



# City of Lawrence

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## CITY COMMISSION

**MAYOR**  
MICHAEL DEVER

**COMMISSIONERS**  
MIKE AMYX  
JEREMY FARMER  
DR. TERRY RIORDAN  
ROBERT J. SCHUMM

March 11, 2014

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:**

1. Proclaimed Monday, March 17, 2014 as the Twenty-Seventh Annual St. Patrick's Day Parade.

## **B. CONSENT AGENDA**

**It was moved by Schumm, seconded by Amyx,** to approve the consent agenda as below, with the exception of consent agenda item 2, regarding claims. Motion carried unanimously.

1. Received minutes from the Community Development Advisory Committee meeting of 02/13/14 and the Hospital Board meeting of 01/15/14.
2. **PULLED FROM THE CONSENT AGENDA FOR SEPARATE VOTE.** Approved claims to 233 vendors in the amount of \$4,279,762.83 and payroll from February 23, 2014 – March 8, 2014, in the amount of \$2,272,187.80.
3. Approved Drinking Establishment licenses for BurgerFi, 918 Massachusetts St. and Yacht Club, 530 Wisconsin St., as recommended by the City Clerk's Office
4. Approved appointments of Kevin Markley to a Building Code Board of Appeals position that expires 11/30/16 and Laura Canelos-Ramon to a Citizen Advisory Board position that expires 03/01/17, as recommended by the Mayor.
5. Bid and purchase items:
  - a) Set Bid Date of April 1, 2014 for City Bid No. B1418, Project No. PW1403 – 2014 Overlay and Concrete Rehabilitation Program.
  - b) Set a bid date of April 1, 2014 for Bid Number B1419, Project UT1304 Contract 1 Wakarusa Conveyance, Haskell Avenue Casing Pipe.



- c) Awarded bid for the Comprehensive Rehabilitation Project at 1926 Vermont Street to T & J Holdings, Inc., for \$21,670.
  - d) Authorized the purchase of one (1) utility body for the Public Works Department from American Equipment for the amount of \$11,450, utilizing the Kansas City Missouri competitive bid contract.
  - e) Awarded bid for a cab and chassis for the Public Works Department to the low bidder, Shawnee Mission Ford, for \$35,500.
  - f) Awarded bid for one (1) Ford F-150 4X4 pickup for the Public Works Department to Laird Noller Ford for \$23,601.
  - g) Awarded bid for one (1) articulated front wheel loader for the Public Works Department to the low bidder, Murphy Tractor, for \$36,289.
  - h) Authorized staff to negotiate an Engineering Services Agreement with George Butler Associates, Inc. (GBA) for Project UT1402 City of Lawrence Flow Monitoring Program.
6. Adopted the following ordinances on second and final reading:
- a) Ordinance No. 8964, amending Code Section 19-122, Fire Service Connections, to permit the City Manager to approve waiver requests related to the maximum size of a fire service connection and to provide for appeal of waiver denials to the City Commission within 30 days of such denial for further consideration at a public hearing to be scheduled within a reasonable time thereafter.
  - b) Ordinance No. 8967, prohibiting the possession of glass bottles and other glass containers in the downtown district during specified hours.
  - c) Ordinance No. 8961, establishing No Parking along the north side of Steven Drive, 50 feet east and 50 feet west of Pamela Lane (TSC item #5; approved 5-2 on 1/6/14).
  - d) Ordinance No. 8963, repealing the existing Transportation Development District for the 9th and New Hampshire Redevelopment Project.
7. Approved Special Event, SE-14-00061, for Final Four merchandise sales at 2300 Louisiana Street (Checkers) from March 30th through April 13th, 2014. Submitted by Sun Creations, Inc., with permission of 2300 Louisiana Co., LLC, property owner of record.
8. Accepted dedication and vacation of easements and rights-of-way associated with Final Plat, PF-14-00010, for Wakarusa Wastewater Treatment Facility Addition, a 1-lot subdivision of approximately 537 acres located at 4380 O'Connell Road. Submitted by Bartlett & West Inc. for City of Lawrence, property owner of record.
9. Approved a temporary use of public right-of-way, event permit for use of various city streets, including the rolling closure of the northbound lane of Massachusetts Street

downtown from 8:00 a.m. – 8:25 a.m., on Sunday April 13, 2014 for the Kappa Delta 5K Shamrock Run.

10. Approved the following related Kansas Relays events to be held in downtown Lawrence on 4/18/14 to 4/19/14:
  - a) Approved a Temporary Use of Public Right-of-Way Permit for the closure of the 100 block of E. 8th Street and the intersection of 8th Street and New Hampshire Street from 6:00 a.m., on April 18, 2014 to 6:00 a.m. April 19, 2014; and
  - b) Adopted on first reading, Ordinance No. 8968, authorizing the possession and consumption of alcoholic liquor on the 100 block of E. 8th Street and the intersection of 8th Street and New Hampshire Street from 4:00 p.m. – 10:00 p.m. on April 18, 2014.
11. Authorized the City Manager to execute a contract with Gila, L.L.C. d/b/a Municipal Services Bureau, for collection services for Lawrence Municipal Court.
12. Authorized staff to apply for the Kansas Health Foundation Recognition Grants Program for a South Park Fitness Zone.
13. Approved \$75.00 administrative fee for City weed abatement pursuant to Section 18-305 (C) (4) of the City Code.

Amyx pulled consent agenda item no. 2 regarding claims for a separate vote.

**Moved by Schumm, seconded by Amyx,** to approve non-Rock Chalk Park related claims to 232 vendors in the amount of \$4,275,352.83 and payroll from February 23, 2014 – March 8, 2014, in the amount of \$2,272,187.80. Motion carried unanimously.

**Moved by Schumm, seconded by Farmer,** to approve claims to 1 vendor, in the amount of \$4,410. Aye: Dever, Farmer, Riordan, and Schumm. Nay: Amyx. Motion carried.

**C. CITY MANAGER'S REPORT:**

David Corliss, City Manager, presented the report.

Schumm said regarding the February Sales Tax Distribution, he asked if that was the first month the City received money for this year.

Corliss said the City received a check the last week of every month that went back approximately 7 or 8 weeks when those actual sales were conducted. He said the City had a modified accrual accounting system which meant that when the City received that check in January, they counted it as 2014 revenue until the City received the last check in January 2015

which they then replaced in the City's accounting for 2014. The 2014 January check that the City received was attributed to the 2013 revenue. It was important for staff to keep track of the trend regarding sales tax and more importantly, was the City bringing in enough revenue for the City to meet its budgetary obligations. He said the City received two checks so far from the state and it was 2014 revenue, but when the City receives that January 2015 check, that check will be replaced and accounted for accordingly.

Schumm said for budgetary purpose, he asked if staff looked at a 2 percent increase each year.

Corliss said he thought they did for 2014.

Schumm said the sales tax distribution reflected a good increase.

Corliss said correct. He looks at if we are above or below budget and under or over for the year in the 3 different places sales tax went to: the City's general fund, and then the sales tax the City received from the County, some of that money stayed in the general fund and some went to the sales tax reserve. The .55 percent sales tax was distributed to a couple of different places and was used for either infrastructure or to operate the City's transit system. He said he was always looking to see if the City was over or under for the year. If the City had a healthy trend of over, that was good, but it went back and forth and not only had to do with the economy, but sometimes when the retailers send the check to the state.

Farmer said they had a 64% increase in sales tax distributions for the year looking at the top spreadsheet, the City's sales tax from 1995 at 8.4 million to 2013 at 13.8 million. He said when they were having conversation at the Retail Market Study, one of the things that was said was that when factoring in inflation, they had been very flat ever since then. He asked if there was a way they could see how inflation factored into those totals. He said obviously those numbers had been increasing and didn't know if it was fair to say that the City had a flat sales tax revenue for the last 20 years, because obviously 8 and 13 million were two different

numbers. He asked if there was a way they could see that on those spreadsheets going forward in the future to see how the City was doing with inflation year to year.

Corliss said staff could draft a report for the City Commission.

