

**BEFORE THE CITY COMMISSION OF THE CITY OF  
LAWRENCE, KANSAS**

|                                  |                |
|----------------------------------|----------------|
| In Re: APPLICATIONS FOR ZONING ) |                |
| MAP AMENDMENTS OF LANDPLAND )    |                |
| ENGINEERING, PA, IN BEHALF OF )  | No. Z-15-00327 |
| ARMSTRONG MANAGEMENT, LC, )      | No. Z-15-00328 |
| AND GRISHAM MANAGEMENT, LC. )    |                |
| _____ )                          |                |

**INTRODUCTION**

On August 24, 2015, the Lawrence-Douglas County Metropolitan Planning Commission recommended approval of two applications for zoning map amendments, which would rezone that real property located at the southeast corner of the interchange between Kansas Highway 10 and U.S. Highway 59, as follows: (1) approximately 59.80 acres from RS-10 (Residential) district to CR (Regional Commercial) district; and (2) approximately 6.07 acres from RS-10 (Residential) district to OS (Open Space) district.<sup>1</sup> On January 5, 2016, the City Commission convened a public hearing on the proposed rezonings. The City Commission received evidence from City Staff, the applicants, and the general public. Based on the credible evidence adduced at that hearing, the City Commission voted by a 4-1 supermajority to override the recommendation of the Planning Commission and to deny the proposed rezonings. This document memorializes the City Commission's findings of fact and conclusions of law.

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<sup>1</sup> Contemporaneously, the Planning Commission recommended approval of an application to amend *Horizon 2020: The Comprehensive Plan for the City of Lawrence and Unincorporated Douglas County*, which would permit general commercial retail use of the subject property. Because amendment of *Horizon 2020* is a legislative act, these Findings of Fact address that application for amendment only as it is relevant to the proposed rezonings.

## FINDINGS OF FACT

1. Armstrong Management, LC, and Grisham Management, LC, own approximately sixty-five acres ("subject property") located on the southeast corner of the interchange between Kansas Highway 10, also known as the South Lawrence Trafficway ("SLT"), and U.S. Highway 59, also known as South Iowa Street.

2. The City annexed the subject property in 1979. At the time that it annexed the subject property, consistent with its practices of the time, the City zoned the subject property for residential use as a holding designation. Currently, the subject property retains residential zoning: RS-10 (Residential) District. Historically, the subject property has been, and currently is, used for agricultural purposes.

3. In 1987, the owners of the subject property sought to rezone the subject property, under the City Code in effect at that time, to C-4 (Commercial) District in order to accommodate an enclosed shopping mall. On March 12, 1988, for a number of reasons, including protection of the City's downtown commercial district, the City Commission voted to deny the application for rezoning. On April 12, 1988, the City Commission issued findings of fact consistent with its decision. (Those findings of fact are affixed hereto as Exhibit A and, to the extent that they remain relevant, are adopted herein by reference). Ultimately, the United States Court of Appeals for the Tenth Circuit affirmed the decision of the City Commission. *Jacobs, Visconsi & Jacobs Co. v. City of Lawrence, Kan.*, 927 F.2d 1111 (10th Cir. 1991).

4. The subject property overlaps the Wakarusa River floodplain. It is bounded to the north by the SLT. Farther north is the southern terminus of the South Iowa commercial corridor. The properties immediately east and south are used for agricultural purposes. Farther east is the Baker Wetlands and the floodplain extends to the south. The subject property adjoins U.S. Highway 59 to the west. Across the highway, to the west, is agricultural land.

5. Although the subject property has been zoned residential since 1979, the Revised Southern Development Plan, which is incorporated into *Horizon 2020, the Comprehensive Plan for the City of Lawrence and Unincorporated Douglas County* ("Horizon 2020"), as the area or sector plan, provides that the subject property shall be used for auto-related commercial activities and will be surrounded by medium-density residential and open space.

6. On June 18, 2015, as owners of the subject property, Armstrong Management, LC, and Grisham Management, LC, granted to LandPlan Engineering (collectively, "applicants") the authority to act in their behalf for the "purpose of making application with the Planning Office" regarding the subject property.

7. On June 22, 2015, applicants filed with the Planning Office the following: (1) Zoning Map Application, No. Z-15-00327, seeking to rezone 63.89 acres, later amended to 59.8 acres, from RS10 (Residential) District to CR (Regional Commercial) District; and (2) Zoning Map Application, No. Z-15-00328, seeking to rezone 2.61 acres, later amended to 6.7 acres, from RS10 (Residential) District to OS (Open Space) District.

