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CITY COMMISSION

MAYOR
MIKE AMYX

COMMISSIONERS
JEREMY FARMER
DR. TERRY RIORDAN
ROBERT J. SCHUMM
MICHAEL DEVER

June 17, 2014

The Board of Commissioners of the City of Lawrence met in regular session at 3:30 p.m., in the City Commission Chambers in City Hall with Mayor Amyx presiding and members Dever, Farmer, and Riordan present. Schumm was absent.

A. STUDY SESSION:

1. 2015 Budget Study Session.

The City Commission Meeting reconvened in the City Commission Room at 6:35 p.m.

B. RECOGNITION/PROCLAMATION/PRESENTATION

C. CONSENT AGENDA

Amyx pulled item 2, approval of claims, and item 6a, Ordinance No. 9000, authorizing the use of the City's eminent domain authority and condemning required right-of-way for the improvement of Wakarusa Drive and construction of a roundabout at Wakarusa and Inverness/Legends Drive, from the consent agenda for separate discussion.

It was moved by Riordan, seconded by Dever, to approve the consent agenda as below minus items 2 and 6a. Motion carried unanimously.

1. Received minutes from the Traffic Safety Commission meeting of 05/05/14.
2. THIS ITEM WAS PULLED FORM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. Approved claims to 312 vendors in the amount of \$4,674,841.70 and payroll from June 1, 2014 to June 14, 2014 in the amount of \$2,018,735.40.
3. Approved reappointment of Richard Haig and Daniel Born to Aviation Advisory Board terms that expire 05/13/17 and appointment of Michelle Fales to a Sister Cities Advisory Board position that expires 12/31/15, as recommended by the Mayor.
4. Bid and purchase items:
 - a) Set a bid date of June 24, 2014 for City Bid No. B1447, Project No. PW1422, Mississippi Street, 10th Street to 11th Street, Storm Sewer Improvements.



- b) Awarded the bid for a DC Electric Scissor Lift for the Parks & Recreation Department, to the low bidder, Hertz Equipment, for \$15,493.
 - c) Authorized the Finance Department and Engineering Division of Public Works to purchase two half ton trucks from Laird Noller Ford for the amount of \$44,962.
 - d) Authorized the purchase of office furniture and public space furniture for the recreation facility at Rock Chalk Park from Scott Rice Office Works, LLC, for \$95,210.89, utilizing the TCPN cooperative purchasing agreement.
 - e) Authorized the change in concrete contractors for the Parks & Recreation Department miscellaneous small concrete work, Bid #B1204 from Elite Construction to Hicks Concrete. Elite Construction had notified the City they were not able to perform the work at the pace desired by the City and Hicks Construction was the next most responsive bidder and had agreed to do the work based on their bid in 2012.
 - f) Authorized the sole source purchase of three in-car video systems and six additional wireless microphone components for the Police Department, from Watchguard Digital In-Car Video, for \$23,973.
 - g) Authorized the sole source purchase of 600 5/8" and 300 1" water meters for the Utilities Department, from Badger Meter, Inc., for a total of \$78,885 for the 2014 Water Meter Replacement Program.
5. Adopted on first reading, Ordinance No. 8702, rezoning (Z-06-08-07), Bauer Farm Planned Residential Development from PRD-2 (Planned Residential Development) District to PD-Bauer Farm (Planned Development) District with maximum density limited to 25 dwelling units per acre. Property contained approximately 15 acres and was located on the north side of W 6th Street between Champion Lane and Folks Road. *Rezoning approved by City Commission on 8/28/07. This ordinance was the completion of that rezoning request.*
6. Adopted on second and final reading the following ordinances:
- a) THIS ITEM WAS PULLED FORM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. Ordinance No. 9000, authorizing the use of the City's eminent domain authority and condemning required right-of-way for the improvement of Wakarusa Drive and construction of a roundabout at Wakarusa and Inverness/Legends Drive.
 - b) Ordinance No. 8999, de-annexing (A-14-00073) approximately 87 acres located at 2200 Noria Road and 4600 E. 23rd Street. (PC Item 1A; approved 9-0 on 5/19/14)
7. Accepted dedication of utility easements shown on MS-14-00185, Haskell Light Addition, a Minor Subdivision Replat of Lots 74, 75, and 76, Breezedale Addition. The property was located at 135 and 137 Pawnee Avenue.

8. Approved rezoning, Z-14-00097, approximately 1.7 acres from IG (General Industrial) District to IL (Limited Industrial) District, located at 701 E. 19th Street. Submitted by Zach Stoltenberg on behalf of Silverback Enterprises LLC, property owner of record. Adopt on first reading, Ordinance No. 8995, rezoning (Z-14-00097), approximately 1.7 acres from IG (General Industrial) District to IL (Limited Industrial) District, located at 701 E. 19th Street. (PC Item 7; approved 9-0 on 5/21/14)
9. Approved artificial turf request, SP-14-00169, for 701 E 19th Street. Submitted by Zach Stoltenberg on behalf of Silverback Enterprises LLC, property owner of record.
10. Approved rezoning, Z-14-00108, approximately 11.66 acres from IL (Limited Industrial) District to GPI (General Public and Institutional Use) District, located at 2900 & 2920 Haskell Ave (east of the proposed relocated Haskell Avenue). Submitted by Landplan Engineering PA, on behalf of Unified School District 497, property owner of record. Adopted on first reading, Ordinance No. 8996, to rezone (Z-14-00108) approximately 11.66 acres from IL (Limited Industrial) District to GPI (General Public and Institutional Use) District, located at 2900 & 2920 Haskell Ave. (PC Item 9A; approved 8-0-1 on 5/21/14)
11. Approved Special Use Permit, SUP-14-00110, for an Institutional Development Plan for the Lawrence College and Career Center, located at 2900 & 2920 Haskell Ave (east of the proposed relocated Haskell Avenue). The project proposes the construction of a new two-phase structure containing 56,000 sq. ft. and associated parking and site improvements. Submitted by Landplan Engineering PA on behalf of Unified School District 497, property owner of record. Adopted on first reading, Ordinance No. 8997, for Special Use Permit (SUP-14-00110), for an Institutional Development Plan for the Lawrence College and Career Center, located at 2900 & 2920 Haskell Ave. (PC Item 9C; approved 8-0-1 on 5/21/14)
12. Approved extension request for Preliminary Development Plan for Mercato PCD, PDP-08-08-06, located in the northeast corner of the intersection of W 6th Street/Hwy 40 and K-10.
13. Concurred with the following recommendations of the Traffic Safety Commission:
 - a) Approved a recommendation from the Traffic Safety Commission to install traffic calming on Trail Road between Eldridge Street and Folks Road (TSC item #2; approved 5-0 on 5/5/14). Funding was not currently available for construction of traffic calming devices.
 - b) Concurred with the recommendation from the Traffic Safety Commission to deny the request to construct a round-a-bout at the intersection of Folks Road and Overland Drive (TSC item #3; denied 5-0 on 5/5/14).
 - c) Concurred with the recommendation from the Traffic Safety Commission to deny the request to construct a round-a-bout at the intersection of Folks Road and Trail Road (TSC item #4; denied 5-0 on 5/5/14).
14. Approved a street event permit for the Lawrence Public Library to close a portion of the 700 block of Vermont Street adjacent to the Lawrence Public Library on Thursday June 26, 2014, from 5:00 p.m. – 10:00 p.m., for the Sneak Peek Party and adopted on first

reading, Ordinance No. 9003, allowing the possession and consumption of alcohol on the 700 block of Vermont Street adjacent to the Lawrence Public Library on Thursday June 26, 2014, from 5:00 p.m. – 10:00 p.m., for their Sneak Peak Party.