**D. REGULAR AGENDA ITEMS:**

**1. Receive update from First Management Inc., concerning the plans for the building at the northeast corner of 9th and New Hampshire and the existing mural on the north of the building.**

Micah Kimball, Treanor Architects, representing the development group, presented the report. He said on the north side of the existing building was a mural painted on the building called the Pollinators. He said they were having a lot of discussions with various community organizations and the Spencer Art Museum to discuss the possibilities for this mural. He said one of the biggest concerns about that wall was that with the new project, the wall couldn't stay where it was due to construction. He showed slides of the proposed project and explained why the wall couldn't stay at the current location. He said one of the solutions they proposed was to have two additional mural spaces. He said those spaces would be blank canvasses and they could work with local or commissioned artists to replace art on those fairly sizable walls. He said they were looking to cut the mural into vertical panels, stabilizing the back and relocating the mural at the Spencer Arts Museum or where ever they decided to put that mural. The developer had pledged some funding to assist with relocating the mural.

Farmer asked about the existing mural size.

Kimball said the highest point was 21 to 22 feet tall and roughly 60 feet in width.

Schumm said there was going to be conversation about moving the mural and asked if in Kimball's opinion, was the mural salvageable and able to be moved. He said in other words, if you cut that wall into 6 or 8 large sections and one section broke apart, then the painting would be pretty much destroyed. He asked about the probability of each section remaining intact and reusable.

Kimball said they talked to their structural engineer and how they could pin that in from the backside to try and keep those vertical panels together. It was a difficult process and would take quite a bit of work. It was possible to do it, but they faced the risk of damage or something happening.

Schumm said if putting that mural back together they would need to paint the cut lines or chip marks that occurred while moving that wall. He asked if the entire mural would need to be repainted because there would be different colors of paint.

Kimball said those were some of the details they would need to work through. He said they were looking at removing it or replacing it with new art. He said if they moved the mural, he asked where it would go to because they didn't have enough space on their site.

Riordan asked if Kimball had any idea of the cost to move the mural and putting the mural in a new place. He said he had heard the figure \$20,000 towards this project.

Kimball said correct and that was pledged towards those efforts. He said they hadn't done a full estimate of the costs yet.

Schumm asked if it would cost more than \$20,000.

Kimball said it would take every penny of that \$20,000. It was quite possible it would, especially considering what happened afterwards. The take down and relocation of that mural, with re-erecting it and stabilizing the mural could be quite costly.

Riordan said he suspected that by the time the mural was taken down, moved, a foundation was built and it was put back up, it would be a lot more than \$20,000, probably twice that amount.

Schumm said based on his personal experience, he knew a single block wall would need to be braced from the back substantially.

Kimball said correct, it was a delicate procedure.

Dever said this conversation was first started back when the building was being proposed and public art was always part of the plan. He said he didn't recall ever discussing

the fate of that wall before, but some of the people that spoke last week indicated that there wasn't a solid flow of communication between Kimball and the owner of the building, but Kimball provided some clarity on that situation. He said Kimball needed some leadership on what the City Commission and community expected.

Mayor Dever called for public comment.

Susan Earle, Spencer Museum of Art, said they appreciated having the opportunity to work with First Management and had been very gracious in discussing the project with the Spencer Museum in recent months. She said Dave Lowenstein, the artist, who had overseen the mural, had been working very hard in trying to figure out the best solution for the mural. The mural was commissioned in conjunction with this nationally touring exhibition and the museum commissioned the creation of the mural as part of that project and as a result, the Pollinators came out of the community and endeavored interaction with the artist, Dave Lowenstein who spearheaded the mural. She said the mural had support from the National Endowment for the Arts and also from the local community. She said for instance, when the mural was completed in September 2007 which was right around the time the exhibition opened, the City Commission declared "Aaron Douglass Mural Day" in Lawrence. The exhibition toured but the mural was designed for the site where the mural was now and was a site specific artwork. She said there was always some hazards involved with that type of situation, but it was designed specifically for that spot, the concept that Dave Lowenstein and the community member that produced it, students, residence of Lawrence, downtown area and other neighborhoods created the idea of the Pollinators as part of it, related to the Farmer's Market. The mural had gained cultural significance beyond what they could have imagined and had become a point of pride in this community and it had taken on symbolic proportions as a civic work of art in this community. She said they were very much interested in having the mural preserved on its current site. She said they appreciated the architect's perspective about the challenge, but it still was the solution the museum was seeking and understood there might be other options to consider.

Schumm said he shared in Riordan's opinion that it would be well more than \$20,000 to move that mural. He asked if Earle knew of any grants available through the Spencer Museum or arts organization that Earle was familiar with and could participate in helping to preserve that art through moving it.

Earle said that was an excellent question. She said she had been doing quite a bit of research about murals that had been preserved in the sites where they were created, murals that had been moved, but didn't have figures of what that would cost or know if there were specific funding agencies that could assist, if it became twice that amount or more. She said the Spencer Art Museum would need to look into that idea.

Riordan said it was a very difficult decision to make because there were some unknowns and they didn't know how easy or hard it would be to move the mural, but thought it would be hard to move. He said when having something like this that had to be moved there were costs. He said Schumm's question was good, but someone needed to own this wall before it was moved and then be responsible for moving it. He said he would love that to occur, but there was an open checkbook that would scare a lot of people. He said if they had any solutions to that situation because they knew where they could get seed money, but there had to be more and couldn't just increase the cost and not have someone pay for it. He said they might want to have innovative ideas on how to handle this and would love to hear people talk about any ideas regarding this matter or if there was an entity that would buy that wall and move it. Someone had to be responsible and own it because it was going to cost more money than \$20,000.

Earle said that was an excellent point. She said ownership of the wall was a very interesting question because the mural had taken on a life of its own which was why there were present discussing this mural. She said Dave Lowenstein was the creative lead behind the mural and held the copyright for the mural, but it really wasn't owned at the moment. She said she supposed they could explore the City taking over ownership of the mural. She said others



from the community might have other ideas or suggestions. She said they wanted to continue conversations, not just with the developer, but also with all of the other stakeholders about the options, ownership, and all of those ideas.

Amyx said Earle discussed the risk involved with site specific commissioned art and in this particular case, that site was selected for this particular mural. He asked if there was any discussion about the opportunity to get some kind of easement on that building or something so they would have ownership in time. He said in understanding the risk, was that something that should be looked at into the future to avoid situations like this.

Earle said very often community murals were placed on buildings where the ownership was not clear or there was no protection into the future so it was fairly common. She said she confessed that she didn't fully realize that they hadn't made all of those provisions for the future. She said it could not always be controlled and it might not be possible to have the mural be placed if placing too many restrictions on future ownership of murals. She said like many works of public art there was always some risk.

Schumm said the City Commission was very supportive of trying to find a solution to work this out. He said they had a seven year old mural on the wall which everyone liked, but asked what was the life of the mural before it had to be repainted and as long as the artist was still living and was capable of painting, if it was reproduced on another site, he asked if it was equally as valuable as the original. If the artist was no longer capable or no longer with us, then it would be lost art. He said there was a mural downtown that was repainted in the walkway between the Signs of Life on Massachusetts and Vermont Streets last summer was rejuvenated and looked great. He asked if the art was still original art if the painter could recreate that art. He said that would have a lot to do as to the things that were factored into their final decision.

Earle said those were two excellent questions. She said the mural was still in very good condition and Dave Lowenstein used good materials and the artists that he worked with put a lot of care and pride into that work of art. The artist might have a better idea of the longevity of that

mural. Many murals had survived in big cities like Chicago, Philadelphia and other places for decades and had done well, but sometimes they might need some repainting and sometimes not. She said the life of the mural was something that needed to be addressed and the topic of the artist recreating the art because he was young and could do it. The reason they were thinking about preservation was because it was made on that site and had specific meaning at that time and all the people that participated, but that didn't mean it couldn't be recreated. In this circumstance that was a possibility that could be considered, but the best was to preserve the mural.

