone with that option.

Dever asked about the rooftops and there weren't many there.

Edwards said this was a situation where they were looking for every advantage they could. In Lawrence they looked at two different tracks. He said they catered to day trippers and also the rural guys. People drive 2-3 hours in some locations to come to Menards. In Lawrence if they located outside of town, they would only tap one of the markets instead of both.

Amyx asked if Edwards was aware of the amount of future zoning the City Commission had approved at 6th Street.

Edwards said Menards wanted to start building next year at this spot. If they were rejected and could only build at the 6th Street location, it could be 5, 10, or 15 years before they could determine there was enough development to make that worth it.

Riordan said he was wondering if Edwards had data on area codes of people in Lawrence visiting stores in Kansas City and Topeka.

Edwards said they didn't have any store in Kansas City. He could get data from the credit card transactions on the number of Lawrence shoppers.

Riordan said there were significant numbers from Lawrence.

Edwards said several hundred every month.

Riordan said Edwards indicated that Menards had a fairly significant pull from rural Leavenworth and other counties nearby and asked if Menards pulled from those places also.

Edwards said yes. If looking at the maps from St. Joseph to Topeka there were lots of rural residents that would come to Lawrence.

Dever asked why.

Edwards said people loved Menards.

Dever said he understood Edwards as saying that people would drive from Kansas City to Topeka to shop at Menards because Kansas City did not have a Menards. He asked what happened when a store was built in Kansas City.

Edwards said eventually they planned to be in Kansas City. Let's say if living 20 miles north of Lawrence and you wanted to do some shopping, there was a choice of going to a large city and doing everything at once or going to lots of different places. He said Lawrence would have all of the Douglas County residents making a trip to Lawrence because it was the closest place to do all of their business at once.

Dever asked about the topographic challenges at Sixth Street and was that because it's not flat?

Edwards said yes.

Dever said Menards had dealt with that in other cities.

Edwards said their interpretation of the topographic challenges for instance, there was 6th Street which was elevated and to have a commercial development the front would need to be dug down to make 800 to 900 feet flat, and if building a giant wall a person would be looking at the roof and not the front of the store. If looking at other locations, they were always level at the road and the walls were in the back. If going to a larger development which was planned for Lawrence, there would be a row of out lots which need to be upfront because Menards liked to have the upfront spot and the big box tenants sit further back. He said a row might be able to go upfront, then a wall and another frontage road and then tiered downward where you could only look at the out lots upfront and wouldn't be able to see anyone behind it which was where they ran into problems.

Schumm said Edwards mentioned that when the store opened, they weren't worried about vacating their store anytime soon, and that Edwards experience in other communities was that Home Depot didn't vacate their stores either. He asked about the affects Menards stores had on other businesses that sold similar goods.

Edwards said their stores average $30,000,000. One way to look at this was that you wouldn't be draining the ocean, but adding a drop to the ocean. There were ripple effects but they minutely affect the others.

Schumm said he would think a good deal of those sales would come out of existing sales in the community.

Edwards said there would be a portion that would come from within the community.

Schumm said he wasn't against Menards, but when the City Commission was asked to look at rezoning, especially for the situation because there were extenuating circumstances that they needed to take into account.

Edwards said that made sense, but the other half of that argument was that they had an appropriately zoned project that gave up for lack of demand as well. He said with the proposed apartment complex that was initially slated for this location which was now sitting empty versus occupied and competing which would be Menards was the choice that had to be made. According to the developer for that apartment complex there was significant lack of demand. He said Menards thought it was a prime candidate for commercial development.

Dever said in Topeka, Menards had some topography issues and asked if Edwards did that development as well.

Edwards said he was not on that project, but understood Menards was sitting on the top of the hill with a wall behind the store, but at the same time they weren't sitting below anything and were king of the mountain. Menards could be seen from Wanamaker.

Dever said that's what Edwards meant by visibility.

Edwards said yes, there was always pass-by traffic.

Dever said Edwards indicated the sites on the east side were pass-by and didn't want to go there which made him confused. He said the Commission wanted to understand the site challenges.

Edwards said on the east and north side those were exclusively pass-by on the way to Kansas City. They liked to capture the pass-by of people who were already shopping, not commuting.

Dever said it's the same thing on 6th Street.

Edwards said yes. If the 6th Street site was on level with Wal-Mart it might be different, but you can't see it because of topography and there was nothing else out there.