15. Approved a street event permit for the Lawrence Public Library to close a portion of the 700 block of Vermont Street adjacent to the Lawrence Public Library on Saturday July 26, 2014, from 7:00 a.m. – 10:00 p.m., for the grand opening of the library and adopted on first reading, Ordinance No. 9005, allowing the possession and consumption alcohol on the 700 block of Vermont Street adjacent to the Lawrence Public Library on Saturday July 26, 2014, from 7:00 a.m. – 10:00 p.m., for the grand opening.
16. Approved a revised traffic control plan for the 2014 Tour of Lawrence event on Saturday June 28, 2014, from 6:30 a.m. to 8:00 p.m. along 9th Street, allowing the closure of 9th Street at Michigan Street to west bound traffic.
17. Approved a street event permit for the Lawrence Originals allowing the closure of 7th Street, between Kentucky Street and Tennessee Street, on Friday, July 4, 2014, from 12:00 p.m. – 11:59 p.m. and adopted on first reading, Ordinance No. 9006, allowing the sell, possession and consumption of alcohol on 7th Street between Kentucky Street and Tennessee Street on Friday, July 4, 2014, from 12:00 p.m. – 11:59 p.m. for the Lawrence Originals July 4th event.
18. Approved a street event permit for Downtown Lawrence, Inc. to close a portion of the 700 block of Vermont Street adjacent to the Lawrence Public Library on Thursday August 7, 2014, from 1:30 p.m. – 11:30 p.m., for the Downtown Film Festival and adopted on first reading, Ordinance No. 9007, allowing the sale, possession and consumption alcohol on the 700 block of Vermont Street adjacent to the Lawrence Public Library on Thursday August 7, 2014, from 1:30 p.m. – 11:30 p.m., for the Downtown Film Festival.
19. Authorized staff to bind coverage for property and casualty insurance (\$140,000) and fire and medical auto/professional liability insurance (\$57,864) for the insurance period of July 1, 2014, through July 1, 2015.
20. Authorized the City Manager to execute an agreement for the 2014 Edward Byrne Memorial Justice Assistance Grant (JAG) to use grant funds to purchase interview room equipment at the Law Enforcement Center and the Investigations and Training Center. The grant was for \$43,571 with no matching funds required by the City.
21. Received a request from Hernly Associates to purchase the property from the City, received a development grant and establish a Neighborhood Revitalization Area on the property located at 1106 Rhode Island Street, referred the item to the Public Incentive Review Committee and set July 8, 2014, as the date for a public hearing on the proposed NRA and Revitalization Plan.
22. Received a request from HERE Kansas LLC, to establish a Neighborhood Revitalization Area (NRA) and Industrial Revenue Bonds for the property located at 1101/1115 Indiana Street and refer the item to the Public Incentive Review Committee and set July 8, 2014, as the date for a public hearing on the proposed NRA and Revitalization Plan.
23. Approved Sign Permit for Mural Installation at the Lawrence Community Shelter.

24. Approved as “signs of community interest”, a request from Lawrence Metaphysical Fair to place as many as 32 directional signs along 23rd Street and Harper Street, from July 11 to July 13, 2014.
25. Authorized the Mayor to sign a Release of Mortgage for Steven M. Fair and Landra L. Fair, 1113 West 27th Street.

Regarding item number 2, approval of claims, Rock Chalk Park Related claims were voted on separately.

Moved by Farmer, seconded Dever, to approve non-Rock Chalk Park related claims to 310 vendors in the amount of \$4,663,040.82 and payroll from June 1, 2014 to June 14, 2014 in the amount of 2,018,735.40. Aye: Amyx, Dever, Farmer, and Riordan. Nay: None. Motion carried unanimously.

Moved by Dever, seconded by Riordan, to approve Rock Chalk Park related claims to 2 vendors in the amount of \$11,800.88. Aye: Dever, Farmer, and Riordan. Nay: Amyx. Motion carried.

Regarding item number 6(a) adopt on final and second reading Ordinance No. 9000, authorizing the use of the City’s eminent domain authority and condemning required right-of-way for the improvement of Wakarusa Drive and construction of a roundabout at Wakarusa and Inverness/Legends Drive, Amyx asked it be pulled for a separate vote.

Moved by Farmer, seconded by Dever, to adopt on second and final reading, Ordinance No. 9000, authorizing the use of the City’s eminent domain authority and condemning required right-of-way for the improvement of Wakarusa Drive and construction of a roundabout at Wakarusa and Inverness/Legends Drive. Aye: Dever, Farmer, and Riordan. Nay: Amyx. Motion carried.

D. CITY MANAGER’S REPORT:

David Corliss, City Manager, presented the report.

E. REGULAR AGENDA ITEMS:

1. **Received 2014 actuary report on the City of Lawrence's other post-employment benefit liability (OPEB).**

Ed Mullins, Finance Director, presented the staff report.

Patrick Glenn, Lewis and Ellis, Overland Park, Kansas, said when they did the evaluation this year they tried to use as much local data as they could which gives them more reasonable assumptions. As a result, some of the assumption changes that we made, the liability numbers did go down relative to the prior evaluation. As far as GASB45 (Governmental Accounting Standards Board), what we are trying to do is project what we think the costs are going to be to cover retirees in the future. By cover I mean pay the claims, pay the admin costs, etc. associated with the health care plan. We take those costs, then we subtract off what the retirees have to pay for their coverage. They have to pay a premium but it's not enough premium to cover their age based costs. On average, as people age their health care costs go up. As you have older retirees, their costs are higher than the actives. So, their costs are generally higher than the plan premium, which is based on a pool of retirees and actives. Our goal is to project the difference between the cost and what the retirees pay, then discount that back to today and we get a present value of benefits pool. We take those numbers and, through the accounting rules and what's called a cost method, we allocate those to different time periods. In the process of doing this we have to make assumptions about when people are going to retire, terminate before they become eligible to retire, people are going to die, what the trend rates are going to be, etc. Even though there's a lot of numbers to this, and a lot of fancy words, what we are really doing is trying to project that difference in those costs. Then we discount that back to today and we get our numbers. The components of the expense are divided into the three areas. There is something called normal costs that's allocated to today, there's accrued liability which gets spread over various periods. So there are 2 or 3 components to that cost which gets booked as expense in the financial statements. Going further into why the liability numbers actually did go down, those present value costs, we looked

hard at your claim experience through your administrator and the HR department. They gave us some good, detailed data. We took a look at the way your plan had been trending in terms of the cost increases over the years. We looked at the possibility that every retiree, that may be eligible, may go get another job. They may do something different and not elect to stay in the city's plan as a retiree. Those are some of the things we looked at. In the process of doing our work we heavily test it against the prior evaluation. We feel like our assumptions are solid, follow actuarial standards and are very reasonable.

Riordan said Actuarial tables were based on the past. He said with the ACA (Affordable Care Act) coming in and having virtually no past, he asked how they took that into account.