Margaret Perkins-McGuinness, Director of External Affairs, Spencer Art Museum, said since plans for the development at 9<sup>th</sup> and New Hampshire by First Management were announced in 2012, the Spencer Museum of Art had sought to identify an appropriate strategy for preserving the Pollinators mural. They had been in communication with a number of diverse organization and groups with interest in preservation of the mural. Those groups included the City of Lawrence, Lawrence Historic Resources Commission, Lawrence Farmer's Market, East Lawrence Neighborhood Association, University of Kansas, Cultural District Taskforce, Lawrence Cultural Arts Commission, National Endowment for the Arts, members of the regional African American communities, members of the local artists communities, and local media outlets. In the fall of 2012 Spencer Museum began meeting with Dave Lowenstein and also held a meeting with representatives of Treanor Architects in order to discuss the preservation of the mural. Spencer Museum Director, Saralyn Reece Hardy, first discussed the issue with Compton, by phone in June of 2013. In November of 2013, Hardy sent Compton a formal request for a meeting to which Compton responded by mail. The first in person meeting between representatives of the Spencer Museum of Art and First Management took place on February 25, 2014. The meeting was positive and it did indicate a shared interest in identifying a mutually agreeable resolution to preserve the mural. As recently as today staff from Spencer met with representatives of First Management as well as Treanor Architects, on-site, to discuss

options for preserving the mural. She said on behalf of the Spencer and Saralyn Hardy, they did look forward to continuing their discussion with First Management and with Lowenstein and hoped to convene a meeting of the stakeholder that she mentioned in order to really identify what the priorities of the community were so as they approached a mutually agreeable solution, they had the best long-term interest of the stakeholders in mind.

Dever asked Perkins-McGuinness about reaching out to a multitude of organizations.

Perkins-McGuinness said in every instance the organizations reached out to the Spencer Museum.

Dever asked what they offered. He asked if there was money involved and were there people willing to help recreate the mural or help in moving the mural.

Perkins-McGuinness said the overwhelming sentiment was in the interest of preserving the mural. She said for those that did not express interest, for example preserving the mural on site, the ways they were communicating indicated that people want to do what was best and were asking for Spencer's guidance or leadership along with Dave Lowenstein to discuss their priorities. She said that was what brought them to realize that at this point, with that many stakeholders interested in the outcome of the mural, their best step was to convene those individuals and representatives of those organizations so they were speaking on behalf of everyone's best interest.

K.T. Walsh said she was representing the East Lawrence Neighborhood Association. Their group would like to see the mural preserved. She said this was our City paying lip service and calling Lawrence "The City of the Arts" to actually moving forward and hiring a cultural director, this year creating a cultural district and now dealing with some of the thorny issues of public art and art in the community. Those were things that they needed to have policies for. She said she was surprised to hear that the spaces for the front of the building would be much bigger than she thought for the mural spaces. She said in the letter that was sent and the meeting with the neighborhood the spaces were much smaller, but those were big enough

spaces for Lowenstein to recreate his mural, unless the City insults Lowenstein and ask him to miniaturize the mural. She said Lowenstein was commissioned to do a community mural recreating an Aaron Douglas painting in Tennessee Town, a community of decedents of slaves and that would cost about \$30,000 and they had since had problems and had to put French drains in which was expensive. She said she was researching public art in Lawrence and last time they had the beautiful sculpture out front she thought it was \$35,000 to maintain that sculpture. She said they needed to put on their big city pants and have a maintenance fund for the City's public art. She said Philadelphia was leading the world because they had a City Department of Murals and would be good people to contact about the easements which were not uncommon and all of the legalities. Lastly, she said Lowenstein and the community did a beautiful mural at 9<sup>th</sup> and Mississippi when the Community Mercantile was there and when the liquor store rented the building, the liquor store was going to paint over it. She said there were people that got on their bikes and in their cars and notified the neighborhood that they were painting over Lowenstein's mural. She said people demonstrated and the owner realized and asked Lowenstein to repaint the mural. The owner again this year asked Lowenstein to restore it. In terms of the materials, when they were poor muralist, they used house paint, but they would never do that now and used very expensive professional mural paint that had UV inhibitors, very rich pigment and was long lasting.

Dave Lowenstein said there were a few outstanding questions about the longevity and process. He said Walsh answered a couple of those questions, but it was common practice with murals like this to prepare for restoration down the road. It was actually written into all of their contracts. If looking around town, Schumm mentioned the mural that they restored after 20 years on Massachusetts Street, the mural at 9<sup>th</sup> and Mississippi and the wall actually fell apart before the mural. As long as he was able, he would ensure that the projects that he led were in good condition and again, that was written into the agreements that he used for any project that

he did. In terms of the Pollinators, it was in great shape now and it would be kept up as long as it was at that location.

Dever said Schumm asked a good question although Walsh slammed the door on that and the City Commission did not want to insult Lowenstein by any means. He said there were several issues such as if they wanted to keep it in the same place and not move it off-site, if it was moved that wouldn't be good enough because then it was out of context. He said there were a lot of moving parts. He said there were three issues and how do you get two out of three when the third one was not to do anything. He asked if they wanted that mural to be at that current location and it was on a building, just at a different location, he asked what happened if the Farmer's Market moved and was no longer there and wasn't in context anymore. He asked what happened if the Farmer's market didn't move, but they moved it and created this extra-large space, similarly in size and asked if Lowenstein would be able to reproduce something if Lowenstein had the mural to look at.

Lowenstein said as mentioned, they were evaluating all of those options. He said Walsh indicated that the spaces on the proposed development had changed in scale very recently and they would need to look into that. He also agreed with the Spencer Museum that their first hope and the community members that participated and cared about this project, was that the mural be preserved at the current location. He said they wanted to continue those discussions and explore those options more thoroughly. He said they just really had gotten started and as mentioned, didn't have their first meeting until a couple of weeks ago and then it was placed on the City Commission's agenda.

Dever asked if about moving it to the City owned the parking garage next door. He said theoretically if the mural was moved, it could be moved 15 or 20 feet. He said they would lose some parking spaces, but they would save a mural. He said there were things they could do, but there's going to be some give and take. He said the mural was a community project, but

Lowenstein was the creator. He asked Lowenstein if there were over 100 people that help paint the mural.

Lowenstein said there were a large group of designers and over 150 people helped paint.

Dever asked if Lowenstein commissioned those people to help.

Lowenstein said those people chose for themselves. It was the nature of those types of projects. He said those were community based projects that encourage citizen engagement in the arts. Fortunately, in Lawrence, people were really hungry for this kind of opportunity and they cared about it.

Schumm said if it came down to moving the wall and in moving the wall, there were risks. There were risks that a panel could be damaged and chipped and would re-establish the wall with a lot of damage on it. He said he presumed they could fix it and repaint all or parts of it. He asked if it was better to go that way or was it better to paint another picture just like the original.

Lowenstein said he could not evaluate the cost because he didn't know the cost.

Schumm said not to worry about the cost, but talk in terms of artistic value and what might be the best way to go.

Lowenstein said he hadn't thought about it much because they were focused on preserving that mural where it was currently. He said he thought they could retain the artistic value in the mural either way. Either if you moved the mural, reassembled and restored it or if you recreate the mural at a new location, based on the original design. He said the sense he received from supporters of the Pollinators was that they desperately want the Pollinators to exist where it currently was and in downtown Lawrence where they had an association, not only with the art, but with the art in the place. It had become inextricably linked to the Farmer's Market and to downtown. He said to put the mural somewhere else would change its profile in this community. If they had to discuss that option, they would.

Dever said when having public art and it was out in the public, it could easily be defaced, damaged, or destroyed. He said it was something that he noticed in his recent trips to some cities where there were murals that would get graffiti and drawn on or the buildings were being torn down. He said this was not a new thing and they needed to make sure they weren't creating an extra step. He said clearly, the developer showed the Commission drawings that indicated that if they were going to build a site, they needed that space. He said the way he saw it was if a person bought a building and the mural was in place on that building and there was no easement or restricted covenant indicating that they couldn't paint or change it or tear it down then ultimately, legally, the building owner had the right to do whatever he wanted with the building. He asked if there was any real desire to try and tell someone that legally it wouldn't be upheld.