Mayor Dever called for public comment.

Dale Willey said he had attended a public meeting early in the process. He didn't hear one negative comment about Menard's coming in. There has been concern about traffic on 31st. As you know, 31st now was our SLT. Once the SLT was built traffic would reduce significantly. It was previously a fight to locate Target, but where would they be today without Target. The City had lots on their plate as far as budget challenges. Tonight, the City Commission could be heroes by voting for Menards because of the tremendous real estate, personal property, and sales taxes which would be on-going for years to come and help the City meet a lot of budgets. The last thing was the synergy, for instance, Schumm was in the downtown restaurant and bar business and those types of businesses were up and down Massachusetts Street. He said they were in the car business and car businesses were located all around their location. He said from what he had learned, Menards liked to be located next to Home Depot or Lowes which worked. The big box stores were also out at those locations which was a natural synergy that was good for the community. He said he would appreciate the City Commission's favorable consideration of this project.

Zak Bolick said he encouraged the City Commissioners to support the requests. The sight was currently blighted in a high visibility area. He said he felt Menard's had done tremendous due diligence. This was the site that worked best for Menards. They have opened hundreds of stores and not closed a single one. The idea that there was a set limit on retail spending didn't take into account free market principles. This would generate more tax revenues than any multi-family development you could put there. The closest neighbors supported the development and the Planning Commission recommended it too. He said he hoped Lawrence would be officially opened for business with national retailers now.

Kirk McClure recommended that the City Commission vote against the amendment and the ensuing rezoning. He said they planned for a verity of reasons but among the most important was that markets fail. If market were self-correcting they wouldn't be in the planning business and would know they would only build as much a space as there was demand for that space, but that's not what happened. They have witnessed overbuilding of retail space that was at such a great pace that they had seen the complete breakdown of the planning process. City staff had given the City Commission a retail sales report that stated that the City's retail space had grown by 4.4 percent per year. Inflation adjusted to growth and demand for that space had grown by .4 percent. In a period of about a decade, they had allowed the amount of retail space to grow 8 to 11 times the pace that was defensible. A good market wouldn't do that but it was the nature of real estate. They have had a lot of false claims about jobs, sales taxes, and property taxes all of which would accrue to the community if doing this. The evidence was before the City Commission in the staff report. Demand was growing, but not fast enough to support the growth in demand they were seeing. They wouldn't get more jobs by building more buildings. Smart communities manage their supply to keep it in pace with demand. Consumers drive sales tax, not retailers. Adding a Menard's was not going to create the additional $30,000,000 that was necessary to support this project. Adding more buildings doesn't create more property values. The Planning Commission didn't want the City Commission to blame them for being business unfriendly. Being business friendly was accepting the heavy responsibility of balancing supply and demand.

Dever said he read an article about Menard's plans to expand in Kansas City and their plans pulled back. How had economic conditions changed?

Edwards said at that time his explicit direction at that time was to pull back on Kansas City but continue with Lawrence. It was a temporary setback.

Dever said the comments at the time were that the poor fiscal policy of the government was to blame.

Edwards said it costs a lot to open a store in Kansas City or St Louis. They were looking at rates of return as they decided what to attack next. They had never speculatively opened a store. They expected to do well the first day and for at least 30 years.

The Commission recessed for a short break at 8:42 p.m.

The Commission returned to the regular session at 8:48 p.m.

Amyx said several years ago, there was another discussion about a major rezoning at 6th and Wakarusa. He said at that time, McClure said that Dillon's would close if Wal-Mart opened, but in fact Dillon's had doubled in size since then. He asked what that meant.

McClure said he missed on that bet. They tried to get Wal-Mart to locate in North Lawrence, and they didn't because they said they wanted to locate opposite to Dillon's because they wanted to kill Dillon's. That didn't happen, but the aggregate growth had not been with the growth in square footage, but only with the growth in income. There hadn't been new jobs or property taxes.

Amyx said during the same time period with the development of the new Wal-Mart store he saw a number of large stores redevelop in town.

McClure said they had seen a lot of other things die off. He said look at the amount of spending per square foot in this community, it was somewhere around $250 a square foot. It was real hard to make the value of your property wholesome. There wasn't a lot of investment downtown, but had a lot of junk on East 23rd Street, a North Lawrence that was suffering, and heavy investment that the public made in a Riverfront Mall that was now turned into a tourist class hotel. They had Tanger come in and build a mall that they now had to turn into back office space which has hurt the office market. If they had shown restraint in building, they would be in a position to have a much more vibrant retail base, more investment downtown, healthier commercial strips, big box store which could not be avoided. It should be the community's choice not the development driven choice on where and how to build those big boxes.

