



**PLANNING COMMISSION MEETING**  
**February 24 & 26, 2014**  
**Meeting Minutes**

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February 24, 2014 – 6:30 p.m.

Commissioners present: Britton, Culver, Denney, Graham, Josserand, Kelly, Liese, Rasmussen, Struckhoff, von Achen

Staff present: McCullough, Stogsdill, Crick, Halm, Larkin, Ewert

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**COMMITTEE REPORTS**

Receive reports from any committees that met over the past month.

Commissioner Culver said the Metropolitan Planning Organization (MPO) met last week and that the three draft multi-modal studies were available for review online. He stated the MPO would be sending the drafts to the governing bodies for approval.

Commissioner Rasmussen said the Oread Neighborhood Design Guidelines were close to being done. He said staff would incorporate the comments and changes made along the way.

**COMMUNICATIONS**

Mr. McCullough said he received a call from Ms. Marilyn Bittenbender requesting that items 4 and 5A-5C be deferred without holding the public hearing. He said the applicant desired to look at the communications received today and meet with the neighborhood to try and resolve some issues.

Ms. Marilyn Bittenbender said she was surprised about the amount of communications that came in today. She said she would like time to review and look at the concerns and meet with the neighborhood. She requested deferral without holding the public hearing so as not to duplicate comments twice since the comments in the future may be different if given the time to work out some of the concerns.

Commissioner Liese said he received a lot of emails about this project. He felt both sides were taking a risk by having the item heard tonight without taking the opportunity to discuss it further.

Motioned by Commissioner Liese, seconded by Commissioner Rasmussen, to defer items 4 and 5A-5C for one month to allow the applicant the opportunity to discuss with the community.

Commissioner von Achen asked if the applicant held a public meeting.

Mr. Paul Werner, Paul Werner Architects, said he met with several of the neighbors in the immediate neighborhood to the southwest three times in his office.

Commissioner von Achen asked if the entire neighborhood was invited.

Mr. Werner said he invited 3-4 people who showed involvement in the Inverness District Plan.

Commissioner Josserand said citizens who live in the area came prepared to make statements tonight. He said the residents of the area felt disinfected by the process and felt like they had been hit with secret and silent plan. He said he was sensitive to the neighborhood issues. He felt the developer should have an open meeting and also allow the public to speak this evening.

Commissioner Britton inquired about procedure. He asked if Planning Commission wanted to hear public comment tonight but with the idea they were not taking vote they could open the hearing and move to defer.

Mr. McCullough said they could either defer now or hear the public comment and then vote.

Commissioner Britton felt they should have as much information as possible. He said this piece of property had been problematic for a long time. He felt there needed to be significant discussion with the neighborhood and he was surprised the applicant did not make a stronger effort to receive neighborhood input prior to tonight. He felt they should respect the people present this evening by listening to what they have to say. He said he would leave it up to the public about whether they talk tonight. He said he would support a deferral but would like to defer after the public hearing.

Commissioner Culver took a poll of the audience of who would like to speak this evening.

Commissioner Liese said he would be willing to withdraw his motion if that was the interest.

Commissioner Rasmussen said he would not withdraw his 2<sup>nd</sup> because the item needed to be deferred to allow time for the applicant to meet with the neighborhood. He felt it would be a waste of time for the community, the applicant, and staff to hear comments tonight on an item that may not come back or could change significantly. He felt they should defer and let it move on.

Commissioner Denney asked for a show of hands from the audience if they would still want to speak this evening with the understanding that there would be an opportunity to meet with applicant and have the item come back at a future date.

Motion carried 6-4, with Commissioners Britton, Denney, Josserand, and von Achen voting against the motion. Commissioners Culver, Graham, Kelly, Liese, Rasmussen, and Struckhoff voted in favor of deferring items 4 and 5A-5C.

#### **EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- Ex parte:

Commissioner Liese said he had a brief conversation with Mr. Rick Hird regarding agritourism but that it was nothing of substance.

Commissioner Rasmussen said he received a call from Ms. Marilyn Bittenbender last week. He said he asked her if she had talked to people in the neighborhood and she said yes and that there were no negative comments. He said when he saw the amount of communications today he alerted her of them.

Commissioner Kelly said he spoke with the principal at Southwest and Sunflower Elementary School and they shared a mixed bag of concerns regarding the proposed Family Fun Center. He said he also spoke with superintendent, Mr. Rick Doll, who also had a mixed bag of concerns regarding the Family Fun Center. He said regarding item 1 the Lawrence Arts

Commission talked about tax incentive funding as it relates to the piece of artwork at 9<sup>th</sup> & New Hampshire Street.

Commissioner Britton said Luke and Lori Sinclair were friends of his from law school and he spoke with Mr. Sinclair about the process of the item.

Commissioner Culver said he spoke with Ms. Marilyn Bittenbender who inquired about the procedures and process of requesting a potential deferral. He said he asked her to contact Planning staff directly. He said he did not speak with her about specifics of the project. He said he had a brief conversation with Mr. Bill Fleming about item 1 being on the agenda this evening.

Commissioner Rasmussen asked if Planning Commission could talk about the process at a future Mid-Month meeting.

- No abstentions.

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**ITEM NO. 1 9<sup>TH</sup> & NEW HAMPSHIRE REDEVELOPMENT PLAN**

Consider making a finding that the North Project Plan for the 9<sup>th</sup> & New Hampshire Redevelopment District is consistent with the City's comprehensive plan.

**STAFF PRESENTATION**

Ms. Diane Stoddard, Assistant City Manager, presented the item.

**APPLICANT PRESENTATION**

Mr. Bill Fleming, Treanor Architects, was present for questioning.

Mr. Micah Kimball, Treanor Architects, said the bulk of the project were apartments. He stated there would be public restrooms for the Farmer's Market. He showed the site plan on the overhead and pointed to different aspects of the project. He said the roundabout was no longer part of the plan.

Commissioner Rasmussen inquired about where the restrooms for the farmers market would be located.