Glenn said ACA had various rules about increasing benefit limits, doing away with benefit limits, having certain coverage's that had to be included and different provisions. He said he thought Riordan's question was getting at whether they would be fully insured versus self-funded. He said the City was self-funded right now and they took into account all of the ACA provisions in doing the evaluations. He said if they did go fully insured the provisions might be a little bit different in terms of how they were applied and the provisions they would need to look at, but right now, the way GASB rules stood, was they would value the plan as it stood today. If they knew there was a law in the future, based on their plan today, specifically going on impacting their plan as it stood today. He said they really didn't value the possibility that they might go another route and had to base it on the plan today.

Riordan said he was just talking about the retiree's might elect to go ACA.

Glenn said yes, part of what we do is look at past experience, which could be different in the future because these exchanges give them other options. Essentially what we've done is looked at plans with similar cost sharing, meaning what percentage of the total cost that retirees have to pay to maintain their coverage. We've looked at similar plans, and what their retiree enrollment rate has been, then we factor in that there is going to be some reduction, potentially,

over time for these exchanges. We do try to take that into account. Admittedly, we don't lower it a lot from the experience because we don't know how many are going to actually do that. In essence, we lower the enrollment rate for those that retire in the future that may go to one of those exchanges.

Mayor Amyx called for public comment.

After receiving no public comment, David Corliss, City Manager, said staff put together a draft option report that set out some possible responses to that liability. Lori Carnahan, Human Resources Manager, was available as a resource along with the consultants for the City's Health Care Program. He said the next step was to send this report along with the draft options to their health care committee and were the employee and retiree representation. They were the group that looked at that program and made recommendations to him and the City Commission and made final decisions regarding the scope and program design etc... regarding the City's health care plan. He said staff saw that as a next step to continue their work on this.

Amyx said the Health Care Committee could make recommendations back to the City Commission on any of those options.

Corliss said the committee made recommendations to him and the City Commission would see all of that.

Amyx said one of the options to consider was modification of the benefits and the number of service as a minimum.

Corliss said that is a possibility. What the different rules would be for that, they obviously needed to check the state law and would need to be in compliance. An option that might look attractive was increasing the premium amounts sometime in the future for future retirees. You can do it for existing retirees. One of the concerns we would have is that some people have made some plans based on our current program design. We might not want to change those too abruptly but if we changed them sometime in the future it might be more palatable.

Amyx asked if there were any other questions.

Corliss asked Lori Carnahan if there was anything else we needed to add to this discussion.

Carnahan said no.

Amyx asked if they were just making a referral to the Health Care Committee at this time.

Corliss said that would be appropriate.

Moved by Dever, seconded by Farmer, to receive the report and referred to the City of Lawrence Health Care Committee. Motion carried unanimously.

2. **Considered approving Special Use Permit, SUP-14-00049, to continue the bed and breakfast use of the property as Runaway Pony Bed & Breakfast, located at 603 Tennessee St. Submitted by Rainbow Works LLC, property owner of record. Adopted on first reading, Ordinance No. 8998, for Special Use Permit (SUP-14-00049) to continue the bed and breakfast use of the property as Runaway Pony Bed & Breakfast, located at 603 Tennessee St. (PC Item 8; approved 7-2 on 5/21/14)**

Jeff Crick, Planner, presented the staff report.

Amyx said the un-owner occupied requires a resident inn keeper, or employee. He asked if there are restrictions on the number of rooms also.

Crick said there was something in the State law about the number of occupants and something about licensing. Unfortunately, he didn't have that number off the top of his head.

Amyx said that something he couldn't figure out in the report was what the difference was in occupancy between the two different headings. One requires a license and one doesn't. He asked if they both required a special use permit.

Crick said correct.

Scott McCullough, Planning and Development Services Director, said the inn would allow more occupants and more guest rooms. Through discussion with the City Commission those could be capped as part of the process.

Riordan asked if it would be monitored.

McCullough said per the ordinance, it would be monitored in a detailed fashion according to the recommendation of the City Commission. He said for 2 years of the recommended 5 year SUP, every 6 months staff would inspect the interior and exterior of the premises, review a submitted log of the guests by the owner to ensure that it was meeting the 3 guest cap stay each night. He said staff would review bookings and related websites. There was a lot of discussion through the Planning Commission process about whether there was owner occupancy at that location or whether there was a resident agent. Some of the testimony and website evidence was contained on-line so there was a condition to monitor that. It would also entail requiring the owner to provide a signed affidavit that the owners operating the bed and breakfast as an accessory use to the owner occupied residence and providing a report to the Planning Commission each of those 6 months.

Farmer asked if they were in compliance right now.

McCullough said staff believed, with those conditions and with the special use permit, the owner would be in compliance. He said staff found that the owner wasn't in compliance with some of the conditions as they were going through the Planning Commission process but he would say that the owner was in compliance right now.

Mayor Amyx called for public comment.

Serina Hearn said she appreciated what the Planning Commission did last month in approving the SUP. They endorsed the hybrid use of the property, meaning it is an occupied bed and breakfast. She is grateful to the Planning Commission because, with the renewal of the SUP, it gave 603 Tennessee, a historic home, the opportunity to financially keep on striving which is the reason she originally applied for it. She wants to show the City Commission that she intends to carry out all of the stipulations as long as they are within the law of her rights. She doesn't understand the inspections and would like some clarity about what the inspection entailed. One of the criteria is that she can't have any employees and to her it's a grey area because she has people who do laundry and help clean. She would like to emphasize how

valuable the SUP was because those homes are large and cost a lot to restore and upkeep. She said just last week a person that lived in her house as a child, with her grandmother, and hadn't been back to Lawrence for 47 years, now lived in Seattle, Washington. She had come by to see what her childhood memories were of her grandmother in her house. She said her grandmother then purchased the cottage next door and was the same cottage that sold last month for its full asking price. She said she would like to talk about the fact that adaptive reuse at 603 Tennessee which was completed in 2008 failed to sell. Essentially, they hit a titanic of economic failure and everything from 2008, until very recently, had been very fragile. In 2008, when it was completed, she tried to sell 603 Tennessee, which was what she did with any of the single family homes that she restored, and it didn't sell and she ended up coming up with this idea to evolve it. It successfully received the SUP and then had to spend the next 2 or 3 years looking for money to put into the house. And, additional money, which was about \$50,000, to put into the fire sprinkler suppressant system, handicapped accessible ramps, etc. It took some time because she was financially strapped after restoring the house and it actually opened its doors in 2012. Interesting enough, when she came to re-apply on April 21st to renew the SUP, until that point, there had been no complaints of any kind. It was at that meeting that someone who was the daughter of the neighbor who had been put on assisted living turned up with several accusations and speculations. She said Scott McCullough, Planning and Development Services Director, said that he did not find her in compliance but she disagreed she was not in compliance and did not have a resident manager. She said they went back and forth on that issue but unless they went to legal court where there was real evidence that could be brought forward. She said 603 Tennessee had fulfilled its mission to be a place that welcomed friends and travelers and it fulfilled the mandate of an adaptive reuse. To preserve it had been set at a culture, the past defines the present. The preservation of their architecture provided a link to the past and contributes greatly to their sense of place. It fostered civic pride by honoring and caring for the efforts of those who labored before they did and stabilized property values, it

attracted visitors interested in the place, distinct from suburbia and its' sprawling homogeny. It strengthened the local community by creating a collective effect of preservation and local investment and it enhanced the quality of what they viewed by preserving the interesting elements of their architectural past and it educated. She said she had certainly been educating about the role that 603 Tennessee played in saving the lives of 3 very important men in Lawrence. The renewal of the SUP, she hoped, would not be colored by personal grudges based on speculation and hoped it would be about supporting the continued preservation of a historic house. She said she hoped the City Commissioners would find in favor of the SUP renewal and support the Planning Commissioners. She said they invested quite a bit of time the last 2 meetings in an effort to separate fact from speculation and improve the renewal. She also hoped the City Commissioners, that all that was being asked of her which was staff recommendation, supported her legal rights. In terms of clarity, she would like clarity about what it meant when they say she couldn't have an employee and did that mean she couldn't have a cleaning person as well as what staff would be coming to inspect. In terms of what she was asking for was consideration of this property as a very special property that welcomed people to Lawrence.