Schumm asked about the about the 2012 Retail Market Report. He had hoped when this was developed they would had time to discuss this report as a group, but they hadn't yet. On p.15, 3a, the last sentence stated the per capita figures say there had been a 20% increase in space from 2006 to 2012. On the next page, it showed from 2006 to 2012 there has been a $9 per capita drop in sales tax collected, or 7% less per capita. Further in the study, on p.21 table 3.6, it appeared that they still weren't collecting any net additional sales tax since 2000. For 12 years they hadn't gained any ground yet and had substantial more square footage available. The per capita spending had only increased $1000 over 11 years. It's apparent by this report that they were over extended on the City's retail availability. The City's revenue was actually less than 12 years ago.

McCullough said when making the adjustments for inflation, Schumm was correct, but the middle part of the decade had a severe recession. Many things were shown in not so positive light. They did need to scrutinize things carefully. This report didn't consider all elements of retail behavior such as pull factor. It was difficult to find real severe pockets of harm. They didn't have in most people's mind severe pockets of blight in the retail segment of this community. If they did, they would need to look very hard at adding new retail to the community.

Schumm said when looking at those numbers and looking at adding $30,000,000 of sales of products that were available elsewhere in the community, they had to ask if it was going to harm other parts of the community.

Amy Miller, Planner, said Schumm was correct. One of the things staff had seen since 2006 was that the vacancy rate was nearly steady between 6.9 percent to currently 7.2 percent. The vacancy rate hadn't changed much and yet they had added retail stock to the market since 2006. While they were not seeing that dramatic of a change in their demand numbers, the supply number indicating that the vacancy rate had been holding steady was a positive.

Schumm said there wasn't an ability to get at the dollars per square foot, but he guessed that the rate had slid some in the past 5 years.

Miller said the report didn't look at that but it did look at sales per capita.

Schumm said regarding the retail pull factor, he asked what Miller attributed the net 7% pull factor better than the equilibrium point.

Miller said they didn't have a way to say for sure, it's an aggregate number.

Schumm said tourism could contribute to it.

Miller said yes.

Riordan asked for an explanation of the chart of vacancy numbers with and without Menard's.

Miller said those numbers were based on the square footages that were included in the applicant submitted market study. It didn't take into consideration a possible reconfiguration of out lots and a possible decrease in square footage. It was square footage supplied the applicant to the consultant who did the market study. On the 31st and Ousdahl, Phase 1, Menards store, they had 189,000 plugged in and for the Phase 2, it was 65,340. If the total square footage of Phase 1 and 2 were constructed and assumed vacant, the City-wide vacancy rate would rise to 9.7 percent. If just the Menards store, Phase 1, was constructed and considered vacant, it would make the vacancy rate rise to 9.1 percent. The other scenario was if assuming the Menards store was built and occupied and not vacant, with Phase 2 and the pad sites were vacant, the vacancy rate was only 7.7 percent.

Dever asked for an explanation of why they had to presume vacancy with the addition.

McCullough said the conservative approach was that retail was only spread so thin and something else would go out of business.

Dever said that didn't happen with Wal-Mart and Dillon's. He asked if there was any anecdotal evidence in this city of such a thing happening. He said he couldn't recall that ever happening. McClure brought up Tanger and a couple other decisions. The one at the turnpike was almost full even though it had been repurposed. Could anyone recall a time when something was built and something else went out of business immediately?

McCullough said it was very dynamic. People come in and out of business for different reasons, different economies and different markets. He said one business that McClure brought up was the south Wal-Mart and Food for Less Store which was vacant for a while, but now had a new use.

Dever said that was vacant by choice.