Mr. Kimball showed on an overhead map where the restrooms would be located, toward the back alley. He said they would be opened on the weekends and maintained by the apartment or building manager.

**PUBLIC HEARING**

Ms. Pam Blackburn, 830 Connecticut, inquired about where the wall with art was located.

Mr. Kimball pointed out on the overhead the spaces for the new murals.

Ms. Blackburn asked if the current mural would be torn down.

Mr. Kimball said that was correct. He said there were discussions about relocating the mural.

Ms. Blackburn asked how tall the building would be.

Mr. Kimball said the building would be 7 stories on the corner and 6 stories as it goes to the north.

Ms. Blackburn expressed concern about how much direct sunlight she would be losing on her house. She also inquired about parking.

Mr. Kimball said there would be 168 parking spaces provided for the 114 apartments.

Commissioner Denney said the drawing showed the key going from the alley way over to Rhode Island Street. He inquired about what the use would be.

Mr. Kimball said it would be parking.

Commissioner von Achen inquired about the implications of the downtown urban conservation overlay district.

Mr. McCullough said the project was reviewed under the downtown design guidelines and went through Historic Resources Commission and City Commission for the parking. He said the project was vetted through the architectural design process.

Commissioner von Achen asked if Historic Resources Commission was involved.

Mr. McCullough said yes. He said essentially the basic design had gained some approval but still needed to go through the site plan process and the Architectural Review Committee to work out some of the details of the design. He said this project generated some of the work that Planning Commission did with Historic Resources Commission in terms of some of the issues about density and angled parking versus parallel parking.

Commissioner Josserand said he noticed that the TIF and TDD zone extended to the next street.

Ms. Stoddard showed a map on the overhead. She said New Hampshire Street included the street right-of-way for a new water line that was triggered by this project.

#### **ACTION TAKEN**

Motioned by Commissioner Josserand, seconded by Commissioner Denney, to make a finding that the North Project Plan for the 9<sup>th</sup> & New Hampshire Redevelopment District was consistent with the City's comprehensive plan.

Unanimously carried 10-0.

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**ITEM NO. 2 IG TO RS5; .5 ACRE; 830 E 13<sup>TH</sup> ST (JSC)**

**Z-13-00513:** Consider a request to rezone approximately .5 acre from IG (General Industrial) District to RS5 (Single-Dwelling Residential) District, located at 830 E 13<sup>th</sup> St. Submitted by William Price, property owner of record.

**STAFF PRESENTATION**

Mr. Jeff Crick presented the item.

**APPLICANT PRESENTATION**

Mr. William Price said he purchased the property to fix up the house and sell this Spring. He wanted to rezone for ease of the new owners.

**PUBLIC HEARING**

Mr. Chris Burger, 850 E 13<sup>th</sup> St, said Mr. Price was under the belief that a purchaser would not be able to acquire financing to buy a residence in IG zoning. He said by rezoning the property would turn his property into non-conforming. He requested that Mr. Price be allowed to reconstruct a residence in the event of a catastrophic loss on his property.

Commissioner Josserand asked Mr. Burger to explain how the proposed rezoning would make his property non-conforming.

Mr. Burger showed a survey with 15'. He said he would not be able to rebuild at the same location and would have to go back 5-15'.

Mr. McCullough said the difference was between zoning districts and the setback line. He said the current setback was 15' and would move to 20' with rezoning it from IG to RS. He said it would be made non-conforming through the process and it was the future that was of concern, such as a fire. He identified variances as an option to mitigate. He said since the recession the banking standards have changed.

Mr. Burger said the irony was that the property was zoned IG with a residence which was non-conforming. He said to correct the non-conformance it made the adjoining property non-conforming. He said then he would have to request a variance which may or may not be provided. He said the rezoning did not solve any problems, just created longer term issues.

**APPLICANT CLOSING COMMENTS**

Mr. Price inquired about mixed-use rezoning.

Mr. McCullough said mixed-use rezoning would not apply in this particular situation.

**COMMISSION DISCUSSION**

Commissioner Josserand asked Commissioner Culver about his observations on bank financing.

Commissioner Culver said there could be arguments made by both parties when it came to financing.

Commissioner Josserand wondered if the zoning boundaries had to agree with the definition of lots.

Mr. McCullough said it was problematic when it was not for financial reasons.

Commissioner Denney asked if under the current zoning the house was destroyed by catastrophic loss would they have any flexibility or restricted to footprint of building.

Mr. McCullough said they would be entitled to at least the footprint if not more as setbacks were looked at. He said it was in Chapter 15, Non-Conforming Uses.

Commissioner Denney expressed concern about trading one person's problem for another.

Commissioner Kelly asked if the lot could be replatted.

Mr. McCullough said it was not really a platting issue, as much as it was a zoning issue. He said it could help for the applicant to provide a letter from staff to the bank explaining the rights the property owner has to a detached dwelling structure in a non-conforming zoning district.

Commissioner Rasmussen asked what the future would hold for this neighborhood. He wondered if it would be IG long term or if it would go the way of becoming something else in the future.

Mr. McCullough said he did not have an answer because he did not know the desires of all the property owners. He said he had not heard IG was going away. He said it was similar to North Lawrence where there were pockets of IG next to residential.

Commissioner Britton asked if both problems would be solved if the rezoning was approved and the adjoining commercial property owner got a variance.

Mr. McCullough said yes. He said if the rezoning was approved it would transfer the issue to the adjacent property and they would then be seeking relief through a variance. He said it could potentially be an issue with financing or insurance but that variances typically work.

Commissioner Britton asked if one option would be to defer and direct staff to work with the adjoining property owner to get a variance request to the Board of Zoning Appeals.

Mr. McCullough said a pending recommendation of rezoning to RS could be taken to the Board of Zoning Appeals for the adjacent owner to seek a variance, assuming approval of the rezoning.

Commissioner Denney asked if there would be a cost to the adjacent property owner.