Riordan asked if Hearn restored the house just north of 603 Tennessee, the white house on the corner.

Hearn said no. She said she restored 637 Tennessee which was the Girls Achievement Center that was owned by Jimmy Green, the first Law Dean of KU. She said that house had been on the market now for almost a year. In 2008, Mayor Amyx and Commissioner Dever were on the City Commission at the time when she was battling for the right for that house to keep its basement apartment. Old West Lawrence was very afraid that because she happened to be a landlord that she was going to abuse the duplex situation of the house. If anyone had ever followed her record, they would see that she restored 20 houses in Lawrence and had

been very passionate about historic preservation. She said she restored 627 Tennessee and it was for sale.

Riordan said he went through that house and the preservation was very important to him too. It was great that Hearn restored that house and would like clarity because some of the things he didn't quite understand. He said there was a finding of an ad for more than 3 rooms. He said when he did a special permit for his house, for weddings, there were specific things that were written down and understood it very clearly. To advertise for more than 3 rooms would be going outside of that SUP. He said he didn't see in the previous ad whether she had put that ad in and was in error.

Hearn said as she explained to the Planning Commissioners regarding the B&B, there was a section where 5 bedrooms were put in that ad. She said she didn't do those ads herself. She had a 22 year old that saw she had 5 bedrooms, so she put 5 bedrooms in the ad, but since then she removed all of those things.

Riordan asked if Hearn ever rented out more than 3 rooms at one time.

Hearn said no.

Katherine Tuttle, President of the Old West Lawrence Association, said the Old West Lawrence Association was formed in 1961 to revive this historic neighborhood and make it a better place to live. At last month's planning meeting an OWL resident remarked that when the association formed in 1961 about 20% of the neighborhood was single-family and now roughly it was about 80% single-family which was an amazing achievement in that period of time. She said City zoning laws really did play an important role in that revival when their neighborhood was zoned single-family in the 1960's. She said having a vibrant Old West Lawrence positively affects, not only the neighborhood, but also downtown Lawrence and the entire Lawrence community. Based on last month's Planning Commission meeting and documentation that had been submitted to the Commission, she would like to make a few points clear regarding their position. First, their concerns about renewal of the SUP were based solely on facts. As

confirmed by the Planning staff investigation the B&B at 603 Tennessee had not complied with the terms with the SUP that permitted it to operate in a single family neighborhood. Those facts included non-compliance with 3 critical conditions of the special use permit: exceeding the maximum number of guest rooms which was just addressed, presence of staff handling operations in an “on-going and consistent fashion” and lack of adequate parking spaces. Secondly, she would like to say that their concerns were only about the B&B operations and operating under the terms of the law, and the regulations governing it. She said this was not personal and not an attack on an individual. She said she knew they all agreed that there was no place for bigotry or discrimination in any of their actions and it was never a part of any of their discussions and found it distressing and objectionable that it was given as a reason for their concerns. It was simply not true and wanted to state that at this meeting. The Old West Lawrence Association could live with an occupied B&B that complied with SUP conditions which was also stated at the Planning Commission meeting. If they ignored the non-compliance with this special use permit and continued with a lack of enforcement of the City’s zoning laws, this set a precedent for future non-compliance not only with this B&B, but future B&B’s or other special use permits. The impact on Old West Lawrence would be cumulative and negative. She said for those reasons OWL was opposed to the renewal of the SUP for the Bed and Breakfast at 603 Tennessee unless there was clear evidence that the conditions of the SUP were being met, that the City was enforcing those conditions and not depending strictly on neighborhood complaints and assuring that the B&B was lawful and in compliance with local and state regulations. The Planning Commission’s actions last month include a formal monitoring process to occur every 6 months for 2 years. They recommended that, if a decision was made for renewal, extending the SUP for 2 years rather than 5 years would provide a better opportunity for review and compliance. They all enjoyed living in Lawrence and wanted to help their great neighborhoods contribute to the quality of life here, help us keep it that way with good planning approval processes and enforcement.

Tresa Hill said Planning and Development Services review of 603 Tennessee found the Runaway Pony B&B had been operating in violation of their SUP. Not only had they exceeded the number of approved bedrooms, they had not provided adequate parking and people besides the owner were handling some of the operations in an on-going and consistent pattern. A B&B in a residential zone was to be operated as an incidental use of an owner occupied structure. A B&B with more than 3 bedrooms had hotel and restaurant requirements and oversight. Once they had allowed one Old West Lawrence home to be operated primarily as a business and/or allow a B&B with more than 3 bedrooms, and/or allowed inadequate parking, then they had opened the door for another situation to occur in Lawrence. This was the impact to Old West Lawrence, establishing a downward spiral away from single-family, well-maintained in a peaceful environment in their neighborhood. She said let's recognize that the SUP followed the property and with the renewal, lasts forever and becomes a selling feature. She said with statements from the Planning Commission that this B&B use made sense because it was on a busy corner then one could only draw the conclusion that all properties along 6th Street, Tennessee and 9th Street might potentially lose their single-family resident support because of busy streets. OWL residents were committed to single family zoning which protected their way of life and investment. It was a foundation as a vibrant neighborhood and the single family zoning had reversed declining property values and encouraged major investment in all of their homes. They could live with B&B's as part of their neighborhood if they complied with the development code and the SUP, and their truly secondary aspects of an owner occupied, primary residence. They expected that any SUP regulated owners would be good neighbors, supply adequate parking for the guest and maintain their property. And, they expected on-going identification and enforcement by the City of all problems and violations. Old West Lawrence's job was to be a good neighbor.