McCullough said this wasn't an exact science, but a study with a lot of assumptions in terms of what was possible and what effect could this new project possibly have on the health of the market. He said staff had tried to convey to the Planning and City Commission to look at this, even though they had conservative assumption staff had to make in their study. He said there were a number of zoned properties that accounted for an awful lot of square feet. He said they were there, but not really part of the inventory of existing retail. He said they had about 9 million square feet of retail, so much occupied, and so much vacant and the practical vacancy rate was 7.2 percent. He said even this project barely moved that even if considering it to be vacant, in the overall scope of 9 million square feet of retail within the City. One of the things that was very valuable to the City was to look at the biannual studies and surveys of the retail market and look at trends. He said Miller mentioned one trend that the vacancy rate had remained fairly stable over the last 5 years since they had been able to do this study in a consistent method. If they were seeing that ramp up from 6 percent of vacancy to 9 to 12 percent of real practical numbers, they would be talking a very different situation, but they weren't and they hadn't seen that shift. He said staff was trying to present the City Commission the practical numbers as well as the theoretical potential.

Dever said he appreciated those comments, but wanted to be sure he understood the premise of assuming vacancy. He said it was the worst case scenario where the conservative approach to studying retail square footage in a fixed environment assuming there was no new, but only change.

Amyx asked if the old Borders would be included in that vacancy rate right now.

Miller said when staff surveyed, the library had just moved in to that space and so it was considered occupied at the time.

Farmer asked how the sales tax collected in the budgets from 2002 to today, showed an increase from about $10 million to $33 million, which seemed different than the numbers in the retail study.

Corliss said there had been some rate changes also. It helped to look at what the 1% sales tax collected since 1991.

Farmer said to say they had seen the same amount of spending in this community when the budget indicated that from 2011 to 2014, there would be an increase of approximately 1.3 million dollars.

Corliss said there was some inflation adjustment.

Farmer said there had been an increase every year in actual nominal dollars every year.

Corliss said yes, for various reasons.

Schumm said without indexing Farmer's numbers, you had to factor in that they paid more for everything today. The Planning Department had to take inflation adjusted numbers, to try to get some metrics that were consistent they hadn't grown much in sales tax revenue when it was adjusted.

Dever said some of it could be the dollars were leaving the community and spending those dollars somewhere else.

Schumm said for sure the community hadn't done very well with wages.

Riordan said in looking at those numbers, there was about a .5 increase over the last 11 years. He said he would imagine it was the same as the national trend.

Miller said she hadn't researched that information, but staff could get that information for the Commission.

McCullough said the purposes were a little different and this was to normalize it to get a trend going and then break it out into different parts over the last decade and from 2006 to 2011 it was actually adjusted for inflation negative trend. He said prior to that it was positive in two different time periods.

Dever said there were two questions he was hearing which was square footage had increased and yet the City's retail vacancy rate had not increased.

McCullough said that was consistent and hovered around 7 percent.

Dever said fluctuating within a few percentage points which could be argued with some of the numbers, and the reason for the vacancy as well. He said there was square footage and then sales tax dollars. He said it was counterintuitive to believe that they would be adding square footage and not somehow adding sales tax because businesses were in business to make money and not lose money and they had to somehow support their operations. If they were adding square footage, that meant people were paying rent and having to have overhead. If they didn't have the dollars to meet those demands, then they wouldn't stay in business and would leave the market. He said there were a lot of things moving around the board, but he didn't see a clear pattern and to him it was not implicit that when adding square footage in retail, business was lost or increase vacancy.

McCullough said staff hadn't provided an analysis of individual sectors, and that might be the next level to look at. Clearly, there's an impact. Through the recession and in today's dollars retail might not be doing as well.

Schumm said people might have been doing better a decade ago but they still haven't stopped doing business. If they were at that level and the City Commission approved this, he asked if this accelerate the decline around the edges.

Amyx said internet sales might have an effect.

Corliss said one of the other points was that he was not seeing a lot of the blight from the retail that would be assumed with excessive vacancies in the community. They were seeing redevelopment on the Iowa and 23rd Street Corridor. They were seeing investments downtown. One of the good indicators they had seen was almost every grocery store reinvesting. He said he was not seeing the symptom that they were trying to cure.

Farmer said he understood the numbers were adjusted for inflation, but to him that type of growth didn't take place unless people were spending money in this community. When he looked at this year's budget and were looking at a .3 mill levy increase, and the sales tax revenues were so much higher than property taxes, why did they spend so much time talking about mill levy increases when they had an opportunity for a business to come to this community that would generate $200,000 or $300,000 in sales tax revenue. If that businesses was already here generating that money, that would fund the mill levy increase. He said he was at a family gathering recently and one of the things they said was that they frequently go out of town to shop. Someone said grandma loved to go to Topeka to shop at Menard's and loved to eat at Cracker Barrel. He thought about it and about how much money was leaving the community. It would be foolish, stupid and asinine to say no to more sales tax in our community.