Riordan said he had the same question. He said what the City Commission was doing was receiving an update and the way he pictured this was that they wanted to bring the two parties together in a way to maximize the benefit to the public with this art mural. He asked what abilities did the City Commission have other than bringing the parties together or making recommendations. He said he assumed the City Commission didn't have any legal authority to do anything in this situation because they had approved the building. The owner legally owned the building, owns the wall and assumed the owner would own the painting also. He said in good faith the builder had come forward in trying to find a resolution. It looked like it would be virtually impossible to continue to keep the wall in place because of the construction and the way the construction had to be done.

Corliss said Riordan correctly recited the State law, but the only other thing that he would add was that the City Commission previously approved the demolition permit for that property.

McCullough said correct.

Corliss said the City Commission already acted on that. There wasn't any legal right that the City had because the City didn't own the building.

Dever said he wanted to make sure because that was discussed and wanted to make sure that was clear.

Schumm said the City Commission was receiving an update from both the development organization as well as the artisan community. There were three options which were to leave the mural where it was currently; move the mural in sections; or, repaint the mural somewhere else. He said in looking at the plans the developer had presented that the mural couldn't stay at that location, otherwise, that building would need to be totally reworked and you wouldn't get the parking that was needed. He said leaving the mural would dramatically alter the entire architecture of the project. He said that wasn't fair at this point to tell someone to do that. He said there was no way that the mural could remain where it currently was, which left the other two options. He said he would like to hear from the artisan community and anyone else interested to see where they would go with those two options on the table. He said that seemed to be the common sense approach and everyone said they were just starting to talk about it and if they could come back in a couple of weeks with some ideas, then they could start figuring out what the long-term solution would be.

Dever said that was where he was trying to get with some of Walsh's comments. He said the City probably needed to step up and do something to help facilitate this issue. He said realistically they were trying to keep it close and not reproduce the mural. He said the City had land right next to the Farmer's Market and there were ways that they could incorporate it and not disturb it entirely or at least transport it a very short distance which would minimize the likelihood of damage. He said he had no idea what the right answer was.

Amyx said they were probably going to have a tough time leaving the wall where it was currently. He said three weeks ago there was the first meeting between the organizations that were involved along with the developer. He said there had been some fairly good outcome at



this point in seeing some movement on what could happen. He said regarding the location of the mural being site specific, those easements were a necessary evil and was something that should be discussed in the future on legal limits and things the City Commission could do. He said in looking at site specific, if they were going to consider recreating this mural on another wall, he asked if there were locations in the community on publically own buildings or a site that would receive this mural and give an easement for the long-term so the mural couldn't be removed or demolished. He asked if that could be a possibility. He said there should be a location somewhere for that mural where someone would love to have this publically owned art on their building with a long term easement of some kind.

Farmer said the elephant in the room was that they didn't have any policies in place in how the City Commission should deal with this type of situation. He said this was something that should be the responsibility of the Cultural Arts Director they authorized to take an inventory of every mural in the community, on the murals location and what type of protections existed for the mural. He said it was very unfair for the City Commission to retroactively go back and say this mural was made in 2007. He said all of them in an ideal world would love to preserve the mural, but the reality was that this conversation should have happened 3 or 4 years ago. He said it was no one's fault that they were in this situation. He said he was more interested in figuring out how not to be in this predicament again. Inevitably someone was going to buy a building and won't be as gracious and say here was \$20,000 and might need to kick in some money to help with that. He said someone could show up one day and the mural could just be painted over. He said they needed to fix that process. He said this was one of those situations where both parties had really given a lot, concession wise, in figuring out how they could best move forward and preserve that mural. He said leaving it at its current location was not going to be doable. He said he wished they would have had a policy in place and shouldn't unfairly punish someone wanting to put in a neat building and creating mural space for art to happen. He said he would be interested in figuring out where they wanted to go and something needed

to be done with the mural because it was a beautiful piece of artwork. He said he was concerned about the Farmer's Market, if they moved how that would affect the mural. He said there were a lot of things and he would also be interested in figuring out how they could make sure the mural didn't get defaced. He said he wouldn't even know how to begin to protect murals, but it started with having a process. He said if the City needed to find a way to kick in some dollars to make this fair. He said it was very fair that Compton offered to pay \$20,000 because Compton didn't need to do that. He said that gesture was commendable.

Riordan said this was a private building and a private painting and had nothing to do with the City of Lawrence except that it is in the City of Lawrence. He said Farmer was right in that they needed some recommendation and the new Arts Council would be a great way to put not regulations, but recommendations when people want to put up art because if someone had a wall and wanted to put up art like at Cottin's they could do so. He said the City Commission could make some recommendations and guidance, but he didn't think they had regulations or financial or fiscal responsibility for this mural. He said it would be reasonable to help as a City if there was a financial situation where the people were involved came back with a resolution. He said it was pretty clear tonight that the resolution was that the mural wouldn't stay at the current location and would need to be moved. The question was whether it was better to move it or recreate it on the building or someplace else which he left to the art community. He said he would encourage the community and the people that were interested to work with the builder and have those people come back to the City Commission once they had a recommendation. If there were a financial request, the City Commission would certainly entertain that request and find out who would be responsible for over-runs, over cost and who would own that and their protections. If they were going to ask the City for a blank check, he wouldn't be very excited about that because there were lots of things that they needed to do to help people, but at the same time if there were some financial abilities that they could give to help this mural be recreated or moved, the Commission would seriously consider that, but didn't think the City

should take on that full responsibility. He said it was up to the citizens of Lawrence to band together and try to figure out how to do this best. He said certainly when people had requests that were important to the other citizens, they could come before the City Commission and make a financial request in the future, but he would recommend that the Commission receive this report, thank the parties and make a recommendation that the interested parties get together and come back to the City Commission.

Schumm said he agreed with Riordan, but should indicate to the development company that the wall would not remain in place.

Doug Compton, owner of the property, said they were going to start construction June 1.

Dever asked if Compton was going to start demolition June 1.

Compton said yes. He said they were more than happy to continue those conversations and appreciated everyone's input. He said Riordan did a great job articulating the facts involved in this project.

Dever asked Compton if he was going to demolish the building in one day. He said they talked about determining the structural integrity of the wall. The reason why he asked if they were going to only demo part of it was that there were similar walls in other places and maybe they could see what those walls were made of, how those walls were built and maybe they would have a better idea of what they could do.

Compton said the walls were set correctly it was just that the center wall would take unique shoring to shore up that center wall. It was a large centered wall and thought it would be very difficult, if not darn near impossible, to be frank. He said they were willing to explore any options. He said there was a company in Kansas City that might be a candidate for this wall, but it would be very difficult and expensive.

Dever asked was it indicated what per square yard that company might charge.

Compton said no.

Dever said the Commission appreciated Compton getting this issue out on the table. The building, especially the larger mural space on the back was very nice.

Compton said they would love to recreate the mural on those spaces and would be an excellent addition to their project. He said they just participated in a pledge with the Arts Center for a grant that Susan Tate was applying for. He said they hoped they were doing their part.

Dever said short of not tearing down the building, they were doing their part.

Garrett Tufty said there was a person, Keith Middlemast, who was very experienced at moving large rocks and sculptures. He said he would be willing to ask that person about this mural to see what he would charge.

Dever said that sounded good.

Corliss said he actually knew Middlemast who had done work for the County Court House and other places. He said to avoid a flurry of emails on this, Compton had given the start day for his project. One of the things the city had been communicating to Compton and his architects was that as they submitted plans, one thing that the City Commission would eventually approve was a construction traffic plan, probably similar to the work on the Marriott Building for this location because it would obviously impact New Hampshire, a little bit of 9<sup>th</sup> Street, and obviously the alley. It would also impact the Farmer's Market in that parking lot. He said there were construction shoring issues and wanted to make it clear because the City Commission would be receiving communications, particularly from the Farmer's Market representatives about their interest. He said the City's request to the development team would be, when they get to that point, a traffic control plan so that they could see how that would work and the City Commission would eventually have that as an agenda item.