8. The applications also included a concept plan showing a proposed development "of a retail/commercial center" on the proposed commercial portion of the subject property, encompassing "247,000 gross square feet ... of which 30,000 [would be] restaurant and 217,000 [would be] general retail." The concept plan envisioned two large anchor stores, three junior anchor stores, eight smaller shops, and six out parcels.

9. On August 24, 2015, the Planning Commission conducted a public hearing on the applications. At that public hearing, Planning Staff presented its Planning Commission Report, wherein, having examined the applications in light of *Golden v. City of Overland Park*, 224 Kan. 591, 584 P.2d 130 (1978), and City of Lawrence, Kan., Code §§ 20-1303(e) and 20-1303(g) (Jan. 1, 2015), Planning Staff recommended that the Planning Commission recommend to the City Commission that it approve both applications.

10. At the conclusion of the August 24, 2015, public hearing, after hearing evidence from City Staff, the applicants, and the general public, the Planning Commission voted 6-2 to recommend approval of Zoning Map Application, No. Z-15-00327, and 7-1 to recommend approval of Zoning Map Application, No. Z-15-00328.

11. At its January 5, 2016, regular meeting, in accordance with K.S.A. 2014 Supp. 12-757 and City of Lawrence, Kan., Code § 20-1303 (Jan. 1, 2015), the City Commission convened a public hearing on the applications for rezonings. During the course of that hearing, the City Commission received evidence from City Staff, the applicants, and the general public.

12. Highly summarized, the following relevant evidence -- both for and against the proposal -- was adduced:

(a) Planning Staff and the Planning Commission both recommended approval of the proposed rezonings.

(b) Approval of the proposed rezonings would be a mere extension of existing zoning to the north across the SLT, the proposed rezonings would not adversely affect the Baker Wetlands, the proposed rezonings would not be more intensive than that designated in *Horizon 2020*, and the proposed rezonings would provide a much needed southern gateway to the City.

(c) The proposed rezonings meet all of the *Golden* factors -- except that it is not in compliance with the comprehensive plan, which deficiency would be rectified by approval of the contemporaneous application to amend the comprehensive plan.

(d) The proposed rezoning would increase the City's economic pull factor, would have a positive economic impact on the City by stopping leakage of sales tax dollars to other markets, and, because the proposed development would be 100% occupied, it would decrease the City's commercial vacancy rate.

(e) The proposed rezonings dramatically diverge from the comprehensive plan, dismantle key policies thereof, do not, in violation of the City Code, include a nodal plan, provide for a much more intensive use (regional commercial) than *Horizon 2020* (auto-related commercial), and, because only a concept plan has been submitted, could be anything contemplated by the expansive CR (regional commercial) zoning designation.

(f) The proposed rezonings do not meet any of the *Golden* factors -- other than the fact that the subject property has been vacant as zoned since 1979 -- and fly in the face of the City's 1988 findings regarding the subject property, which findings are still valid today.

(g) The proposed rezonings would exacerbate strip commercial along the South Iowa/U.S. Highway 59 corridor and promote urban sprawl, both of which are contrary to the spirit of the City Code and *Horizon 2020*.

(h) The proposed rezonings are contrary to the comprehensive plan and the comprehensive plan should stand as the vision and plan of the community and should not be altered willy-nilly to accommodate the unilateral wants of a single property.

(i) The proposed rezonings would adversely affect other commercial areas within the City, especially the downtown commercial district, which the City, as established in its 1988 findings of fact, has a vested interest in protecting.

13. At the conclusion of the public hearing, the City Commission discussed the issues, deliberated on the evidence that had been adduced, and, taking all evidence into consideration, found the following substantial evidence to be credible:

(a) The proposed rezonings do not conform to *Horizon 2020*, specifically in that regional commercial is a much more intensive use than the planned auto-related commercial and the proposed zoning category and use fail to provide an appropriate transition to less intensive uses planned for surrounding properties.

(b) The properties immediately to the east, south, and west are zoned County A (Agricultural) and VC (Valley Channel) Districts. The properties to the north, across the SLT, are largely zoned commercial.

(c) The character of the neighborhood, despite the fact that commercial properties are located north across the SLT, is largely agricultural, is encumbered by the Wakarusa River floodplain, and *Horizon 2020* contemplates that the area will also include medium-density residential and open space uses. The proposed rezonings therefore deviate both from the existing and the planned character of the neighborhood.