Linda Keeler said she was present to request that the City Commission approve the renewal of the SUP for 603 Tennessee for a bed and breakfast. She said she had known Hearn

for the last 9 years. They first met each other when her son and her daughter represented Kansas at the National History Day Competition in Baltimore Maryland attended by over 5,000 competitors. They had become good friends over the intervening years. Her family and Hearn's family had celebrated together holidays and many very unique opportunities as they visited Hearn in her home at the Runaway Pony. When Hearn was developing the plan for 603 Tennessee, after it did not sell, she discussed the idea of a B&B and the cost of making it code compliant for such an endeavor. Hearn invested around \$50,000 in retro-fitting the house so it would meet the requirements set by the City of Lawrence. The SUP was approved, Hearn had lived at 603 Tennessee and had opened her home to countless guests from, literally, all over the world. She said she visited Hearn multiple times each week at the Runaway Pony and had the privilege of meeting, visiting and breakfasting with Hearn's guest. The guests were generally middle-aged and older professionals from law, medicine and the arts. They were also graduates of KU returning for re-unions or to visit ill or dying parents. The neighborhood was quiet, as were the guests, and she had never experienced difficulty with parking when she had come to visit. She said this B&B offered a personal connection, which was so important to Hearn's guests, and provided a positive introduction to the City of Lawrence. Its proximity to downtown allowed guests to spend money eating at downtown restaurants and enjoying the entertainment venues, all within walking distance. She said Hearn was a conscientious hostess and the objections which the Old West Lawrence Neighborhood Association had cited were unfounded. The property directly to the west sold for the full asking price a few months ago. There had been no complaints registered regarding the operation of the B&B. This was a unique property deep in historical fact and it was a jewel. She strongly encouraged the City Commission to renew this SUP which would allow Hearn to continue to live in, and operate, what was a wonderful asset to downtown. It served a unique population of guests in this City.

Jim O'Malley said the issue was pretty narrow. It was whether, in light of the non-compliance found by staff, the SUP renewed and, if renewed, under what additional conditions

to ensure compliance in the future. The recommendation from the Planning Commission in May seemed appropriate although a renewal period of less than 5 years should be considered. The Planning Staff found the B&B violated 3 of the conditions of the SUP, that more than 3 guest bedrooms were rented out and there was an employee on a regular, and on-going, basis and there was insufficient off-street parking. Old West Lawrence was a single-family residential neighborhood both in zoning and actual use. There was a high percentage of owner occupied single family homes. SUP's for commercial uses at that location should not be granted lightly. The condition of the SUP was meant to ensure the primary use of the property as an owner occupied residence. The owner occupancy requirement was obviously related to this purpose and so was the number of guest bedrooms. The 3 bedroom limit kept the primary use residential. Moreover, if you go over 3 guest bedrooms, a B&B was, by state law, a hotel subject to all kinds of state licensing and regulation requirements. The city should not enable an unlicensed hotel to operate. As for the allegation on the record that the opposition of neighbors and outlook to the B&B was xenophobic, racial or personal, it was none of those. OWL had fought for decades to protect the single-family residential zoning and character of the neighborhood. If there was any prejudice on his part, it's against commercial uses in his single-family residential neighborhood. He would like to see the SUP's have conditions that kept those out and kept the uses primarily residential.

Marsha Hunter said last month she spoke in support of the SUP but she would like to take the opportunity to read something from someone else that wished she could have attended this public hearing. She said the letter was from Sally Howard to the Honorable Mayor Amyx and the subject was the SUP for the Runaway Pony, the letter read: "Hi Mike, we haven't talked in ages and I hope you're doing well. I'm still living in DC but get back to Lawrence pretty regularly to see family and friends that are still there. I wanted to send a note about the SUP that was up for renewal at the City Commission meeting tonight. Sorry to write so last minute but I'm just seeing the recommendation from staff. I've been to the Runaway Pony many times

and I'm a huge fan. I think it is an incredible asset for the City and, frankly, I simply don't understand why it's not being treated that way. First, I don't understand why there is a need to limit the number of guest rooms to 3. Why aren't we promoting this bed and breakfast as an asset to the community? I hope you will vote to strike many of the conditions set forth in section 3 of the permit. Why in the world would the bed and breakfast be prohibited from having a resident manager or employees? Of course a bed and breakfast needs people to work there. How in the world is one person supposed to be able to handle everything entailed with accommodating guests? This is punitive and makes no sense and seems aimed at making it impossible for Serina to continue operating the Runaway Pony. The monitoring requirement and the proposal that guest logs should be reviewed is also overbearing and also invades the privacy of those individuals staying as guests at the bed and breakfast. What need is there to examine who stays there? Will Serina need to tell her guests that she has this responsibility upfront? Finally, in what other case has the City required an owner to sign an affidavit, under penalty of law, in connection with the use of her home? This seems so overbearing? Mike, I don't understand how this bed and breakfast is so under attack. It's beautiful, it's an interesting setting and it's a great way to promote the entire City. We should be promoting this business not trying to end it. That's what the recommendation will do. It would put Serina out of business and that appears to be the goal. I hope you will vote to strike these provisions and simply approve a special permit allowing Serina Hearn to continue operating the Runaway Pony as a bed and breakfast. Best, Sally Howard, 1801 Park Road, NW No. 10, Washington DC, 20010."

Hume Feldman, Professor and Chair of the Physics Department at K.U., said, as full disclosure, he had been married to Hearn, was the father of her children and lived one block away from the disputed property. He said he was present at the City Commission meeting a month ago and heard comments. He asked people to remember how that house looked before Serina bought it. He said he did not have any idea what the residents of this neighborhood would like to do if this house could not be maintained because the property would revert back to

how it was. He said the house was boarded up, run down and blight on the neighborhood. But, all of a sudden, there was this beautiful yard and a nice house in and out. He said he walked back and forth from there all the time, morning and evening, and never saw one time that there was a problem with parking. Except, when the pool was open and a little bit up the road there were problems with parking. Also, the suggestion that somehow Hearn was not an owner occupied was totally ludicrous and, actually, anyone that knew her knows she loves to entertain people. The fact that she was also a landlord was incidental and she had to do it in order to survive. He said at the City Commission meeting a month ago someone mentioned something about a slippery slope, and the world would fall apart, and the neighborhood would have bed and breakfasts in every corner of Old West Lawrence and it would be a horrible place to live. He said to come up with those types of scare tactics and ideas about what would happen "if", seemed silly and not worth considering.

Karen Kressin said she took exception to the statement that the slippery slope was not a good argument because she thought it was an extremely good argument. And, we're talking about legal precedent. She said she didn't know how the City could deny another B&B that proposed to be operated in any kind of variance that this one was given. If this B&B was not held to the ordinance, and to the conditions of the SUP, it could be an open door because the City would be attacked by someone, arbitrarily, saying this B&B was okay but another B&B couldn't. This was a legal precedent and it was important to them that the laws and ordinances be followed when the City used its process to create SUP's that they be enforced as was proper. This was a land use issue and B&B's were allowed in single family neighborhoods as long as they were matched up to a single family use. She said she agreed with the other people that had stated it over and over again that they just wanted this B&B to be in compliance with the ordinances. She said she appreciated staff and the Planning Commissions' understanding of those issues and their recommendations and conditions that they had suggested. There was damage in the precedent area of a history of lax enforcement and the City needed to enforce its

ordinance. She said she was very heartened by what the Planning Department stated at the Planning Commission meetings. They were okay with the B&B if it was in compliance.