Dever said they needed to have a conversation as well about what the City was going to do to help facilitate this. He said the role they would play was as a facilitator whether it was a physical location that was possible. He said that was something that they wanted to make sure

that they took responsibility for to make it happen. He asked if the City Commission wanted to try and get this resolved.

Schumm said yes. They would be coming back in a couple of weeks to see what happened because the construction would be starting on June 1<sup>st</sup>.

Dever said the Commission would try and set up a time and make sure they had a communication about what's been resolved and how the City could help facilitate.

Corliss said the Commission previously indicated last week that they would have more information on April 8<sup>th</sup> and now they had today's briefing. He asked if the City Commission wanted to set another date. He said the Commission wasn't meeting next week, didn't want to do it on March 25<sup>th</sup>, and April 1<sup>st</sup> were the Commission's elections.

Amyx asked if the meeting was already set for April 8<sup>th</sup>.

Corliss said the City Commission had the TIF items coming in as well, but could still have it on April 8<sup>th</sup>.

Schumm said if the Commission came back on April 8<sup>th</sup> and receive ideas on what could be done, that was getting time short in terms of seeing what was possible. He said they were talking about moving a gigantic piece of concrete. He said he didn't know if moving was the most difficult part, it was where the mural would be placed. He said they had to have structure built in place to receive that wall and had to figure out where it would look best and not be offensive to the neighborhood. He said there were a lot of things to decide before they start ripping on June 1<sup>st</sup>. He said he would like to see the City Commission come back in two or three weeks with an update of what the thought process had been amongst the neighborhood, the artist, and the community. He said the City Commission should keep aggressively working on this matter.

Riordan said what if they received the update and recommended that the two groups get together and have the City staff facilitate and come back with a recommendation to the City Commission. He said that would speed things up rather than making it official. He said he

didn't think it was necessary for the City Commission to approve something. He said as far as financing, cost for the city, and where the mural should be placed, there were a lot of things that needed to be done. If that was mutually acceptable to the two groups as well as City staff, then he probably wouldn't be against the decisions. He said since they had a time constraint, not putting the City Commission in the way of this getting done was probably a good idea.

Dever agreed. He asked if the architect could get the name and phone number of the person in Kansas City that was capable of moving walls so they could have a conversation about it.

Compton said it was important to note that someone had to take ownership.

Dever said that was what he was getting at by facilitating. He said he was saying the City would take ownership of it to see that the mural was protected and properly placed if that was what it would take. He said he didn't know if the other Commissioner's concurred.

Schumm said it depended if they repainted the mural on another location or move the wall. If they moved the wall, they were going to get into money issues and site plan issues. He said they could move the wall and store it then build another site out, but then those were things to be concerned about.

**Moved by Schumm, seconded by Amyx,** to receive an update and direct staff to facilitate between the two groups and come back to the City Commission with a recommendation in two weeks. Motion carried unanimously.

**2. Consider authorizing submission of grant application to the Douglas County Heritage Fund for Lawrence Cultural District items.**

Heather Hoy, grant writer for the City of Lawrence, presented the staff report. The original grant was for \$110,000. She said today they had received information from a professor at K.U., Jacob Dorman, who was applying for something similar for Langston Hughes signs in the same area. She said they were asked to consider, but didn't need to if the City Commission wasn't comfortable with the request, adding \$31,000 to their grant request before Friday when it

was due so the City could collaborate with the Langston Hughes group since they were both virtually doing the same thing.

Dever said the total would be \$141,000.

Hoy said correct and instead of going through the planning and design phase that would need to go to the fabrication and manufacturing of the signage and installation. She said a certain amount of the signage was in mind when this budget was designed and their budget called for the manufacturing and installation at \$31,000. She said Schumm was part of all of the conversations and this was a great way to supplement what they were doing with KDOT, Burroughs Trail and Art Place with the planned expenditures on 9<sup>th</sup> Street.

Schumm asked if that request happened today.

Hoy said the request just happened today. She said Susan Tate was on vacation and had been contacted away from the office.

Schumm asked if this was another group or individual.

Hoy said Dorman was a professor at K.U. and had a group of historians that were interested in submitting this grant. She said they had pulled together a substantial list of collaborators. A lot of their letters of support would be very similar to the letters that they had collected and supported for the original application. She said for coordination and collaboration purposes it made a lot of sense to try to submit together especially because the cost would be the same and in some case probably the same historic site they would be planning on putting a sign out.

Schumm asked for confirmation that it was a historical organization or collection of people that were interested in history that made the request.

Hoy said yes.

Schumm said it was the same district.

Hoy said yes. The grant met all the same requirements of the Heritage Fund which had to show that they were tying together Lawrence history and culture and wanted a tangible

outcome to whatever they were doing. In this case it would be the way finding signs which would be interactive with mobile applications and with websites. She said Callahan Creek has agreed to help with the design work which was a substantial investment on their part as well.

Riordan asked if this was a grant that they could get total or partial funding, would this help or hurt the application, and what were Hoy's thoughts on what the city should do.

Hoy said she certainly thought that the Douglas County Heritage Fund would probably look more favorably on collaboration than they would on two separate grants going in to do the same thing. She said there might be some economy of scale that they hadn't explored because it did just come today. It was possible they didn't need 45 signs, but only 30 signs for the entire project, but as they had gotten through what they wanted to do, it might make sense to ask for a little larger amount. She said there would be a person that would be paid to plan and design the overall urban plan. In that situation, they might be told there was less money to work with as far as signage. She said they needed less signs than originally planned.

Riordan asked if Hoy thought this was a reasonable thing to do.

Hoy said she thought it was a very reasonable request, especially looking at the cost involved and other locations that had done this.

Riordan asked if the City asked for \$141,000 could the City get less.

Hoy said yes, it was possible.

Schumm asked what the total pot was.

Hoy said it was around \$300,000 and they were asking for a major grant and people could also submit for targeted grants that were less than \$104,000.

Amyx said if they made application together, in the event it came back with a lesser amount, he asked if they would recommend what the division of funds would be or would it be just one pot.

Hoy said it would need to be one pot. The way this would work was that there was a planning and design portion of the budget that they included and would not change regardless.



Amyx said that was the \$10,000 and \$35,000.

Hoy said they were very interested in the signage being artistically designed. She was not sure that was as big of a concern as the other group, but they wanted that to be part of the process to have artist involved in the design work on the signage. It might come down to that portion that was for manufacturing, fabrication and installation that had to be looked at budget wise.

Amyx said in the event the grant money came in at a lesser amount, he asked if the City Commission would make that division of funds.

Hoy said it would be the City's funds and would be the City deciding how the money was allocated.

Corliss said there would be some type of City/County agreement.

Hoy said it would be wise that the City was the applicant versus the other group because there were on-going maintenance costs and also might be some public/private use issues within the spaces where those signs would be placed. She said it made a lot of sense that City Code and City regulations govern what went on with the grant dollars.

Corliss said that was a good point. If it was public art, they would insist on it being something the City owned and controlled.

Dever said it would be \$141,000 with a total of \$350,000 total.

Corliss said there was no local match or city match.

Dever asked if the City received the grant and took the funds, did the City had to make up the difference.

Corliss said the City didn't need to. He said it was a competitive grant process and if the City gets an amount, it would be part of the discussion they would have back with this group and all those different stakeholders, and with the County to see if they could arrive at a meaningful project and present that back to the City Commission as a recommendation.

Mayor Dever called for public comment.

Chris Tilden, Health Department, said they facilitated the LiveWell Lawrence Coalition that had been involved in the discussion around this application. Certainly this was consistent with the work they had been doing such as the application submitted to extend the Burroughs Creek Trail to Constant Park. He said enticing people into those spaces was an important part of their interest in wanting to create a more active and healthy community and creating mechanisms to encourage people to get out was something they highly valued and supported. He said he thanked the city for its leadership in taking ownership of this issue. He said this was a great addition to what was going on and they were certainly supportive of the application.