(d) The Revised Southern Development Plan, which is the relevant area or sector plan, and which has been incorporated into *Horizon 2020*, provides that the property will be used for auto-related commercial, surrounded by medium-density residential and open space uses. The proposed rezonings are therefore contrary to the Revised Southern Development Plan.

(e) While there is conflicting testimony as to the suitability of the subject property to the restrictions of the current zoning designation, the credible evidence is that the subject property, located at the interchange of two major highways, is not suitable for residential use.

(f) The subject property has been zoned residential since 1979, a period of 36 years. Although it has continuously been used for agricultural purposes during that time-frame, the subject property has remained vacant since 1979.

(g) While approval of the proposed rezonings may increase property values in the immediate area, the credible evidence is that the proposed rezonings would harm the planned medium-density residential uses of surrounding properties, as the proposed rezonings would be incompatible with such uses. It might also lead to a more intensive use of the area, which would have a deleterious effect on the Baker Wetlands and the Wakarusa floodplain.

(h) While the community would not gain much by the subject property retaining residential zoning, a rezoning to regional commercial (CR District) would contravene *Horizon 2020* and the credible evidence presented at the hearing, including that set forth in the City's 1998 findings of fact, establishes that it would adversely affect other commercial areas of the City, including the downtown commercial district, which the City has a vested interest in protecting.

(i) Planning Staff and the Planning Commission both recommended approval of the amendment to the comprehensive plan and, as such, the proposed rezonings.

(j) While the Retail Market Report indicates that the overall economic impact of the proposed rezonings would be negligible, the credible evidence is that approval of the rezonings would be deleterious to other commercial districts in the City, particularly the downtown commercial district. Additionally, it is unclear whether estimates based on 100% occupancy of the proposed concept plan are entirely accurate as the applicants admit that they do not have agreements in place to fill 100% of the proposed development.



16. Based on the totality of the substantial and credible evidence presented at the public hearing -- as outlined above -- the City Commission voted by a 4-1 supermajority to override the recommendation of the Planning Commission and to deny Zoning Map Application, No. Z-15-00327, seeking to rezone 59.8 acres from RS10 (Residential) District to CR (Regional Commercial) District and to deny Zoning Map Application, No. Z-15-00328, seeking to rezone 6.7 acres from RS10 (Residential) District to OS (Open Space) District.

#### **CONCLUSIONS OF LAW**

1. The Kansas legislature has enabled the City to adopt zoning regulations, see K.S.A. 12-741, and to amend its zoning map through rezonings. See K.S.A. 2014 Supp. 12-757; see also City of Lawrence, Kan., Code § 20-1303 (Jan. 1, 2015).

2. City of Lawrence, Kan., Code § 20-1303 (Jan. 1, 2015), consistent with K.S.A. 2014 Supp. 12-757, establishes the procedures by which the City may rezone. The City Commission concludes that, in this case, those procedures have been followed.

3. Additionally, borrowing factors first enunciated in *Golden v. City of Overland Park*, 224 Kan. 591, City of Lawrence, Kan., Code § 20-1303(g) (Jan. 1, 2015), sets forth ten factors that the Governing Body should consider as criteria in making any rezoning decision:

- (1) conformance with the Comprehensive Plan;
- (2) zoning and use of nearby property, including any overlay zoning;

- (3) character of the neighborhood;
- (4) plans for the area or neighborhood, as reflected in adopted area and/or sector plans including the property or adjoining property;
- (5) suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations;
- (6) length of time the subject property has remained vacant as zoned;
- (7) the extent to which approving the rezoning will detrimentally affect nearby properties;
- (8) the gain, if any, to the public health, safety, and welfare due to denial of the application, as compared to the hardship imposed upon the Landowner, if any, as a result of the denial of the application; and
- (9) the recommendation of the City's professional staff.
- (10) For proposals that will create more than 10,000 square feet of retail space within the city: the impact of the proposed project on the retail market ....

*Id.*; see also *Golden v. City of Overland Park*, 224 Kan. at 598. It must be remembered that the *Golden* factors, as well as those set forth above, are not exclusive factors to be considered in every rezoning case, but are merely suggested factors that may be important in a particular rezoning case. The courts recognize that other factors may, and no doubt will, be of importance to an individual case. *Id.* at 599; see also *Landau v. City Council of Overland Park*, 244 Kan. 257, 262, 767 P.2d 1290 (1989).