Dean Palos said he lived a block and a half away from Hearn's house, was an old friend, and, in full disclosure, he was also Sally Howard's fiancé. He said they didn't collude on this but he appreciated what Howard had to say. He said it was established from the Planning Commission meeting last month that all the indictments against the Runaway Pony were inconclusive. He said he didn't believe anyone walks out of their thinking, for sure, there was any proof. In fact, a City attorney made a comment that "there were no smoking guns here" on the allegations of the violations. He said they had a very successful business that was an asset to the community, an individual that worked hard to restore a historic structure and someone that had brought a lot of enjoyment to people that had stayed at the Runaway Pony, as well as her friends and guests. In talking about precedent and slippery slope, he understood the meaning of both of those terms. He said he disagreed with the slippery slope notion but the other side of the precedent issue was the thought that the City Commission would turn this down, turn down a business that had been operating based on very inconclusive and circumstantial evidence about how they were operating. Hearn had worked hard and was a landlord, a business person in Lawrence and, again, she was providing a great asset to the community. He said he echoed Howard's comments about the requirements. He said some of you know I have been a City planner for 41 years, spent 8 years here and had never seen stipulations like this ever. He said he understood what the Planning Commission was trying to do and they wanted to be assured that Hearn was compliant with the regulation. He said he knew planning staff was trying to do that but there was an element of trust. He said they were focusing on 3 issues. Number one, the residency was inconclusive. The notion of the parking was dependent upon whether or not Hearn had a resident manager but Hearn stated she didn't so, therefore, the parking wasn't an issue. They were left with 2 inconclusive issues. What Hearn was trying to do was to comply, Hearn stated she was going to comply, and he believed

based on Hearn's willingness to do that. Hearn's has been in compliance and he was hopeful the City Commission would extend the SUP for another 5 years as recommended and it was up to the City Commission if they wanted to include all of those stipulations. But, again those stipulations were beyond reasonable. He said the City Commission was in a legal position where they could do that. He thought those stipulations were eyebrow raising and didn't know why the City Commission would want to treat a business that way, particularly a successful one.

Vicki Hester said she lived at the Runaway Pony with Hearn a lot of the time. It seemed odd that this was a tiny town and it would be easy to walk to the Runaway Pony, and other homes in Old West Lawrence, and see that other people's yards weren't perfect. That other people were doing things that might not comply with everything. But, the main thing was that there was nothing going on at the Runaway Pony. She said she had been there since December, off and on, but she was helping her friend Hearn. She said she was not a manager and didn't manage anything. They were friends and it was like her home. She made breakfast for people because they made breakfast for people in their home. The only odd thing that was going on was that the Planning Commission kind of gave permission for those odd neighbors to come over and sneak around with cameras which was very unnerving. Her dog had worn herself out catching people coming into the yard to take photographs. He said a planning commissioner at one of their meetings said that they liked it that the neighbors were diligent at watching their neighborhood but there were lines to cross. The B&B SUP was one thing but people trespassing in the yard, taking photographs of them and coming around corners and then sneaking away because they saw them out in the yard because it was summer and they were outside was creepy. That kind of thing needed to be addressed with this SUP like who was enforcing the SUP because Hearn wanted to be compliant and they had guests that would love to come back to their B&B. There was no reason to not have an SUP to make it a wonderful adorable bed and breakfast that people had fun. She said the law needed to be complied with about trespassing.

Amyx said regarding the restriction of the 3 rooms, what that was based on.

McCullough said it was essentially based upon the available parking on-site.

Amyx asked if staff had a listing of other bed and breakfast locations in Old West Lawrence.

McCullough said he had to research that and get the Commission an exact list.

Amyx asked if there were any B&B's in that area recently.

McCullough said no, not since he had been with the City.

Amyx said at one time there was a B&B at 7th and Tennessee. He said the rooms were restricted by parking.

McCullough said yes, specific to this property.

Amyx asked about the clarity in the inspection process.

McCullough said through the process and per the direction of the Planning Commission, through some of the accusations that came forward, there was a need to go onto the property to look at exterior yard conditions, and the interior conditions, to verify that the correct number of guest rooms were there and that the interior, which was a business, was compliant with the approved floor plan. He said staff conducted those interior and exterior inspections. Out of that came the Planning Commission's recommendation to maintain that monitoring system to ensure compliance with the approved floor plan that would go with the SUP. He said staff would verify that the floor plan remained the same but what staff found was that the floor plan changed. It hadn't gone through a process to be changed through the planning office and staff wanted to be able to monitor that. Monitor exterior yard conditions because there were things that needed to be cleaned up in the yard. Staff had stated all along that the owner occupant could have typical sort of residential services like cleaning service, and those sorts of things, but couldn't maintain a resident agent at that location because they would be there overnight and they would be there to do the bulk of the B&B operations.

Amyx asked a resident agent along with the owner occupant being there.

McCullough said right, or in place of.

Farmer said according to the old SUP, staff was to make sure Hearn was compliant via the site plan performance agreement. He said if staff didn't make sure she was compliant then, he asked how staff would make sure she was compliant now.

McCullough said the site plan performance agreement was a document that they had every owner sign with every site plan or special use permit. It was really a document that ensured that they know that the site plan was part of the enforcement tool and was not extraordinary to this particular thing and didn't establish a monitoring program. It simply was a document that staff could use if they needed to go to court to say the owner knew that the site plan said this, and the owner knew that the conditions were such. The original SUP didn't have, necessarily, any monitoring to it. Special use permits typically come with a few zoning tools that staff employed and one of the tools was time periods. Not every special use permit gets established a timeframe. In this case, where there's a question of compatibility in a neighborhood, the best tool that he was aware of was establishing a timeframe. He said that way the neighborhood, and the owner, could come, and after a certain timeframe, staff would re-hear the case, see if there were any issues, bring to the City Commission any issues that staff received over the years and determine whether or not that use is still compatible with the neighborhood. Over and above that, there were methods to monitor special use permits and weren't so typical in the City and had a number of them in the county that dealt with quarry's, for example, that has pretty regular monitoring of certain phases. He said staff spent a lot more time monitoring those kinds of issues than the City issues. He said, bear in mind, that the SUP was completely discretionary with the City Commission. If they found out that it was not compatible their options were to not approve one, approve it with conditions to make it compatible which might include hours of operation, if it was a certain bar or restaurant use, and other conditions. Each one could be very unique in terms of its framework of conditions.

Farmer asked who would ensure compliance.

McCullough said it would be the planning office. This one was a little bit more unique because there was a direct monitoring program established in the conditions that staff would calendar, implement and bring to the Planning Commission. Also, the City Commission should note that the SUP had a process in code where if an applicant was not in compliance at any point of the time period, the City Commission could hold a hearing, see the evidence and either suspend, revoke or modify the conditions to bring it into compliance.

Farmer said, according to the SUP that was granted, one of the conditions was owner occupied resident manager and employees prohibited. He asked what about the person that stated that she lived at that location. He asked if that was okay, according to the SUP.

McCullough said the fact that it's a residence and a business created some of that challenge in compliance. He said what spurred a lot of this was some of the original testimony at the first Planning Commission hearing which the last speaker made some comments about living with Ms. Hearn at 1941 Massachusetts Street. He said that, combined with some other evidence brought forth, really triggered that entire deferral to the next month to the Planning Commission, the investigation staff completed, the review of several on-line websites that noted multiple guest rooms above 3. The task staff had was to look at the 5 or so accusations, do their best to investigate those accusations, then bring it back to the Commission and then present those options with how to get it into compliance. It almost became a sort of enforcement hearing instead of the typical special use permit hearing. He said that was how staff addressed it and staff would monitor it with those conditions if those were approved.