Amyx said this looked like a very good project and people should be commended for that. As far as the comprehensive plan it seemed like a good move. This area had developed as a huge commercial corridor that meant a lot to this community and it could handle the traffic. He thought it was a good development the city could support.

Riordan said when he looked at this development he had some concerns. One concern was traffic on 31st, but now it didn't seem that it would be a significant problem. He worried a little about the intersection at Iowa and 31st because it could be expanded, but it didn't seem like a big problem. He said another concern was the cost of the project was initially 1.5 million and now were up to 1.8 million. There would be significant pressure south to expand and there would be people knocking on the door in the near future to create some type of space to make money around 31st Street. The fact that they were over $1.5 million didn't concern him much because the amount of space at that location was inadequate. The concerns over building too much, on an emotional basis, shouldn't be taken into account and we should do what was best for the City. This was a logical place to put a business where currently it was blighted. Overall, looking at the economy, he thought this was the time to allow this project to occur. He did not know that this project was a no brainer, but it was certainly a good idea.

Schumm said he couldn't buy the numbers. There was a lot of commercial at this node already. He didn't thing they would see that much more net sales tax in the community. People that leave the city to go shop would still find reasons to do so. The rates without much growth of sales tax were concerning. There was tremendous infrastructure at other locations. He asked why they went to those other areas if they weren't going to develop those areas. They had to say no at some point. He said he had nothing against Menards and hoped they located in Lawrence. He was just not sold on the case that it's a net plus. There were other land uses that could work. He said he could not support the change to the plan or the rezoning.

Dever said he believed that there was potential to make a mistake any time a decision was made. He believed in his experience that they didn't really impact how people spend their dollars. He just wanted to offer a little more variety, take advantage of some of the investments the State of Kansas was making in this community. He said it was a possibility that some of the lack of growth in our sales tax was directly linked to the City's policies. He was willing to rest on his experience of the last six years and say that the investments people had made, had not led to additional vacancies. He believed those investments brought people to this community. He said he was in favor of this as a positive development.

Moved by Amyx, seconded by Riordan, to approve Comprehensive Plan Amendment (CPA-13-00067) and adopt on first reading, Joint City Ordinance No. 8869/County Resolution No. ____, Motion carried 4-1 with Schumm dissenting.

Amyx asked if we were interested in a time limit on the zoning approval before the building permits were pulled.

Edwards said they were not opposed to making final approval of the zoning contingent on Menard's pulling the building permits. The only problem with the time limits was that he had to work with the Corps of Engineers which was unpredictable.

Dever asked what time limit was reasonable, 12 months, 24 months?

Edwards said 24 months was okay.

Corliss said what the Vice Mayor suggested was that the zoning ordinance would be null and void if building permits were not pulled within 24 months.

Moved by Farmer, seconded by Amyx, to approve rezoning (Z-13-00071) and adopt on first reading, Ordinance No. 8870, with the condition that the zoning ordinance would be null and void if building permits were not pulled within 24 months. Motion carried 4-1 with Schumm dissenting.

5. ***Received staff update and follow-up information concerning 2014 City budget preparations.***

Casey Toomay, Budget Manager, and David Corliss, City Manager, presented the staff report.

Dever asked for a tabulation of all the unfunded requests.

Toomay said it was around $1.07 million.

Dever said that included the shelter at about .6. He said he would like to see what other commissioners thought about those.

Corliss said the arts center requests were one time for capital improvement. The staffing requests were continuing.

Riordan asked for an explanation of the loan to the shelter.

Corliss said the shelter had about half a million of debt to a local bank. The Shelter would like the City to use its borrowing capacity and cost of money rather than the bank. He would like to find out more about it and whether the City could even do it. This was not an exhaustive list. There were more items in the social service list and the department list.

Riordan said he understood the loan to the community shelter as a pass though expense.

Corliss said it was shown as the equivalent mill levy, but it would be over time and there would be money coming back in as it was repaid.

Mayor Dever called for public comment. None was received.

Riordan asked how the police facility fit in.

Corliss said it was a capital item they would try to respond to.

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 Schumm, seconded by Amyx, to adjourn at 10:02 p.m. Motion carried unanimously.

MINUTES APPROVED BY THE CITY COMMISSION ON JULY 9, 2013.

Jonathan M. Douglass, City Clerk