4. The *Golden* factors, as codified by the City at Section 20-1303(g), require the City to consider, in making its decision, whether the proposed rezoning conforms to the comprehensive plan, whether the proposed rezoning is compatible with existing and planned uses of the neighborhood, and whether the proposed rezoning would have a deleterious impact on the health, safety, and welfare of the community. The substantial evidence and credible evidence adduced at the public hearing -- notwithstanding City Staff's and the Planning Commission's conclusion to the contrary -- establish that the proposed rezonings do not conform to *Horizon 2020*, are incompatible with existing and planned uses of surrounding properties, and would have a deleterious impact on the Wakarusa River floodplain and other commercial developments in the City. The protection of the downtown commercial district is a necessary and appropriate consideration of the City. See *Jacobs, Visconsi & Jacobs Co. v. City of Lawrence, Kan.*, 927 F.2d 1111 (10th Cir, 1991). In this case, the City Commission concludes that the above-noted factors are of paramount importance in this case and that they override other factors -- such as the suitability of the subject property for residential use and the length of time that it has remained vacant -- that may suggest that the subject property is appropriate for rezoning. In fact, while the City Commission is of the opinion that rezoning of the subject property may be appropriate, the relevant criteria lead it ineluctably to conclude that regional commercial is not a suitable or proper zoning designation for the subject property.

5. In sum, based on the substantial and credible evidence in the record, the City Commission concludes that the proposed rezonings do not conform to the comprehensive plan, are incompatible with existing and planned uses of the surrounding area, and would be harmful to the public health, safety, and welfare of the community, particularly the Wakarusa River floodplain and the downtown commercial district. For each of those reasons, the City Commission hereby overrides the recommendation of the Planning Commission and denies Application for Zoning Map Amendment, No. Z-15-00327, and Application for Zoning Map Amendment, No. Z-15-00328.

**ADOPTED** by the Governing Body of the City of Lawrence, Kansas, this 19th day of January, 2016.

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MIKE AMYX  
Mayor

CITY COMMISSION'S  
FINDINGS OF FACT

Z-7-11-87: RS-1 TO C-4; 61.4 Acres on S.E. Corner Of South Iowa Street (HWY 59) and Armstrong Road (JVJ Request)

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I. Description Of the Subject Property:

A. LOCATION

1. The Subject Property is approximately 61.4 acres and is located on the southeast corner of South Iowa Street (Hwy. 59) and Armstrong Road in the City of Lawrence, Kansas.
2. The Subject Property is bounded on the north by Armstrong Road, a two lane unpaved gravel road, on the east by an adjoining parcel developed for agricultural purposes, on the south by the KLWN Tributary of the Wakarusa River and on the west by Iowa Street (Hwy. 59), a four lane arterial.

B. PHYSICAL CHARACTERISTICS

1. The Subject property is relatively flat but slopes gradually from the north to the south.
2. Approximately 1/3 of the southern portion of the Subject Property lies within the flood plain of the Wakarusa River and is classified by the Federal Insurance Administration as Floodway Fringe. (Staff Exhibit #6, Sec. 2, p.6)
3. According to the Army Corps of Engineers, the southern 1/3 of the Subject Property has soil types which are typical of wetlands areas.- environmentally sensitive areas which can serve as the habitat for numerous species of plants and animals which may be rare or endangered. Wetlands come within the jurisdiction of the federal government and cannot be developed without approval from the Army Corps of Engineers. (Staff Exhibit #6, Appendix 1, letter from M. D. Jewett, Army Corp. of Engineers 9/23/87)
4. The Subject Property has Wooden silt loam, Gymer silt loam, Wabash silty clay loam and Wabash silty clay soils. (Staff Exhibit #6, Appendix 1, Letter from SCS 9/1/87.) These soils are located in over 1/3 of the City. Over 2/3's of the City has soils which exhibit moderate to severe limitations for development. Additional development costs for construction on these type of soils is a routine expense for a developer in the City rather than an extraordinary expense. (Staff Exhibit #6, Sec. 2, pp.1-2)

5. The Subject Property is classified as prime agricultural land by the Soil Conservation Service and is considered prime agricultural land from a real estate appraisal viewpoint. (Staff Exhibit #6, Appendix 1, letter from Soil Conservation Service dated 9/1/87)( Transcript 10-21-87, p. 72, ln 4-7)
6. The Subject Property has readily available public sewer and private utilities. Public water may be made available to the Subject Property for a shopping center at a substantial cost. Looping the water lines would be necessary to provide the required fire flow for a shopping center.(Appendix I, Utilities 9B, and Appendix II, p.2)

C. DESCRIPTION OF APPLICANTS.

1. Richard A. Armstrong and Betty J. Grisham are the legal owners of the Subject Property (the "owners").
2. Jacobs, Visconsi and Jacobs ("JVJ") is a shopping center developer with its national headquarters in Cleveland, Ohio. JVJ has an option to purchase the Subject Property contingent upon rezoning.