Riordan said he was a little bit perplexed about the parking. There was a notation that there was to be 5 parking spots and there were only 4 and they were out of compliance. Now it says required parking 1 per guest room, plus 1 per 1.5 employees was the standard and it says 4. He said if he had 4.5, they would need 5 parking spots for 4.5 people. He said he was perplexed at how they got to 4.

McCullough said it was out of compliance because our finding on whether or not there was a resident agent was that if there was a resident agent that would trigger the 1.5. It was otherwise in compliance if there was no resident manager.

Riordan said that was based on the fact that if there was an employee at that location.

McCullough said correct. If in compliance as an owner occupied, it was compliant.

Dever said he was reading the planning commission notes and Commissioner Denney said he approved of this and then he voted against it.

McCullough said he would need to review that there was a lot of discussion about whether or not this particular motion with its monitoring system and it might have been part of that, but he didn't recall.

Dever said it was not the use but the method. He said the requirement for bedrooms in a bed and breakfast was 3 bedrooms. He asked if that was City Code because someone mentioned hotel versus bed and breakfast during the public comments. He asked McCullough to help him understand if there was a rule that scored the number of rooms and the definition of a hotel.

McCullough said there were 2 types of bed and breakfast. A bed and breakfast with 3 or few guest bedrooms shall be operated as an incidental use to the principle use of an owner/occupied structure. A bed and breakfast establishment with 4 or more guest bedrooms was considered a bed and breakfast and shall have a full-time resident manager or owner on-site and be licensed by the State of Kansas to do business. A bed and breakfast shall only be permitted adjacent to or within ready access to an arterial or collector streets.

Dever asked if that was City Code.

McCullough said yes but he believed it was married to the state code.

Dever said so it was the same no matter where in the State of Kansas that someone operated a bed and breakfast was 4 or more and had to have an on-site resident.

McCullough said he was not sure that was the state requirement and he had to research that.

Amyx said he was thinking how many times staff reviewed an SUP since 2005. He said the only one he could think of that came to the City Commission for review was the Community Shelter Building at 10th and Kentucky.

McCullough said that was the one he recalled.

Amyx said all the rest of those SUP's were subject to review upon the request of someone filing a complaint.

McCullough said typically that was the way staff reviewed and investigated accusations.

Riordan said he knew of one more which was his home and he had a 10 year renewal.

McCullough said the Community Shelter had a timeframe and came back to the City Commission for review. He said this B&B would be reviewed at the end of 5 years and a 2 year inspection process which would be every 6 months of their guest logs.

McCullough said yes.

Amyx said there was no other business that they did this to that was a B&B.

McCullough said he did not know what the other conditions were. There was no other that staff regularly monitored in that fashion.

Amyx asked if there were any other SUP that existed that staff monitored like this.

McCullough said there were SUP's with conditions, hours of operation for example, but staff didn't do regular inspections to ensure that. He said most of it was complaint driven. Complaints were logged and staff would do an investigation. If staff found them out of compliance their first step was to talk to the owner and say they were out of compliance, please come into compliance immediately, if not they had the opportunity to bring that to the City Commission.

Amyx said to bring this SUP into compliance, they had gone back through the process and those were the rules established by the Planning Commission to the City Commission to place on this SUP.

McCullough said correct. This was an actual renewal, the SUP expired, but if staff found in their 6 month review evidence of non-compliance, they would first work with the owner to come into compliance. If they found a trend in non-compliance, or that it wasn't coming into compliance, then staff would initiate that code compliance hearing in front of the City Commission.

Amyx said with these conditions placed on this SUP, this property was in full compliance.

McCullough said it would be in full compliance with the development code.

Dever said there were a lot of comments that occurred at the Planning Commission meeting that not quite as many people showed up for this meeting, from what he could tell, in reading those minutes. He asked McCullough to give his 30 second opinion, after hearing all of this stuff they heard over the last 6 or 7 years now. He said he was trying to understand the negative impacts of this land use and the negative opinions of those in the neighborhood. When, clearly, this building was in far better condition than it was when they started. He said he was trying to figure out what were the perceived negative impacts on the neighborhood, and, why he wasn't seeing this as being an issue to renew something that had been in compliance because he hadn't heard any complaints for the last 5 or 6 years since it started.

McCullough said there was some discussion at the Planning Commission about this very thing. There hadn't been any complaints lodged on this specific property since the bed and breakfast was initiated and operated. There was an agreement that this specific property didn't create harm and how it had been operated. The harm is in the precedent setting nature of holding it to compliance in that if this neighborhood, if other bed and breakfast were populated with bed and breakfast that didn't have an owner/occupancy element to it, it would create a

more commercial nature and open the door to less owner/occupied residential and more commercial bed and breakfast.

Dever said the slippery slope that people were talking about was the commercialization or the potential for other structures to have the same approval or the same precedent.

McCullough said in his opinion yes. As they got into the discussion with the Planning Commission, bear in mind that staff didn't know those accusations existed until they got to the Planning Commission stage. Had staff received complaints about those items, staff would have been investigating this all along. He said it was a bit of a surprise to staff because again they didn't receive complaints about real harm to the neighborhood, parking for example, traffic, parties, noise, and property neglect. Those types of issues were a little bit of an extension about the possible harm if they did multiple bed and breakfasts where the owner wasn't there to man, and manage, the property.

Dever said it was a non-occupation of the structure that seemed to be the biggest concern

McCullough said and the question about whether this particular structure was owner occupied or not.

Amyx said the conditions that were placed on this building SUP was that it would be owner occupied at all times.

McCullough said yes.

Dever asked if this B&B could be bought and convert it into an apartment or multi-family structure.

McCullough said no.

Dever asked why.

McCullough said because it was in a RS District and the bed and breakfast was a special use permitted in that district. It would need to be re-zoned and a site plan done converting it that way.

Dever asked what other uses were possible besides the single family residential structure.

McCullough said home occupations. Daycare, religious institutions, typical RS district uses. He said it was fair to say that a bed and breakfast inn was allowed under a special use permit. He said the factors that influenced that decision was the parking available on-site and the matter of the neighborhood opposition to a more commercial type of bed and breakfast. The neighborhood has worked hard over the years to create some protections to keep it essentially single-family owner occupied, to a large degree, in this neighborhood and there was a view point that if the bed and breakfast inn, type of bed and breakfast, that allowed an owner to live off-site and a commercial agent to live on-site, that did the harm to the neighborhood.

Dever said in order to achieve that commercial use they would need the parking restriction because there would not be enough parking.

McCullough said they would need to reconfigure parking or somehow get some additional parking.

Dever said they could tear the garage down that was at that location and put in more parking.

McCullough said there might be some Historic Resources Commission implications.

Dever said exactly. It was kind of ham strung in which harm did they want to do, tear down a historical building in order to put a parking lot in. He said he was just trying to figure out what was best for the neighborhood because he wasn't hearing anything that was clear.

McCullough said staff offered that option to the Planning Commission and thought there was their majority consensus that a bed and breakfast inn wouldn't be compatible in this neighborhood and should really be an owner occupied bed and breakfast.

Dever asked if the Planning Commission said that.

McCullough said he thought that was the general discussion about that issue because staff offered that option to the Planning Commission as a way to bring it into compliance. The

owner, Hearn, did not ask for that so staff didn't pursue it very much, but when they were looking at all the available options, that would be an option. He said it would have taken a new special use permit application because it was a different type of bed and breakfast, in staff's opinion, but it was an option.