Mr. McCullough said there would be a fee but that staff would consider waiving it.

Mr. Price said he was fine with that plan.

Mr. Burger said he was not really thrilled with that because it sounded like more hoops to jump through, time and expense for something that was not necessary.

Mr. Price said there was a garage structure on the property. He said if he wanted to rebuild the garage he would have to follow commercial setbacks so it would have to be moved to the center of the yard to get 15' on both sides. He said for future use of the property it would work better if it was zoned residential.

Commissioner von Achen asked if the variance would apply to a future building if industrial property was destroyed.

Mr. McCullough said typically yes, if it was the same building.

Commissioner Struckhoff said the variance would enable to the applicant to rebuild as is, while still providing the change in zoning he needs. He said the perpetuity of the variance was important.

Commissioner Liese asked how much work it would require to obtain a variance.

Mr. McCullough said it would require time to talk to staff and submit an application. He said staff could waive the application fee.

Commissioner Liese disclosed that Mr. Price had been a customer at his store in the past but that he did not know him personally.

Commissioner Culver said he had some hesitation with passing an issue to another person.

### **ACTION TAKEN**

Motioned by Commissioner Kelly, seconded by Commissioner Josserand, to approve the rezoning (Z-13-00513) of .5 acre from IG (General Industrial) District to RS5 (Single-Dwelling Residential) District, located at 830 E 13<sup>th</sup> St, contingent upon approval from the Board of Zoning Appeals for a variance at 850 E 13<sup>th</sup> Street, and recommend staff do everything they can to reduce the burden on the neighboring party at 850 E 13<sup>th</sup> Street. If the variance is not approved then the rezoning would come back to Planning Commission for consideration.

Commissioner Britton felt it was a good motion and the least bad outcome.

Commissioner Denney expressed concern about passing one person's issue on to another.

Commissioner Rasmussen said he had heartburn with passing on an issue to a different property owner that was not the applicant. He said Planning Commission often has to look into the future and rezoning the property from IG to RS made sense.

Commissioner Josserand agreed with Commissioner Rasmussen and said without the variance he would vote for the rezoning.

Unanimously approved 10-0.



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**ITEM NO. 3A RM32 TO MU-PD; 2.391 ACRES; 1101 INDIANA ST (SLD)**

**Z-13-00516:** Consider a request to rezone approximately 2.391 acres from RM32 (Multi-Dwelling Residential) District to MU-PD (Mixed Use with PD Overlay) District, located at 1101 Indiana St. Submitted by Hartshorne Plunkard Architects, for Berkeley Flats Apartments LLC, property owner of record.

**ITEM NO. 3B PRELIMINARY DEVELOPMENT PLAN FOR HERE @ KANSAS; 1101 INDIANA ST (SLD)**

**PDP-13-00518:** Consider a Preliminary Development Plan for HERE @ Kansas, a mixed use multi-dwelling residential apartment building with ground floor retail uses, located at 1101 Indiana St. Submitted by Hartshorne Plunkard Architects, for Berkeley Flats Apartments LLC, property owner of record.

**STAFF PRESENTATION**

Commissioner Rasmussen disclosed ex parte that he talked with the applicant, Mr. Jim Heffernon several times. He said Mr. Heffernon's great great great grandmother was sisters with his great great great grandmother. He said since he was not able to attend the Planning Commission Mid-Month meeting where additional information was provided about the HERE @ Kansas project he met with Mr. Heffernon on February 11, 2014 and received that information.

Ms. Sandra Day presented items 3A and 3B together.

**APPLICANT PRESENTATION**

Mr. Jim Heffernon, HERE Enterprises, said currently there were two curb cut locations that provided access to the current parking lot of Berkley Flats, one on 11<sup>th</sup> Street and the other on Mississippi Street. He said the new design would eliminate all vehicular access on 11<sup>th</sup> Street due to safety concerns with the topography. He said when the project was being designed to fit within the context of its surrounding. He said one of the criteria for the zoning was that 7,700 square feet of outdoor open space be provided. He said he was proud of the fact that they were proposing 58,000 square feet of open space, which was 7 ½ times more than what was required by the Code. He said the project would provide outdoor dining venues. He said in addition, there were two 5,500 square feet indoor courtyards. He said the roof would contain 27,000 square feet of open space. He showed drawings on the overhead of what the project would look like. He said the garage would be composed of three levels and contain automated parking.

Commissioner Jossierand asked if KU had any input or expressed any concerns.

Ms. Day said KU provided general comments.

Mr. Heffernon said

**PUBLIC HEARING**

Mr. Norman Bell said he grew up at 1115 Indiana Street and that his mother owns the house. He expressed concern for the safety of his mother. He stated there used to be an alley behind 1115 Indiana Street and that his mother parks her vehicle behind the house. He said the new development would block his mother's house in by building around it on three sides.

**APPLICANT CLOSING COMMENTS**

Mr. Heffernon showed a picture of 1115 Indiana Street and the topography of the area. He stated the new proposed building would be farther south and farther west than the current Berkley Flats building. He said 1115 Indiana Street was fenced in on three sides and an improvement with the proposed project would be the location of the trash, which was currently outside the back of 1115 Indiana Street. He said the project took into consideration the effects of the sun on that property over a period of time. He showed shadow studies for different times of the year on the overhead. He said the effect of sun exposure to the house was remarkably mitigated. He said regarding safety, soil engineers determined the setbacks and parking structure were such that the foundation and integrity of the house would not be impaired. He said regarding the nature of access, currently there was an undocumented license of understanding that the property owner of 1115 Indiana Street, Ms. Georgia Bell, uses to drive through the parking lot of Berkley Flats to a gate that she manually opens and enters. He said they thoroughly researched it and that in Kansas law as long as there was access to a public street there was no easement of necessity. He said he discussed with staff about providing a designated parking spot on Indiana Street for the occupant of 1115 Indiana Street.

### **COMMISSION DISCUSSION**

Commissioner Liese asked if there was a stairway to 1115 Indiana Street.