D. HISTORY OF THE SUBJECT PROPERTY.

1. The Subject Property was originally part of a parcel of property which consisted of 165.4 acres which was rectangular in shape and which extended northward from the KLWN Tributary.
2. In approximately 1968, an assessment of approximately \$61,332.96 was levied against the entire 165.4 acre tract for the extension of sewer lines. The extension of sewer lines to the 165.4 acre tract substantially enhanced its value. ( Transcript 10-7-87, p.19,ln 13-14,; p.12, ln 3-7)
3. In approximately 1972, a strip of the 165.4 acres along Iowa Street was condemned for highway purposes. The owners received a substantial sum of money in connection with such condemnation. (Transcript 10-07-87, p. 20, ln 8-10)
4. Portions of the 165.4 acres have been sold over the years for commercial use along Iowa Street. These uses are a K-Mart, movie theater, bowling alley, skating rink, garden center, wallpaper store and an automobile dealership. ( Transcript 10-21-87, p.12, ln 9-14)
5. In 1979, the Subject Property was annexed to the City of Lawrence at the request of the owners. (Staff Exhibit #6, Sec. 2, p.8)

6. Upon annexation, the northern portion of the Subject Property was zoned RS-1 (Single Family Residence District) and the southern 1/3 was zoned FP (Flood Plain). (Staff Exhibit #6, Sec. 2, p.8)
7. In 1981, a request by the owners and JVJ to rezone the Subject Property into the C-4 zoning district under the City of Lawrence Zoning Ordinance was denied. JVJ proposed to develop the Subject Property with an enclosed shopping mall of approximately 422,196 to 457,000 square feet.
8. In 1986, the City, on its own initiative, with proper notice to the owners and without any objection or comment from them, rezoned the southern portion of the Subject Property from FP (Floodplain) to RS-1 (Single-Family Residence District). ( Transcript 10-21-87, p.14, ln 12-17)
9. The Subject Property has been used for agricultural purposes continuously since its annexation into the City of Lawrence. ( Transcript 10-21-87, p.14, ln 7-9).
10. Plan '95, the comprehensive plan of the City of Lawrence, designates the Subject Property for residential development. (Staff Exhibit #6, Sec. 2, p.15)

## II. ZONING AND USES OF PROPERTY NEARBY

- A. The property located to the west across Iowa Street from the Subject Property and the properties to the east and south of the Subject Property are located in unincorporated Douglas County and are zoned A (Agricultural District) under the Douglas County Zoning Ordinance.
- B. The property located to the north across Armstrong Road from the Subject Property is zoned A (Agricultural District) under the Douglas County Zoning Ordinance, except for the property located to the north along the west 798 ft. of Armstrong Road which is zoned C-5 (Limited Commercial District) under the City of Lawrence Zoning Ordinance.
- C. Properties east, west and south of the Subject Property are in agricultural use. The properties immediately to the north of the Subject Property across Armstrong Road are in agricultural use. (Transcript 10-21-87, p.8, ln 24-25; pp.9-10)(Exhibits 10 through 18)
- D. Further to the north extending along the east side of Iowa Street for 1/2 mile are vacant parcels and commercial uses consisting of a garden center, wall covering store, and discount store and entertainment/recreational land uses consisting of a bowling alley, roller rink and theaters.



- E. The area to the east and northeast of the Subject Property between Louisiana on the east, 31st Street on the north and east of the C-5 Commercial uses along Iowa Street is used for agricultural purposes and is zoned A except for a mini-warehouse facility on 31st Street which is zoned C-4 and a print shop on Louisiana Street which is in the unincorporated Douglas County and is zoned B-2 (General Business).
- F. On the southwest corner of the intersection of 31st Street and Iowa Street is a miniature golf course which is zoned C-5. The area on the west side along Iowa Street is in the unincorporated area of Douglas County and zoned A (Agricultural) and is used for single family homes, and agricultural use or is vacant except for a parcel occupied by a bait shop, which is zoned B-2 (General Business).
- G. The area south of the Wakarusa River is zoned A (Agricultural District) and is used for agricultural purposes with scattered residential use.