K.T. Walsh said Schumm was very familiar since they worked together on the Cultural District Task Force and was familiar with all her reservations about all of those grants that had been rushed big time. She said their neighborhood had a deep conflict with the Arts Center when they wrote a grant two years ago that required deep engagement with the neighborhood and came to them just before the grant was due. Once again, another grant just going in and people were picking artists for sculptures to go into their neighborhood. The Art Center representative didn't show up to their neighborhood meeting last Monday when they were to begin engagement with the neighborhood about this grant. She said god forbid they would turndown public money. She said she loved preservation, downtown, and glad she lived in the Cultural District, but knew her friend Brenda Nunez who was black and was 5<sup>th</sup> generation in East Lawrence always says, "who's history?" There had been no black history written for Lawrence. She said there were some wonderful oral histories, but it hadn't been written. If they weren't going involve the people in the neighborhood and rush this grant through, then yes, get the money but then let's talk. There were the working people, the really poor people, and some illiterate people that had opinions about where historic parks should go. She said she adored Langston Hughes of course, but that they asked the Professor that wanted to do this research to come to an East Lawrence meeting and the Professor didn't respond. She said this was their

neighborhood. She said once again they had a rush grant. If the money came in that was awesome, but then it was time for some meetings.

Hoy said they did have a letter of support from the East Lawrence Neighborhood Association for the grant. Also, part of that process was to bring all of the stakeholders in to talk about the planning and design. She said it was part of the grant proposal.

K.T. Walsh said they did vote to support the first proposal with a deep promise and a long talk with Mike Myers. Now that they were dealing with public money, they couldn't just have 5 or 6 people at a meeting and decide it was time to bring in the public. East Lawrence did support the initial part of the grant.

Schumm said he was involved in the meetings with this grant proposal and was a little concerned about the group tag teaming with the City at this late hour. He said not that it was anything he wouldn't support, but the question was going to come down to what if they get 2/3 or half the money then whom would get what. He said he didn't know the person or group who was involved.

Amyx said Corliss indicated there would be agreements.

Corliss said the way that he understood was that the County entered into an agreement with the grant recipient and would need to detail their work program and if they didn't get all that they requested, he didn't know because the City never applied for County money, but he was excited to get County money. He said his speculation was that it was competitive and they wouldn't be able to get all that they were asking for in which case they would need to come back with a revised budget and would work with the different people that were interested in this to see what made sense. He said they might have a pre-meeting with K.T. Walsh and others about the priorities to help work on that grant. He said he found out about the additional information when he was walking into City Hall this evening.

Schumm said the other conversation they had as a committee was they didn't want to ask for too much more and wanted to be in the major grant request column because the feeling

was that there wouldn't be many of those, but yet didn't want to ask for too much more than a little bit above the minimum. He said the request was for \$110,000 and the cut-off was \$104,000. The question was did this put them over the top by too great a distance to where the people would say they would rather fund half a dozen of these as opposed to 40% of their money going to one plan.

Corliss said Hoy knew how to put those together and would work to make sure they write it in a way that the reviewers could see how it could be segregated out. He said he could see the concern because some people would say they were asking for too much and would do something a little less to accomplish a project. He said the City thought they could accomplish a really good project for the \$110,000 and they would make it clear that could happen along with the additional work as well.

Schumm said whoever the grant review committee was could indicate they didn't want to spend \$141,000, but did think the additional project was worthy and might give the City direction back that they want to fund 100%.

Farmer asked if the City would have on-going cost if they did get this grant at \$110,000 or \$141,000. The section that stated that on-going maintenance cost would be finance by the City of Lawrence. The City would have some responsibility and was something they might need to clarify. He asked if there was a formal plan as how that would happen with the on-going maintenance cost.

Corliss said the city did not have a formal plan. He said that would be one of the things the City would like to have the design element in addition to being a really good stakeholder and facilitator as far as getting all of the correct input. He said when they get to create the design guidelines they would want to know how to create public art that could be way finding and a good telling of different stories in a way that did that but also was something that could relative be easily maintained. He said they would eventually need to work out that in part of the City's budget.

Amyx asked if the \$31,000 was going to be part of the City's on-going maintenance responsibility. He asked if the City was thinking about taking that over too.

Corliss said the responsibility of the art and the signage that was created would be the City's responsibility.

Riordan said if they put in the higher amount, the committee would come back and if they had recommendations specifically of the two parts they would need to follow those, but if they send this back with a lesser amount, it would come back to the City Commission and staff would evaluate that and make recommendations and bring it before the City Commission. He said at that point the University input they would take, but the City Commission would have the final say so on how this was done.

Corliss said correct.

Riordan asked if KU would understand that.

Corliss said yes, but not just KU, but all of the other different stakeholders that would be part of this process. He said when they find out what the dollar amount was or if they would even get anything then they would have a series of meetings to make it clear what the City's recommendations would be about accepting the final contract and what all that entailed.

Schumm said he had another letter to attach to the document and didn't get written and it was his responsibility to get it written and would turn in the letter tomorrow. It would be a letter from the Cultural District supporting this grant application.

Hoy said any letters of support that she could get needed to be in by Friday.

K.T. Walsh said the Cultural District Task force had disbanded.

Schumm said Walsh was correct and directed staff to disregard that letter of support.

**Moved by Schumm, seconded by Riordan,** to authorize submission of a grant application to the Douglas County Heritage Fund for Lawrence Cultural District items, in the amount of \$141,000. Motion carried unanimously.

3. **Consider approving, Z-13-00516, 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 Street. Submitted by Hartshorne Plunkard Architects, for Berkeley Flats Apartments LLC, property owner of record, and consider adopting on first reading, Ordinance No. 8966, rezoning (Z-13-00516) approximately 2.391 acres from RM32 (Multi-Dwelling Residential) District to MU-PD (Mixed Use with PD Overlay) District, located at 1101 Indiana Street. (PC Item 3A; approved 10-0 on 2/24/14)**
4. **Consider approving Preliminary Development Plan, PDP-13-00518, for HERE @ Kansas, a mixed use multi-dwelling residential apartment building with ground floor retail uses, located at 1101 Indiana Street, with a variance request from right-of-way requirements in Section 20-810 of the Subdivision Regulations. Submitted by Hartshorne Plunkard Architects, for Berkeley Flats Apartments LLC, property owner of record. (PC Item 3B; approved 10-0 on 2/24/14)**

Sandra Day, Planner, presented the staff report.

Amyx said regarding the property at 1115 Indiana Street, as they saw the development of the entire project he asked if they were at 100% of what could happen on that lot.

Day asked if Amyx wanted to know if that lot could be incorporated.

Amyx said yes, with additional development.

Day said it would be incorporated because of the building design they were seeing today and would be incorporated as open space.

Scott McCullough, Planning Director, said there were some options and the applicant might be best to answer that question because they had looked very strongly at this property. He said they were asked the same question at the Planning Commission level and it would be prudent for Jim Heffernon, applicant, on how the lot could be incorporated into their design.

Schumm asked relative to 1115 Indiana, did the occupant understand that parking was going to be non-existent during construction and thereafter.

McCullough said he would provide context and history of the discussion with the owner of 1115 Indiana because it was important for the City Commission to know they had been in contact with the owner, expressed the impacts to the owner of this development, tried to outline the development options to address the impacts. The impacts essentially related to how the lot sits within a larger building. It already sat within the context of an existing apartment complex.

He said staff tried to help the owner understand the impact of losing the ability to access the lot from the rear, again without any kind of legal instrument that anyone could discover, that ability to get to the back lot which was a gate into the yard to park would be lost. He said they talked with the owner about mitigating that issue. In other words right now the conventional wisdom was to try and work out a permit system, giving one or two spaces up on Indiana Street to that particular lot in order to mitigate the impact. Throughout the process staff had contacted and gave notice of meetings and discussions with the owner.

Schumm asked if there had been letters written or verbal communication.

McCullough said there had been both. There were letters identifying what the process entailed and what the potential impacts could be. He said personally he had several phone calls with the owner regarding the impacts.