Mr. Heffernon said there was an existing staircase to Indiana and he showed a picture of it on the overhead.

Commissioner Liese inquired about any improvements to the stairway.

Mr. Heffernon said the stairway was not his property to improve.

Commissioner Rasmussen asked the staff attorney to respond to the applicant's interpretation about Kansas law. He asked if staff thought it was a good idea to reserve a parking spot on Indiana Street.

Mr. Randy Larkin, staff attorney, said the statement about the law was correct. He said if there was access to the street to get to the property it would be fine. He said if the property was cut off and can't get access the law would probably impose an easement of necessity across someone else's property. He said if there was access to the street there would be no easement.

Commissioner Rasmussen asked if there could be an easement by adverse possession in the state of Kansas.

Mr. Larkin said yes. He said whether there was in this case or not he did not know.

Mr. McCullough said one of the first issues reviewed and looked at were the records of the existing apartments to determine whether or not there was an instrument of access to the back lot. He said they did not find anything. He said essentially the research found there was no legal access that provided access to 1115 Indiana Street. He said there was some sort of unwritten agreement with the current owners of Berkley Flats to use the surfaced parking lot as a way to get in to Ms. Bell's back property. He said the design to keep and maintain some form of driveway would not benefit the project or be very feasible given the mixed use project. He stated one idea that was not decided yet was to grant some sort of permit parking in the front of the lot to 1115 Indiana Street. He said there were lots in the city that did not have any parking and got all their access from on-street parking. He said this project was not unique in that perspective. He said the reason they were considering it here was because it was a direct impact of a development on the property.

Commissioner Rasmussen asked Mr. Heffernon about his attempts to purchase the property.

Mr. Heffernon said he had met with Ms. Bell, the owner of 1115 Indiana Street, and also talked with her on the phone, totaling about 12 hours. He said HERE had offered her \$600,000 for her house and that he would be prepared to honor that today. He said Ms. Bell wanted more money.

Commissioner Denney asked if Mr. Bell grew up in the house at 1115 Indiana Street.

Mr. Bell said yes.

Commissioner Denney asked if there used to be an alley behind 1115 Indiana Street.

Mr. Bell said he was almost positive there used to be an alley behind 1115 Indiana Street.

Commissioner Denney asked if there was ever a garage off of the alley behind the house.

Mr. Bell said no, he didn't remember a garage. He said they parked on Indiana Street but mainly parked behind the house.

Commissioner Liese felt substantial efforts had been made to help Ms. Bell by the City and the applicant.

Mr. Bell said his mother was 93 years old and could not hear very well and could get confused. He said he recommended that she obtain a lawyer.

Commissioner Liese asked what Mr. Bell thought would help his mother if the development moved forward.

Mr. Bell said his mother needed an attorney and needed to sell the property and be satisfied.

Commissioner Liese asked if Mr. Bell would be satisfied if a conclusion was reached with an attorneys help.

Mr. Bell said yes.

Commissioner Culver asked how the development plan would change if that particular piece of property, 1115 Indiana Street, was acquired.

Mr. Heffernon said inefficiencies in the parking design would not be necessary. He said it may create additional commercial space on Indiana Street and a nominal addition of units above that. He said it would also create a third interior courtyard.

Commissioner Liese asked Mr. Heffernon if Planning Commission approved the development to what extent he would be open to talking to Ms. Bell's lawyer about a fair deal.

Mr. Heffernon said he had suggested to Ms. Bell on numerous occasions that she obtain a lawyer. He said he researched public council for her but that free public council was not available on this subject matter. He said HERE retained a lawyer through Stevens and Brand and offered that the lawyer sit with her and go through a simple sale contract but she refused.

**ACTION TAKEN on Item 3A**

Motioned by Commissioner Liese, seconded by Commissioner Struckhoff, to approve the request to rezone approximately 2.391 acres from RM32 (Multi-Dwelling Residential) District to MU-PD (Mixed Use with PD Overlay) District based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Commissioner von Achen asked what 1115 Indiana Street would be zoned.

Ms. Day said it would remain RM32.

Commissioner Rasmussen said he was excited the Oread Neighborhood Plan that was approved a few years ago was actually going to get used.

Commissioner Culver agreed that it was neat to see an area plan being utilized.

Commissioner Jossierand said parking was a critical resource in the Oread Neighborhood and that a novel solution had been come up with for parking at 1115 Indiana Street. He said he would support the project but expressed concern about the resident of 1115 Indiana Street and hoped future negotiations would result in some sort of satisfactory arrangement.

Commissioner Denney felt a development like this was a huge improvement in the public welfare and safety of that intersection. He said he had great sympathy for the property owner of 1115 Indiana Street. He said there was probably an alley there in the past and that when the property was transitioned from housing to an apartment complex the alley was probably vacated. He said in the interest of the greater good of the area he would support the project.

Commissioner Liese hoped some decision could be made with the property owner of 1115 Indiana Street. He said in terms of her safety he hoped whatever happened would make her life even more safe and comfortable. He encouraged Mr. Bell to stay involved in the process.

Commissioner Britton felt this was a great project and he was impressed by the development group and their interactions with Ms. Bell. He supported the project and hoped an agreement could be made with what Ms. Bell should do with her property.

Commissioner Kelly said it was a historic area and 1115 Indiana Street was a historic home. He encouraged the developer to honor that space and the history of the property if it was acquired.

Unanimously approved 10-0.

**ACTION TAKEN on Item 3B**

Motioned by Commissioner Liese, seconded by Commissioner Graham, to approve the HERE @ Kansas Preliminary Development Plan based upon the findings of fact presented in the body of the staff report and subject to the following conditions:

1. Provision of a revised plan to reflect correct unit and density

Unanimously approved 10-0.

Motioned by Commissioner Liese, seconded by Commissioner Graham, to approve the variance associated with HERE @ Kansas Preliminary Development Plan for the reduced right-of-way for 11<sup>th</sup> Street.