### III. CHARACTER OF THE NEIGHBORHOOD.

- A. This is not a neighborhood in the traditional planning sense in light of the definition of "neighborhood" contained in the comprehensive plan, Plan '95. Therefore, it is more appropriate to think of the "neighborhood" as the area which exerts influence on the use and development of the Subject Property.
- B. The "neighborhood" of the Subject Property is bounded by 31st Street on the north, Louisiana Street on the east, Berg Acres on the south and the properties fronting on the west side of Iowa Street south of 31st Street. This "neighborhood" measures approximately 1 - 1/4 miles wide by approximately 2 miles long (along Iowa Street).
- C. The physical characteristics of the neighborhood are described as follows:
  - 1. Starting at the southern boundary of the area, cropland and pastureland gently slope downward and to the north to the Wakarusa River. The river meanders from west to east and provides a prominent feature of the neighborhood. A wide alluvial plain extends on both sides of the river through the neighborhood. Much of this feature has been designated a regulatory flood plain by the Federal Insurance Administration. North of the river the KLWN Tributary parallels the river within the floodplain and forms the southern boundary of the Subject Property. Agricultural land uses (mostly cropland) extend north of the Wakarusa River about 3/4 mile to a point approximately 400 feet north of Armstrong Road. North of this point the area is in agricultural use and vacant except for several commercial uses along the east side of Iowa Street and



the miniature golf course, mini-warehouse and print shop mentioned in the previous section.

2. In his report, the appraiser who testified on behalf of JVJ characterized the area south of 31st Street as largely agricultural in use with a few scattered single family residences and a mobile home park. (JVJ Exhibit 11, p.5)
  3. In the area between 31st Street on the north, Iowa Street on the west, the Wakarusa River on the south and Louisiana Street on the east, there are approximately 700 acres. Only approximately 38 of those acres are devoted to commercial use, most of which is non-retail in character. The remaining acreage is devoted to agricultural uses with scattered residences. The existing C-5 uses along the east side of Iowa Street have been there for quite some time. There have been no new major developments for many years. Charles Hedges, a real estate appraiser testified there has been no significant changes in this neighborhood for many years. In fact, approximately 18 acres of the land already zoned C-5 along the east side of Iowa Street are vacant or used for agricultural purposes. Thus, it is difficult to discern any particular trend of development. In fact, it is appropriate to characterize the area as primarily agricultural/residential uses with a stable limited number of commercial uses. (Staff Exhibit #18) ( Transcript 10-21-87, p. 73, ln 6-25)
- D. The proposed regional shopping center is inconsistent with the character of the neighborhood as discussed in A, B and C above.
1. JVJ is seeking rezoning into a zoning classification which differs from the zoning classification for all the other commercial uses south of 31st Street along Iowa Street. The existing commercial uses along Iowa Street are located in the C-5 Zoning District, a zoning classification designed for highway commercial uses. The proposed development seeks C-4 zoning which is recommended as a zoning district for miscellaneous commercial and wholesale uses.
  2. The proposed development is more intense than any other commercial use south of 31st Street along the east side of Iowa Street. If the acreage for each of the existing commercial uses along the east side of Iowa Street between 31st Street and Armstrong Road are combined, there are in total only 28.343 acres of developed land. If the square footage of each of the existing commercial buildings along the east side of Iowa between 31st Street and Armstrong Road are combined such buildings contain in total only approximately 157,311 square feet. By contrast, the Subject Property with

its 61.4 acres is over twice as large as all of the other commercially developed land along the east side of Iowa Street south of 31st Street combined. The proposed regional shopping center will be over twice as large when initially built and over 2 - 1/2 times as large at buildout as all of the other commercial buildings on the east side of Iowa Street south of 31st Street combined. (Staff Exhibits #7 & #18)

3. Staff Exhibits 18 and 19 illustrate the intensity of the existing land uses along Iowa Street. Exhibit 7 describes the intensity of the proposed development on the Subject Property. Comparing the amount of building floor area to lot area shows that the average floor area ratio for all the uses combined along the east side of Iowa Street between 31st Street and Armstrong Road is 1.3. The floor area ratio for the proposed regional mall is 1.9. Therefore, the proposed regional mall is 46% more intense than development currently existing on South Iowa Street.