Corliss said he did as well and had seen this issue coming for some time. He said he tried to communicate to the owner the impact and indicating staff wanted to look out for that owner's interest as well through the process and asked what the City could do to assist in regards to that as well. He said staff tried to be as responsive as they could to those concerns. There had been some indication that that owner wanted to sell that property and then there were some times when that was no longer the case. He said regardless of that, they tried to look out for that owner's interest, making sure that Mrs. Bell was able to stay at her home and continue to use and enjoy her property to the extent that she could given the fact that there was going to be a large development built around her, although to some extent Mrs. Bell would have a little bit more space than she did now, but it wouldn't seem like that when the construction started.

Riordan asked if the City and City Commission had something like in medicine called informed consent and asked if they had any reason believed that Mrs. Bell didn't understand what they were saying and did they have any obligation to try to determine whether that was the

case or not because of her age and the fact that this wasn't a decision most people would make. He asked if that put the City at any risk at all.

Randy Larkin, Senior Attorney, said staff had talked and explained the situation to her. He said they advised her to get an attorney to get some type of representation and Mrs. Bell was some degree resistant and sometime she hadn't resisted. He said they really didn't have much more obligation to do.

Riordan said so the City didn't need a definition of informed consent that she understood this, but had to define that the City had stated this.

Larkin said correct.

Amyx asked what the elevation difference was between Indiana Street, down to the property at 1115 Indiana Street. He asked if that would be changed.

McCullough said there was quite a change.

Amyx asked if there was going to be a change in elevation. He asked how this individual would get down to the alleyway.

Dever said it dropped off 20 feet to the alley.

McCullough said you could still see the peak of the roof in front of that property. There was an existing stairway from the sidewalk on Indiana Street down to the property.

Amyx asked was that how the owner of the property currently accessed her property.

McCullough said that was how you could access the property from Indiana Street if visitors, for example, parked on Indiana Street.

Dever asked if the alley run through there originally.

McCullough said staff had not been able to discover any vacation. Certainly in recent times, as Berkeley Flats has had it, staff research had not indicated any vacation of an alley. He said there were actually a few blocks in a row where the alley did not exist.

Schumm asked if the property owner was capable of climbing those steps.

McCullough said he couldn't answer that question.



Schumm said if the property owner wasn't able to get up steps, they've created a situation where the property owner was confined to her own house.

Amyx said if the access was on the west side of that house through the parking lot the property was almost landlocked in a way.

Dever asked if staff looked into if there was right-of-way vacated and there was none on record.

McCullough said staff had not discovered a vacation and reviewing the site plan for Berkley Flats apartment complex there was no easement shown, but there was simply a note that provided access to the gate of the backyard.

Dever asked who had done that.

McCullough said it was on the site plan of the Apartment Complex.

Dever asked if it was on the original site plan.

McCullough said yes. He said he assumed there was some verbal unwritten agreement in that as they designed their parking area, to provide access to that lot.

Dever confirmed the only documentation was a note on the site plan indicating the property owner could have access via the back gate.

McCullough said it wasn't even that clear. He said it wasn't setup as a site plan agreement or note.

Dever asked if there was a garage.

McCullough said there were a couple of parking spaces and there might be a shed or garage at that location.

Larkin said this was a rezoning matter as such and was of a quasi-judicial capacity and it would be necessary to disclose ex parte communications so the parties could respond and everyone had the same platform from which to make a decision.

Schumm said he had no conversation with anyone about this issue.

Amyx said he had no communications.

Farmer said he had no communications.

Riordan said ditto.

Jim Heffernon, principal with HERE Enterprises, a development company out of Chicago Illinois, and developers of student housing, said the project was immediately across from Memorial Stadium and the project had 1100 feet of frontage: 440 feet on Mississippi Street, 250 feet on 11<sup>th</sup> Street, and 390 feet on Indiana Street. The challenge with the site was the topography. The intersection of Mississippi and 11<sup>th</sup> Streets would be the northwest corner which he would refer to that as they went through the presentation. He said from the northwest corner to the southeast corner there were over 4 stories of fall and was a little over 41 feet. Some of the challenges of the site were that Mississippi fell when going further north so did Indiana but at different rates. The Indiana Street was steeper than that of Mississippi and the most severe grade was on 11<sup>th</sup> Street. Currently there was vehicular access possible through 11<sup>th</sup> Street, midblock and also on the south side of Mississippi. They were eliminating all vehicular access on 11<sup>th</sup> Street due to the nature of the 40 foot right-of-way as well as the severe grade. It really wasn't the greatest street to be entering and exiting the project due to that grade. He said they had south justified their access points, both ingress and egress vehicular, in order to mitigate impact on the intersection of both Mississippi and Indiana Streets. He said part of the thinking on only having vehicular access on Mississippi was to maintain the pedestrian nature, particularly on Indiana Street. The project as presented would be a lead certifiable building, per City Code they were required to have 7,700 square feet of open space and they were providing 58,000 square feet. He said how they were doing that was with an arrangement of outdoor seating areas on the perimeter of the property. In addition they had two interior court yards, totaling 5,500 square feet as well as 27,000 square feet on the roof. He said they were introducing what they believed to be was the first automated parking garage in the State of Kansas. Automated parking around the world was common place. In the United States it was relatively new, but had been used in densely populated parts, particularly the east

coast where land was in short supply. The benefits of automated parking was a highly green idea and if you could imagine when someone negotiated up and down the ramps of a typical parking garage there was a lot of idling and CO<sup>2</sup> omissions and those would be dramatically reduced because there was no need for ramps up or down and currently most parking garages were designed with 24 foot aisles and there were no aisles in an automated parking garage. The cars were only inches apart and as a user part of the benefits were that you would never lose your car and your car was brought to you. There was also huge security benefit to that, due to the shared access point for dropping car and picking it up, it became very public and they had cameras. Part of what they sold to parents of their projects, particularly for the female residents was a safety consideration. He said rather than having them going down a dimly lit parking isle in the middle of the night there would be a highly lit camera protected area that allowed them to negotiate coming in and out of their car with relatively ease. Other practical realities were that things left in your car once the car left the vertical transport there were no human bodies in that area other than on occasion maintenance personnel. He said not only was their car safe, but the contents of your car and there would be no door dings with people getting in and out of their cars. He said the garage would be composed of three levels and showed the City Commission the different levels. He said they tried to utilize the topography of the site and relationship to the Oread they were 11 stories in absolute height, shorter than the Oread and were dwarfed by the other elevations. The building design was reminiscent of a typical downtown and the bulk and massing of the building was broken up through changes in color, articulation of the roof line, as well as the elevation itself, variation of window design and actually looked very similar to what a downtown that was constructed in the 50's would look like. The nature of what KU represents from a mixed use perspective was a pretty captive audience. There were 24,000 kids at the university and over 8,000 employees at the university and 1,300 faculty members as well as thousands of visitors every year. Some of the amenities that they brought to that area would be meaningful to that community as well as the general Oread

Neighborhood. The densification of this area their project was a realization of a vision that the Oread Neighborhood Plan had several years ago and they were implementing that plan. He said the densification of this created a tremendous benefit for the university and community because it allowed people to bike and walk to class as well as walk to downtown. He said there were some safety issues of this age group getting into their cars and driving, but there were 11 bus routes that come within 2 blocks of this site and there was a bus stop actually on Indiana Street. It was very consistent with a green community allowing for a lot of non-vehicular access to and from the project.

He said all their units were 2 levels and had 3 residential elevator stops in the project, but every project had 18 foot high ceilings and were designed to be very shallow and wide to provide a lot of natural light into each unit. As an example, their 4 bedroom unit had 2 bedrooms up and 2 bedrooms down with either 2 bathrooms up and 2 bathrooms down or 1 bathroom on each floor. The bottom line was that it served as a duplex within the unit itself.

Riordan said they were encouraging bikes which was great, but where would they put those bikes.

Heffernon said there was bike storage.

Riordan asked how many bikes could fit in that area.

Heffernon said they were going for a green certifiable building so they would be in excess of the City's ordinance.

Schumm asked when the proposed timeline was for starting this project.

Heffernon said if they received City Commission approval, they would be taking their project to the financial markets, but it was their construction plan to start construction at the end of this year for academic year 2016 opening.

Schumm said they were 15 months in construction.

Heffernon said 18 months. He said it was a very large building.