Unanimously approved 10-0.

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**ITEM NO. 4 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; PARTICIPANT SPORTS & RECREATION, OUTDOOR USES WITH SUP IN CN2 (SMS)**

**TA-13-00488:** Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, to allow for Participant Sports & Recreation, Outdoor uses with a Special Use Permit in the CN2 (Neighborhood Shopping Center) District. Submitted by Paul Werner Architects.

**ITEM NO. 5A RSO TO CN2; 10.97 ACRES; 4300 W 24<sup>th</sup> PLACE (SLD/TLH)**

**Z-13-00483:** Consider a request to rezone approximately 10.97 acres from RSO (Single-Dwelling Residential-Office) District to CN2 (Neighborhood Shopping Center) District, located at 4300 W 24<sup>th</sup> Place. Submitted by Paul Werner Architects, for Corporate Holdings II LLC, property owner of record.

**ITEM NO. 5B SPECIAL USE PERMIT; FAMILY FUN CENTER; 4300 W 24<sup>TH</sup> PLACE (SLD/TLH)**

**SUP-13-00486:** Consider a Special Use Permit for Participant Sports & Recreation, Outdoor uses as part of a Family Fun Center, located at 4300 W 24<sup>th</sup> Place. The development includes a 28,000 square foot clubhouse and outdoor tot lot, batting cages, electric go-kart tracks and an 18-hole miniature golf course. Submitted by Paul Werner Architects, for Corporate Holdings II LLC, property owner of record.

**ITEM NO. 5C SPECIAL USE PERMIT; FAST ORDER FOOD WITH DRIVE-THRU; 4300 W 24<sup>TH</sup> PLACE (SLD)**

**SUP-14-00026:** Consider a Special Use Permit for a fast order food with drive-thru as part of the future commercial pad site development, to be located on the west portion of property located at 4300 W 24<sup>th</sup> Place. Submitted by Paul Werner Architects, for Corporate Holdings II LLC, property owner of record.

*Items 4, 5A, 5B, 5C were deferred by Planning Commission at the beginning of the meeting.*

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**Recess at 9:25pm until 6:30pm on February 26, 2014**

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Reconvene February 26, 2014 – 6:30 p.m.

Commissioners present: Britton, Culver, Denney, Graham, Kelly, Josserand, Liese, Rasmussen, Struckhoff, von Achen

Staff present: McCullough, Stogsdill, Day, M. Miller, Larkin, Ewert

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**BEGIN PUBLIC HEARING (FEBRUARY 26, 2014):**

**EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- Ex parte:  
Commissioner Liese said he received a letter from Mr. Rick Hird regarding Item 8 after the communication deadline. He said he received a call from Mr. Ted Boyle, North Lawrence Improvement Association, regarding Item 7 and said he would not be present at tonight's meeting. Mr. Boyle and Ms. Barbara Clark met with Mr. Shane Powers and the North Lawrence Improvement Association supported the project. He said Mr. Boyle's main concern was parking on the county road. He said Mr. Boyle talked with Mr. Powers about some arrangement for busing people if needed and no nighttime noise.

All of the Commissioners said they received a letter from Mr. Rick Hird.

- No Abstentions.

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**ITEM NO. 6 RM12 TO RM24; 3.35 ACRES; NE CORNER BOB BILLINGS PKWY & K-10/SLT (SLD)**

**Z-13-00519:** Consider a request to rezone approximately 3.35 acres from RM12 (Multi-Dwelling Residential) District to RM24 (Multi-Dwelling Residential) District, located at the NE corner of Bob Billings Pkwy and K-10/SLT to be known as part of the Langston Commons Subdivision. Submitted by Tim Herndon on behalf of RSR Holdings LLC, property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

**APPLICANT PRESENTATION**

Mr. Tim Herndon, RSR Development, said this zoning application was a sister application that accompanied the revised plat that was approved by Planning Commission 60 days ago. He said the density parameters established for the entire project were still retained.

**PUBLIC HEARING**

Ms. Linda Haar, 1510 Legend Trail Dr, asked if she could receive a copy of the plans.

Mr. McCullough said Ms. Haar could contact the Planning office for any record she was looking for. He also stated a site plan would be submitted in the future and that a 200' notice would be sent for the site plan as well as signs posted at the site. He asked the applicant to talk about the potential timing of the project.

**APPLICANT CLOSING COMMENTS**

Mr. Herndon said the Kansas Department of Transportation (KDOT) would initiate construction of the new interchange that would connect Bob Billings Parkway to the South Lawrence Trafficway (SLT). He said it would probably not be later than the second quarter of this year. He said he negotiated with KDOT to include, with the construction of the section of Bob Billings Parkway, the stub street that was 100' north of Bob Billings Parkway because it was within the boundary of the KDOT project. He said that should be constructed and operational not later than Spring 2016. He described the timeline of construction.

Ms. Haar asked if he would be building at the same time as the road construction or after.

Mr. Herndon said the portion to the north would be built and ultimately have access to George Williams Way. He said it would be built simultaneously to KDOT's project. He said he would be happy to speak with her after the meeting if she needed additional information.

**COMMISSION DISCUSSION**

Commissioner Jossierand asked Mr. Herndon what kind of structures would be built.

Mr. Herndon said the zoning allowed for up to 45' which would accommodate 4 stories. He said the zoning application was less than three acres and of that 50' of the western edge was all in the SLT greenspace. He said it would be a small multi-family development. He said he expected it to be anything from one monolithic building, consisting of approximately 60 units, to maybe something like 3-4 buildings in the 12-plex range.

Commissioner von Achen said the residents of the area expected single-family homes because they didn't understand that the density included the entire development. She wondered if there was a



way to note that when a person buys their home that this density is an overall average, not just for their individual neighborhood.

Mr. McCullough said this was unique because it was presented as a conglomeration of zoning applications and a single plat. He said during the pre-application meetings a number of different options were pursued such as a PD Overlay. He said there were some advantages to doing it different ways and this was the way that staff agreed to support the application. He said he was not sure that any notice could be provided other than what was done for this particular unique application.