#### IV. CONFORMANCE OF THE REQUESTED CHANGE TO THE ADOPTED OR RECOGNIZED MASTER PLAN BEING UTILIZED BY THE CITY

1. Plan '95 was adopted in conformance with the law on October 11, 1977. (Staff Exhibit #6, Appendix 10, p.1)
2. Each year since its adoption Plan '95 has been reviewed in accordance with KSA 12-704 and has been found to remain a current and viable guide for planning in Lawrence. (Staff Exhibit #6, Appendix 10, p.1)
3. Plan '95 has been amended seven times since its adoption in order to update it. (Staff Exhibit #6, Appendix 10, p.1) ( Transcript 10-7-87, pps. 88-89,& 93, ln 6-19)
4. JVJ argues that Plan '95 was amended by the advisory referendum held in the City of Lawrence as a part of the April 1987 general election. The referendum included the following ballot issues (Page 3, Freilich Leitner letter, Staff Exhibit #7; Staff Exhibit #6, Appendix 10, pp3-4) ( Transcript 10-7-87, pps. 88-89, and p. 93, ln 6-19)
  - a. Massachusetts and Vermont Streets shall not be closed or vacated from 6th Street to 11th Street;
  - b. The City of Lawrence, Kansas shall spend public funds, be they state, federal or local, for the purpose of assisting in the building of an enclosed shopping mall in the Central Business District of Lawrence, Kansas; and
  - c. None of the streets in the Central Business District of Lawrence, Kansas shall be vacated for the purpose of constructing an enclosed shopping mall.

Ballot issues nos. 1 and 3 passed and issue no. 2 failed in the advisory election. (Staff Exhibit #, Appendix 10, pp.3-4) We reject JVJ's claim that this referendum amended Plan '95 for several reasons:

First, JVJ characterizes the vote on the referendum as a rejection of further regional retail expansion downtown and, in effect, an amendment to Plan '95. As several witnesses testified, however, the language of the referendum was difficult to understand and the meaning of the vote impossible to decipher. Therefore, the vote on the referendum provides no answer to the question of the vitality of Plan '95 with regard to downtown development.

Second, Section 12-704 of KSA specifies the method for amending a comprehensive plan. There is no provision of the Kansas statutes which allows a comprehensive plan to be amended by referendum. By law, therefore, the referendum cannot stand as an amendment to Plan '95.

Third, Public hearings were held on the comprehensive plan in conformity with Section 12-704 of KSA subsequent to the referendum on the provisions of Plan '95 to determine the validity of the recommendations regarding downtown development and the regional retail center. All of the comments received at the public hearing on May 27, 1987 were in favor of retaining the provisions of the comprehensive plan relating to downtown development. (Appendix 10, Staff Exhibit "6".) The Planning Commission on May 27, 1987, unanimously voted " . . . to go on record as reaffirming Plan '95 as it pertains to downtown development." (Staff Exhibit #6, Appendix 10)

Fourth, subsequent to the referendum, the City Commission appointed a Downtown Improvement Committee which has hired a consultant, Ralph Basile, who is reviewing and making recommendations with respect to the type and feasibility of further regional retail development downtown. He testified at the hearing on JVJ's application that further retail expansion downtown is appropriate and feasible. Laurence Alexander, a planner, who testified on behalf of the Planning Office, stated that there is additional capacity downtown for development of further regional retail uses.

Last, JVJ has admitted by its participation in two development proposals for regional malls downtown that downtown is an appropriate location for such use.

5. Plan '95 and its amendments is a valid, viable, adopted master plan, and is the "recognized master plan being utilized by the City."
6. The generalized land use guide in Plan '95 designates the Subject Property for low density residential land uses with high density



residential uses along Iowa Street and Armstrong Road. Charles Hedges, real estate appraiser testified that an attempt to use the property for residential use was made in approximately 1981 when the residential real estate market was very poor and that the price being asked for the subject property was far too high for the land to be used for residential purposes. The attempt to use the property in this way substantiates the Plan '95 categorization as a residential area. (Page 44, Staff Exhibit "1").( Transcript 10-21-87, p.74, ln 21-25, & p. 75, ln 1-26, & p.76,ln 1-2)

7. Plan '95 recognizes the idealized approach to future commercial development as being a series of centers, but states that, "It is not reasonable in the respect that it ignores some presently existing commercial development." (Staff Exhibit "1", Pages 6-16. and Figure 6-4)
8. Plan '95 acknowledges the existence of commercial areas such as the 23rd Street-Iowa Corridor and designates them as commercial containment areas. (Pages 6-16 and 6-17, Staff Exhibit "1")
9. Plan '95 advises "extreme caution" be taken in "zoning any additional land for commercial purposes through 1995." (Pages 4-9, Staff Exhibit "1")
10. Plan '95 does not show that "a major retail commercial corridor at south Iowa is to be built" but instead acknowledges the existence of commercial zoning in the area and recommends containment. ( Transcript 10-7-87, p. 88, ln 18-20)
11. The commercial land use plan in Plan '95 designates a "commercial containment area" on the east side of Iowa Street, with Armstrong Road, north of the Subject Property, as its southern boundary. (pp. 6-17, Staff Exhibit "1".)
12. Plan '95 recommends a commercial plan for 1995 which includes "one strong Regional Shopping Center (CBD) supplemented by five or six neighborhood shopping centers (one of which might be a small community center). (pps. 6-15, Staff Exhibit "1".)
13. The growth goal of Plan '95 stresses "Managed quality growth, in current legal, social and economic terms", and "to accommodate the market demand of growth through land use management based on the general public welfare and the carrying capacity of the environment." (pps. 1-8, Staff Exhibit 1)
14. The proposal under consideration ignores the land use management efforts of the City of Lawrence.
15. The proposal under consideration may have an adverse impact upon an ecologically sensitive environment.