Amyx said after all of that discussion, the Planning Commission agreed that it was appropriate to renew this SUP as a 3 guest room unit for 5 years based on the conditions that were outlined as strict as they might be.

McCullough said yes.

Riordan said one of the things Hearn asked for was clarity and that was great. As far as an owner occupied bed and breakfast facility, if Hearn wanted to go on vacation that meant she had to shut down her bed and breakfast that week.

McCullough said no. Staff's advice to Hearn in working out this plan was that it was expected that as an owner occupied, and mix of owner occupancy in business, that she could take vacation once in a while. That wasn't the issue. He said what he advised Hearn was that in that situation, it might be beneficial to send him a letter indicating her business plan was to take vacation so that when they get calls and complaints, which staff might or might not, staff would understand that the owner was out of the area for a while and a person would be helping out. He said that was a fair way of looking at that.

Riordan asked if there was a definition of owner occupied for something like this, such as 51% or 90%. He asked how that was determined because Hearn asked for clarity and he wasn't sure what that clarity was.

McCullough said that had been the real challenge because Hearn, by her own testimony, owned several properties in the City and had a mix of residences throughout the last 3 to 5 years. The challenge is how much time she should spend. The intent of a bed and breakfast, was that the owner would be there operating their bed and breakfast as an incidental use to the owner occupied house.

Amyx said the property owner of record was an LLC (Limited Liability Company). He asked if everyone that was a member of that LLC would be an owner.

Dever said yes by state law.

McCullough said staff's interpretation was that it must be a principle of the LLC.

Dever said LLC was a membership and anybody that wanted a single tiny share was an operating member of an LLC.

McCullough said yes, staff had discussed that issue as well and found that an LLC could be an owner of a property. Any member of the LLC could live at that location as an owner occupant, but couldn't have another agent or manager at that location doing the work as well. He said staff had essentially looked at the intention and purpose of this type of bed and breakfast and it had to be an owner occupant at that location and they couldn't have an owner occupant and another manager while conducting other business in the City primarily.

Riordan said one of the concerns previously on the Commission was about LLC's, specifically in Old West Lawrence, where for one cent an LLC could make a person a member of the LLC and call them an owner occupant where they really were not.

McCullough said if and when that occurred staff would consult the City Attorney's Office and would complete some investigation. Take a position that could be appealed to the Board of Zoning Appeals. There was a process for taking that position and then appealing that position.

Amyx said they were talking about 3 guest rooms and asked if there was a limited amount of people.

McCullough said there wasn't a limit in terms of the residential part of the mixed use nature of the structure. There were 3 guest bedrooms and 10 occupants on the bed and breakfast part of this issue.

Amyx said he didn't know how they could control much more of this business. He said the Planning Commission and City staff had gone that extra mile to make sure this was going to be run as an owner occupied bed and breakfast with a great number of things that the owner

was going to need to submit to whether it was the guest logs, to the number of volunteer employees that might exit on the property, to remain in compliance with the SUP. If not, he believed that planning staff would do what they could to bring it back into compliance or bring it back to the City Commission for consideration and denial of that SUP.

McCullough said correct.

Amyx said he was in favor of the SUP. He said the SUP was very restrictive, and in most cases he would not vote for something that was so restrictive. But, if they changed much of the SUP, at all, it had to go back through the process.

McCullough said with a supermajority vote the SUP could be modified.

Dever asked if it was a supermajority of 4 or 5.

McCullough said a supermajority of 5.

Dever said he was still trying to figure out whether the intention of this owner occupation was about having somebody who was responsible on the property as a responsible agent as opposed to an absentee person who might take this business as just another spreadsheet and a bottom line. If a member of the ownership group lived at that location, whether there were 5 members or 2, he wasn't clear what the importance of that owner occupation was all about. He said to him it seemed reasonable to continue this use, unless it made more sense to send it back and upscale it. It was on 2 major roads and it could request rezoning of this parcel and would make it allowable land use. He asked if they could go through another process.

McCullough said it could go through the SUP process again to go to the bed and breakfast inn or rezone it to do something entirely different.

Dever said theoretically if it was zoned as a commercial area it could be allowed by right without an SUP.

McCullough said correct.

Dever said there were multiple ways that the person that owned that property might want to go. This seemed to be the most expeditious, and direct, route to continue to allow this to

operate in what he believed had been a reasonable fashion sense they hadn't had any complaints from the neighbors.

McCullough said the distinction between an "inn" and the regular bed and breakfast was that as an owner occupant the intention was to have an owner or family live at that location and the bed and breakfast was incidental to that use and was more a strictly commercial use. It was usually one manager, professionally paid, opened up for business and run it more like a mini hotel than a house with a bed and breakfast component.

Riordan said there was a lot of consternation with this SUP because of where reality is. He said the stipulations on the SUP were based on the fact they didn't have an absolute one way or the other. He said they didn't have absolute evidence did occur or didn't occur and that was why the 2 year time period was set. He said he would be more comfortable with a 2 year period but, at the same time, after 2 years and nothings been found wrong and the owner was complying, he thought they should leave the owner alone and change it to a 5 year time period for review of the SUP.

Farmer said he agreed. He asked if Riordan was suggesting making the SUP 2 years instead of 5.

Riordan said he felt more comfortable with that but, at the same time, he thought it was more reasonable to do it on a 5 year basis, if the owner complied.

Amyx said as someone that owned a business like this right down the street, this would be hard for anyone to do, but if it was a way to bring the business into compliance, and allow an adaptive reuse of the building as suggested, this was the only way they could afford to pay for some of those, unless the person was loaded with money and were able to carry those old buildings for a long time. It seemed there were more than enough regulations.

Moved by Farmer, seconded by Dever, to approve Special Use Permit (SUP-14-00049) to continue the bed and breakfast use of the property as Runaway Pony Bed &

Breakfast, located at 603 Tennessee St., and adopted on first reading, Ordinance No. 8998 subject to conditions. Motion carried unanimously.

F. PUBLIC COMMENT:

Hearn said she wanted to clarify one thing to the Old West Lawrence folks. She said 637 Tennessee was bought and they hired an attorney. She said she felt there was a personal element because of what happened with 637 Tennessee. She said once she stopped owning that property, they left the new owners alone.

A person said she wanted to point out that the new owner did not try to operate the house as a duplex and were not interested in using the basement as an apartment.

A person said the reason why the other planning commissioner changed his mind at the end was because he voted for it to be a bed and breakfast inn.

Hester said Senator Pat Roberts had a case, and there was a higher court case that settled the definition of what occupancy was, because there was question of Roberts being on the ballot. If they were looking at another case with occupancy issue, she thought that court case settled what occupancy was.

G. FUTURE AGENDA ITEMS:

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

H: COMMISSION ITEMS:

I: CALENDAR:

David Corliss, City Manager, reviewed calendar items

J: CURRENT VACANCIES – BOARDS/COMMISSIONS:

Existing and upcoming vacancies on City of Lawrence Boards and Commissions were listed on the agenda.

Moved by Farmer, seconded by Dever, to adjourn at 8:14 p.m. Motion carried unanimously.

MINUTES APPROVED BY THE CITY COMMISSION ON AUGUST 26, 2014.


Diane M. Trybom (City Clerk)