Commissioner Culver inquired about the completion of Renaissance Drive. He asked if it would be completed before occupancy of the tract they were discussing this evening.

Mr. Herndon said that was correct.

Commissioner Culver asked if there could be construction prior to the roadway being completed but that the units would not be occupied until the road was complete.

Mr. Herndon said that was correct.

Commissioner Culver if he had any other recent correspondence with the neighbors.

Mr. Herndon said since the last time he was at Planning Commission he had talked to a handful of neighbors. He felt the neighbors concerns had been, for the most part, adequately addressed.

#### **ACTION TAKEN**

Motioned by Commissioner Rasmussen, seconded by Commissioner Struckhoff, to approve the request to rezone approximately 3.35 acres from RM12 (Multi-Dwelling Residential) District to RM24 (Multi-Dwelling Residential) District, located at the NE corner of Bob Billings Pkwy and K-10/SLT to be known as part of the Langston Commons Subdivision, based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Unanimously approved 10-0.

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**ITEM NO. 7      CONDITIONAL USE PERMIT; LODGING HOUSE & RECREATION; 1804 E  
1500 RD (SLD)**

**CUP-13-00492:** Consider a Conditional Use Permit for a Lodging House and Recreation facility to be known as a hostel and banquet hall, located at 1804 E 1500 Rd. Submitted by Shane Powers, for Earl Stagg, property owner of record. *Deferred by Planning Commission on 1/27/14.*

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

**APPLICANT PRESENTATION**

Mr. Shane Powers said he arrived at an agreement with the airport hotel to lease parking spaces on an as needed basis. He said he would like to host weddings, receptions, family reunions, and private parties. He said weddings would mostly take place on the lawn. He said he spoke with Mr. Richard Ziesenis, Douglas County Health Department, and has approved the plan with the contingency that a chemical toilet would be on site when there were more than 50 guests at an event.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Liese asked if catering or alcohol would be allowed.

Mr. Powers said he would not offer catering services but that people could bring in their own caterer. He said he did not intend to have a liquor license but if someone wanted to furnish alcohol for their party they could.

Commissioner Kelly asked how the number of guests would be determined for events and what procedures would be in place if there were more guests than expected.

Mr. Powers said it was a small venue so there was limited capacity. He said it would be a location for people looking for a smaller wedding or event. He said based on the square footage available there were a few ways it could be dissected. He said essentially the standing capacity would be 85 people. He said he was looking at capping it somewhere around 50 people but wanted to be available for the maximum of safe standards. He said he wanted to be able to accommodate as many as legally possible.

Commissioner Kelly asked how it would be enforced if more than the maximum capacity showed up.

Mr. Powers said he had thought about it but had not arrived at any sort of solution.

Commissioner Rasmussen asked if staff was still recommending approval with the new conditions that were included in the staff memo.

Ms. Day said yes.

Commissioner von Achen asked Mr. Powers if he would eventually pursue lodging upstairs.

Mr. Powers said yes. He said he would need a fire sprinkler system installed which would require significant expense and storage of well water.

## **ACTION TAKEN**

Motioned by Commissioner Struckhoff, seconded by Commissioner von Achen, to approve the Conditional Use Permit, CUP-13-00492, located at 1804 E 1500 Road, and forwarding to the Board of County Commissioners, with the following conditions:

- 1) The provision of a revised Conditional Use Permit Site Plan with the following changes:
  - a. Addition of the following note regarding the building requirements: "Submission and approval of building plans to the Zoning and Codes Office is required for the hostel and assembly area uses. Adaptations to the existing buildings to bring them into code compliance shall be completed prior to release of a certificate of occupancy for the use."
  - c. Provide a note on the site plan that states, "Well water is not an approved water source for public use. The operator will supply bottled water or another public water supply for the use per the approval of the Douglas County Health Department."
- 2) Provision of a note on the face of the site plan prohibiting the use of the second floor for assembly and lodging uses. Use of the 2<sup>nd</sup> floor space shall be allowed only after a rehearing by the County Commission as an expansion of the use and compliance with applicable building and safety codes.
- 3) Provision of a note on the face of the site plan limiting occupancy to not more than 78 individuals for events. Expansion of the use shall be allowed only after a rehearing by the County Commission as an expansion of the use and compliance with applicable building and safety codes.
- 4) Requiring the provision of off-street overflow parking to accommodate 10 vehicles per the approval of the County Public Works Director and County Zoning and Codes Director to include any applicable lease agreement and minimum design standard.

Unanimously approved 10-0.

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**ITEM NO. 8      TEXT AMENDMENT TO THE ZONING REGULATIONS; AGRITOURISM  
(MKM)**

**TA-13-00451:** Consider a Text Amendment to Section 12-319-7 of the Zoning Regulations for the Unincorporated Territory of Douglas County, Kansas to establish criteria and review process for Agritourism uses which may have significant off-site impacts. *(Amendment was initiated by the Board of County Commissioners at their October 16, 2013 meeting.) Deferred by Planning Commission on 1/27/14.*

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

**PUBLIC HEARING**

Ms. Natalya Lowther, Pinwheel Farm, thanked staff for their work. She referenced the letter she submitted. She felt the parking standards were still unclear and needed more work. She felt the setbacks needed more clarity, as well as overflow parking and screening.

Ms. Kim Hendershot thanked staff for their work. She said agritourism was a business and they should not forget that. She expressed concern about the protection of residents around a business. She said regarding lighting, she felt it would change the lifestyle of living in the country. She also said noise ordinances were hard to enforce. She asked Planning Commission to be practical in their decision making.

Mr. Jim Hendershot wanted to be sure Tier 1 activities were limited to daylight hours with the exception of bed and breakfast.

Ms. Michelle Kooz expressed concern about the removal of parking screening. She felt screening was extremely important. She also stated that noise ordinances were impossible to enforce.