Schumm asked how many total square feet were under the roof.

Heffernon said a little over 418,000 square feet.

Dever said how many other of those projects had they constructed so far.

Heffernon said they had a 26 story project with automated parking under construction right now at the University of Illinois and was very comparable in size. Instead of it being a 2 acre site, it was a one-half acre site.

Dever asked if it was the same amount of square footage.

Heffernon said basically yes.

Dever said to get a unanimous recommendation from the Planning Commission was pretty impressive. He said as far as the location, he asked Heffernon what was the best thing about this project for the community. He asked if there was a better place to build this building or was this the perfect combination of location, availability, and topography. He said it was a difficult site and asked if they just liked difficult projects or was the proximity to the University important.

Heffernon said the proximity to the University was very important. He said KU was as world class University and really didn't have what they considered A+ student housing. He said they would be the first on the market and felt this was a very convenient location and that was why they were pursuing this site. He said part of bringing the best and brightest to any University was having good student housing and this project would qualify for that.

Dever said they had one project under construction, but none done yet like this.

Heffernon said they built over a billion dollars of development in their careers, but student housing was a new division. Historically they were primarily constructing standard apartment buildings, but this was a division they started in 2012.

Riordan said if the property at 1115 Indiana ever came open, he assumed they would be interested in purchasing and if they did, would they just make it green space.

Heffernon said the incorporation of that house was something they had historically desired to facilitate. They had many discussions with the owner. He said the verbalized desire

was to move, it was just a matter of price. He said he was on record as saying they offered \$600,000 for that property which represents a significant increase over what they were actually paying for the remainder of the site on a square foot basis. He said to answer specifically it was a function of timing. He said they had articulated to the owner of the property as more time went by the property was worth less and less to them because of the nature of their design. He said they completely designed around that property and there were some inefficiency as a result of that redesign, but eventually you had to move forward with a project. If they were able to come to terms soon within the next weeks, they would like to incorporate or perhaps create another third internal court yard, but at this point it was speculative. Again, it was all about the timing.

Riordan said he knew that Heffernon and the City had worked very hard at that.

Schumm said if they achieved ownership of that property after the complex was built, he asked what did Heffernon see happening to that area that the house was located.

Heffernon said green space.

Norman Bell said his mother owned that property at 1115 Indiana. He said he was at home and his mother called him to let him know of this meeting. He said no one told his mother about this meeting. He said they said there was a retaining wall on the south side of the house, but there was no retaining wall. The building that was there now was 25 feet from his mother house. He said the picture didn't show a true picture of the house in front. He said from Indiana Street down to his mother house, the steps were all over and his mother only went out the back and still drove to the store. He said he thought his mother wanted to sell the house, but she wants her price and they wanted their price and they needed to negotiate, but his mother couldn't do it because she was 91 years old. He said his mother needed to sell because it was going to look bad around all that new area anyway. He said there was a pathway through the back and his mother always had designated parking in the back. He said his mother would not be able to get out if she had to use the stairs up front.

Dever asked how long did Bell's mother live at that location.

Bell said she had always had that house.

Schumm asked if the situation was solely about money or were there other considerations too.

Bell said no, but now it was about money because she was not going to be able to stay at her home.

Schumm asked how far apart did he think it was.

Bell said he didn't know.

Schumm asked if he was helping his mother.

Bell said he was trying to. He said his mother was pretty independent, but his mother couldn't deal with the big guys.

Schumm said Bell wasn't present when they first started this conversation, but the City Commission expressed a lot of concern for his mother, the house, and the fact that the parking was going to get cut-off at the vehicular access. He said they were concerned and they would like to see Bell's mother safe and happy. He said just the construction around his mother would probably cause his mother a lot of grief because there would be a lot of loud noises and dust and dirt that went with that.

Bell said it was like that when they built the Oread. He said his mother was a half block away and there was stuff running down her yard from the Oread.

Schumm said if there was something the City Commission could do to facilitate his mother making a deal, he was sure they would all be interested in seeing that happen. He said Bell's mother would be safer and happier than staying where she was at, but his mother had a right to stay at her home and they wouldn't make her move. He said he was afraid Bell's mother wouldn't be very happy.

Bell said he agreed.

Riordan said everyone was concerned about Bell's mother ever since this started. He asked if Bell knew the applicant offered 3 or 4 times the price of the property would be worth on the open market and it was costing more for that one bit of space than they paid for the rest of it. He said their biggest concern was that the price would go down as the construction went up just because it wasn't worth it to the applicant, from a business point of view. He asked if there was anything the City Commission could do to help facilitate. He asked Bell if he could let his mother know those aspects and hoped that it was in her best interest to move because she would be miserable and so upset with this project that when the construction occurred it would be sad and the City Commission would be sadden too. He said he thought this project would move forward.

Schumm said he agreed. It seemed that right now it would be Bell's mother's very best time to make a deal work and get the very best return for herself and her family. He said with that in mind he would certainly ask Bell to encourage his mother to try to get to a final offer, just because the City Commission wanted Bell's mother safe and happy.

Bell said you bet.

Amyx said if Bell would like for him to visit with his mother with Bell, he would be happy to or if any of the other Commissioner's would like to go.

Farmer said he looked up the evaluation on the property for 1115 Indiana and it was \$93,200. He said there was no telling on what the property might get on the open market, but \$600,000 was 6 times that amount. He said this was one of those things because his grandparents had a house on Connecticut Street and his grandmother had been at that location forever and it would have been very difficult for his grandmother to move. He said this wasn't about business or anything like that and it was a really unfortunate situation for Bell's mother. He said this met all the guidelines for rezoning and he felt badly for Bell's mother, but he echoed the sentiments that everyone else had stated. He said in his opinion, Bell's mother was getting a heck of a deal at \$600,000. He thanked the applicant for helping facilitate some finality to this



issue because that was a very generous offer from the applicant to take control of the property. He asked Bell to relay his apologize as well and as Riordan indicated sooner rather than later because he would hate to see Bell's mother only get offered half of that amount.

Amyx said he wanted to thank everyone and his offer stood with Bell and his mother to help facilitate. He said he wanted to let the applicant know that this was one of the prettiest and neatest projects he had seen a quite a while and it really worked. He said to staff he wanted to relay that this was one of the best presentations as well as the work that was done with the Planning Commission and by everyone. He said he appreciated the applicant's answers regarding what the City and Planning Commissions were required to do. He also appreciated the work the applicant did with Mrs. Bell and the applicant's investment in Lawrence.

Riordan said he agreed. He said he was on the Planning Commission for three years and as a Commissioner for one year and that was probably the best presentation he had seen.

Schumm said it was a great project and was going to be very handsome at that location. He said staff did a great job and it was interesting that a project this size had no opposition.

**Moved by Schumm, seconded by Amyx**, to approve Z-13-00516, a request to rezone approximately 2.391 acres form RM32 District to MU-PD District, located at 1101 Indiana Street, and adopt on first reading, Ordinance No. 8966. Motion carried unanimously.

**Moved by Schumm , seconded by Amyx** , to approve Preliminary Development Plan, PDP-13-00518, for HERE @ Kansas, a mixed use multi-dwelling residential apartment building with ground floor retail uses, located at 1101 Indiana Street. Motion carried unanimously.

**E. PUBLIC COMMENT: None**

**F. FUTURE AGENDA ITEMS:**

David Corliss, City Manager, outlined potential future agenda items.

**G: COMMISSION ITEMS: None**

**H: CALENDAR:**

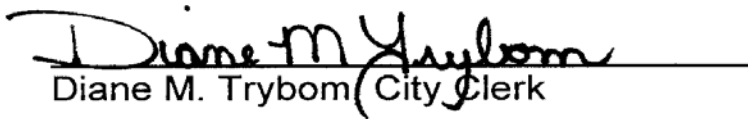
David Corliss, City Manager, reviewed calendar items.

**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 Farmer**, to adjourn at 9:25 p.m. Motion carried unanimously.

**MINUTES APPROVED BY THE CITY COMMISSION ON MAY 13, 2014.**

  
Diane M. Trybom (City Clerk)