**COMMISSION DISCUSSION**

Ms. Miller said the screening requirement was not removed, it was changed to allow for different types.

Commissioner Josserand inquired about the comment from Mr. Pendleton regarding the parking threshold being too low. He asked if Mr. Pendleton had suggested a different number.

Ms. Miller said no, Mr. Pendleton just said he thought it was too low.

Commissioner Denney asked if people had to register for agritourism in Douglas County.

Ms. Miller said agritourism registration was required if it was not agriculturally exempt.

Commissioner Denney asked if low intensity and medium intensity uses had to go before the County Commission and a high intensity use would require a Conditional Use Permit.

Ms. Miller said that was correct.

Commissioner Denney asked how the changes would improve the County Commissions ability to make a decision regarding the item that came before them that cause the moratorium to start.

Ms. Miller said before, the first regulations had a section that said the County Commission could impose conditions on the item so they had the ability to impose conditions. She said with these new regulations it would set parameters and criteria.

Commissioner von Achen said it seemed like some of the requirements would be somewhat burdensome to the lower tier of agritourism. She wondered if some of the restrictions could be removed while still protecting the surrounding neighbors. She said a way for after daylight hour activities to occur in Tier 1 would be to restrict the activity to something low intensity that would not require lights, such as stargazing or owl watching. She asked if the definition of Tier 1 agritourism was that there would not be any impact to neighbors why they had to mail out notice to the neighbors. She did not feel that fencing was needed for the low impact uses on the road side of the parking lot. She said the restriction that the applicant live on the property seemed like a burden on people like Chestnut Charlie.

Ms. Miller said Chestnut Charlie was currently agriculturally exempt.

Commissioner Rasmussen asked why people would want to sign up if it was all voluntary.

Ms. Miller said it was not all voluntary. She said if it was an agriculturally exempt use then future incentives, such as a promotion website, may encourage them to sign up.

Mr. McCullough said the State Statute exempts agricultural use from zoning. He said the purpose of this was that if you're not agriculture and you want to do something that was not seen as agriculture the process in the local code was the Conditional Use Permit process. This is an alternative process for those that voluntarily register with the State as an agritourism to take advantage of the alternative process to get the land use approved.

Commissioner Rasmussen asked if someone met the State statutory definition for agriculturally exempt activity would not be subject to zoning.

Mr. McCullough said that was correct. He said someone could still be registered as an agritourism with the State and not subject to zoning.

Commissioner Rasmussen felt the definition of agriculturally exempt was broad.

Ms. Miller said it was not a definition, it was a list of typical agricultural uses. It would still have to fall within the parameters.

Commissioner Rasmussen inquired about the specific parameters. He asked about the requirement for residing on the parcel or contiguous parcel. He asked how contiguous would be defined.

Ms. Miller said a parcel that was adjacent or abuts.

Commissioner Rasmussen said Pendleton Farm had a railroad track between the property on two different lots. He asked if that was contiguous.

Ms. Miller said she thought it would be considered contiguous.

Commissioner Rasmussen inquired about the motorized vehicles. He asked what they were trying to prevent.

Ms. Miller said four wheelers (ATV's) could cause a lot of noise and impact to neighbors. She said a tractor for hayrack rides would not count.

Commissioner Rasmussen said a tractor would be noisier and felt maybe the regulations should just say that ATV's were restricted.

Mr. McCullough said the idea was to give language to get to the intent of the impact of the issues.

Commissioner Rasmussen said there was a lot of subjectivity to it. He wondered what they were trying to prevent. He said if the real goal was to try and prevent four wheelers and dirt bikes in Tier 1 areas why not just say that.

Mr. McCullough said there were other types of vehicles and the goal was to align with an agricultural use.

Commissioner Rasmussen did not feel it was written well and was unclear. He felt if applicants were required to live on the property they would want to have outdoor lighting for their own purposes. He said he would be supportive of changing the agritourism parking limit for Tier 2 areas to more than 100. He inquired about the language regarding the operator living on the property and wondered who it excluded if it included the operator, property owner, family and employees.

Ms. Miller said she did not have a specific example but said it could exclude someone who wanted to have an agritourism activity on another person's property.

Commissioner Rasmussen wasn't sure what they were trying to solve and did not feel like the provision excluded anyone.

Mr. McCullough gave the example of a national chain of rural putt-putt golf courses. He said the intent was to tie it to an owner who would be responsible for the care of the property and operate the use. He said the KC Pumpkin Patch was a big business with a lot of elements hooked to the use. He said under those circumstances this language could have helped with that situation.

Commissioner Rasmussen felt some of the criteria was confusing and did not seem to be getting at the root problem that was trying to be solved.

Commissioner Josserand felt the Tier 2 parking should be 200.

Commissioner Rasmussen said he would support the 200 parking for Tier 2.

Commissioner Britton asked about the purpose of the notice provisions for Tier 1.

Ms. Miller said it would allow for neighbors to provide input as well as having the knowledge of the agritourism use.

Commissioner Britton agreed with Commissioner von Achen's comments. He saw merit in the idea of removing the daylight hour restriction for Tier 1 and going back to no exterior lighting related to the agricultural use. He felt staff had done a good job with the language.

Commissioner von Achen asked how much leeway there would be to tweak the language for individual applicants.

Mr. McCullough said it would provide criteria by which to judge an application by. He said staff would not have the authority to waive any of the standards but could guide an applicant on the criteria. He said there were avenues for applicants to appeal decisions made.

Commissioner Rasmussen asked for the language about the outdoor lighting to be clear that it was okay for the operation of an agriculture use.

Commissioner Denney felt some of the language was making it more difficult for agricultural businesses.

Commissioner Kelly said it made it easier for anyone who was not agricultural exempt by not having to go through the Conditional Use Permit. He said there were systems in place in the way the applications would be interpreted and could have additional conditions on it. He said the intention was to allow the business but keep the rural way of life. He said he was in favor of increasing the number of parking spaces for Tier 2.

Commissioner Culver asked for consensus on numbers for parking. He asked if everyone was okay with 50 parking spaces for Tier 1 and 200 parking spaces for Tier 2. All of the Commissioners agreed with the increased parking numbers. He said regarding Commissioner Rasmussen's earlier comment about who was excluded from the operator/family/employees, he said the intent was to address the volunteer aspect.

Commissioner Britton said it would be difficult to get it perfect and the best way to make sure there was a good agritourism section to the county Zoning Code was to get it out there and working and then tweak and amend as things come up in the future.

Commissioner Rasmussen agreed with Commissioner Britton and was in favor of moving this forward.

Commissioner Josserand said Planning Commission had done what the County Commission asked them to do and County Commission could tweak as needed.

Commissioner Denney asked what about this would allow the County Commission to deal with the KC Pumpkin Patch.

Commissioner Josserand said the Conditional Use Permit process.

Commissioner Denney said they were holding people hostage and nothing could go forward.

Mr. McCullough summarized the Planning Commission discussions and suggestions from this evening.

Commissioner Rasmussen asked how to address Mr. Rick Hird's comment about amplified noise.

Commissioner Kelly suggested they change the language to 'no amplification of sound' rather than noise, 'such as auctioneering, speakers, or amplified music, with the exception of stereo or radio.' He felt it should match up with how the no motorized vehicle language was worded. He said someone could do a Special Event Permit for a band.

Commissioner Struckhoff inquired about the scenario of an outdoor structure with music being amplified inside of it.

Commissioner Liese suggested using the word 'outdoor' instead of 'exterior.'

Commissioner von Achen felt they should eliminate the requirement in Tier 1 of fencing the street side.

Commissioner Struckhoff said there may be a neighbor across the road that could be impacted by it.

Commissioner Britton asked if there would be opportunities to exempt someone from a particular requirement through the process, such as an applicant only having 10 parking spaces with Tier 1 and asking not to have screening.

Ms. Miller said a threshold of screening could be added to the language.

Mr. McCullough said the language allowed for some flexibility but that the majority consensus from Planning Commission was to maintain it as is with an administrative waiver.

Commissioner Kelly asked if there was support in removing an employee from being an agritourism operator.

Commissioner Rasmussen said he did not want to remove the employee as an operator.

Commissioner Britton said the language still tied it to the operator who had the financial and legal responsibility for the activity.

Commissioner Liese inquired about enforcement.

Mr. McCullough said the Zoning Code had an enforcement section.

### **ACTION TAKEN**

Motioned by Commissioner von Achen, seconded by Commissioner Britton, to approve the Agritourism Text Amendment with the suggested conditions in the staff memo and that Mr. McCullough summarized earlier.

Commissioner Britton recapped the conditions:

- Increase Tier 1 parking spaces to 50
- Define contiguous
- Remove daylight hour restriction
- Remove exterior lighting prohibition and replace with something that says residential lighting would be allowed
- Change sound amplification language to no outdoor amplification of sound such as auctioneering, speakers, or amplified music, with the exception of a stereo or radio
- Administrative discretion for Tier 1 to waive requirements for equal or better conditions
- Increase to Tier 2 to 200 parking spaces and give County Commission discretion to waive requirements for equal or better conditions

Unanimously approved 10-0.



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**ITEM NO. 9 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; PARKING & ACCESS STANDARDS (SMS)**

**TA-6-14-09/TA-13-00235:** Receive an update on the proposed Text Amendments to the City of Lawrence Land Development Code, Article 9 and related sections of Chapter 20, for comprehensive revisions to parking and access standards.

**STAFF PRESENTATION**

Ms. Sheila Stogsdill provided an update on the item. She said had received 727 responses as of February 25<sup>th</sup>, 2014. She said 45% felt there should be a size limitation and 55% said no size limitation. She said regarding a time limit 38% said yes. She said 82% felt parking should be allowed in rear yards. She said the numbers were more evenly split for allowing parking in the side and front yards but that there was more support for allowing them. She said there was more support for allowing RV's on residential properties outside of buildings. She said the responses were fairly evenly split across the City in each zip code. She said she would provide draft language to them in the future.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Denney asked if 727 was a large response to the survey.

Ms. Stogsdill said yes it was a decent response.

Commissioner Liese expressed concern about the validity of the numbers.

Ms. Stogsdill said it was not designed to be a scientific survey.

**NO ACTION TAKEN**

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**MISCELLANEOUS NEW OR OLD BUSINESS**

Consideration of any other business to come before the Commission.

**MISC NO. 1      VARIANCE FOR CERTIFICATE OF SURVEY; 120 HWY 40 (MKM)**

**CSR-13-00496:** Consider a variance associated with a Certificate of Survey for approximately 30 acres located at 120 Hwy 40. The variance is requested from Section 20-810(e)(5)(ii) of the Subdivision Regulations [Section 11-110(e)(5)(ii) of the County Code] to allow the creation of Residential Development Parcels without the dedication of additional right of way for Hwy 40, which is classified as a Principal Arterial. Submitted by Rogers Surveying, for Howard Z Smith, property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

**ACTION TAKEN**

Motioned by Commissioner Liese, seconded by Commissioner Britton, to approve the variance requested from Section 20-810(e)(5)(ii) of the Subdivision Regulations [Section 11-110(e)(5)(ii) of the County Code] to allow a land division through Certificate of Survey CSR-13-00496 to create 2 RDPs without the dedication of additional right-of-way where the property is adjacent to Hwy 40 subject to the following condition:

1. The following notes shall be added to the Certificate of Survey:
  - a. "The Planning Commission approved a variance from Section 20-810(e)(5)(ii) to allow the land division to occur without the dedication of additional right-of-way where the property is adjacent to Hwy 40."
  - b. "KDOT did not require the dedication of additional right-of-way with this land division, but indicated that additional right-of-way would be required when more intense development were proposed."

Unanimously approved 10-0.

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**ADJOURN 9:25pm**