16. There was conflicting testimony on the issue of the validity of Plan '95's population projections. The applicant's witness, Mr. Williamson, stated in his review of Plan '95 that the 1980 census data for Lawrence had not been incorporated into the population projections to determine whether the Plan was on target regarding growth. He concluded that the omission of the 1980 census data, as well as the underestimation of total enrollment at the University of Kansas made the population projections contained in Plan '95 low and thus the assumptions for land use needs would also be low. The planning staff's witness, Mr. Jones, testified that while the University of Kansas enrollment trends grew instead of declining as was originally anticipated, the amount of private sector development providing employment opportunities did not expand at the rate anticipated. Thus, these two factors balanced each other and when the 1980 census figures were released, the population projections for 1980 were off by only 390 persons. When the population projections for 1985 are compared, the difference is even less. (Staff Exhibit 7, Plan '95 Review, p. 4)( Transcript 10/7/87, p. 139, ln 8-19).
17. After reviewing all the evidence on the issue of the validity of Plan '95's population projections, it is clear that the 1980 census data did not change the basic concepts or the basic considerations of Plan '95. (Transcript 10/7/87, p. 139, ln 21-23).
18. It is an expressed policy of Plan '95 to "lend support to the Central Business District as the primary Regional Shopping Center." (p.14-13, Staff Exhibit 1)
19. The proposal under consideration would negatively impact the CBD and usurp its role as the Regional Shopping Center.
20. The Comprehensive Downtown Plan, which was included as an amendment to Plan '95 in 1982 recommends that downtown Lawrence "be strengthened as the premier retail, financial, and office center within the region and as the city's largest employment area, other than the University." (p.VII-1, Staff Exhibit "3").
21. The proposal under consideration will weaken downtown as a retail, financial and office center.
22. The request to rezone the subject property from RS-1 to C-4 is not in conformance with the adopted recognized master plan being utilized by the City.

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V. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED.

A. The Subject Property is restricted to the following permitted uses under the provisions of the RS-1 Zoning District:

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| <ul style="list-style-type: none"> <li>1. Agricultural/Field crops:                             <ul style="list-style-type: none"> <li>a. Agricultural uses</li> <li>b. Field crops</li> <li>c. Floriculture</li> <li>d. Greenhouses</li> <li>e. Horticulture</li> <li>f. Nursery</li> <li>g. Truck gardening or viticulture, but not including retail sales on the premises</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>h. All other agricultural uses which                             <ul style="list-style-type: none"> <li>(1) are similar to the listed uses in function, traffic-generating capacity, and effects on other land uses and (2) are not included in any other use group.</li> </ul> </li> <li>2. Residential Single-Family Detached:                             <ul style="list-style-type: none"> <li>a. Residential uses</li> <li>b. Single-family detached dwelling</li> <li>c. Accessory uses (Ord. 4247, Sec. 3)</li> </ul> </li> </ul> |
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B. Moreover, the following uses are permitted provided special conditions of the ordinance are complied with:

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| <ul style="list-style-type: none"> <li>1. Agricultural-Animal Husbandry:                             <ul style="list-style-type: none"> <li>a. Agricultural uses</li> <li>b. Animal and poultry husbandry</li> <li>c. Dairying and pasturage, but not including the keeping of swine, the feeding of offal or garbage or retail sales on the premises</li> <li>d. All other agricultural uses which                                     <ul style="list-style-type: none"> <li>(1) are similar to the listed uses in function; traffic-generating capacity, and effects on other land uses and (2) are not included in any other use group.</li> </ul> </li> </ul> </li> <li>2. Residential-Mobile Home Park                             <ul style="list-style-type: none"> <li>a. Residential uses - Mobile homes park</li> <li>b. Accessory Uses</li> </ul> </li> <li>3. Community Facilities - Public Utilities                             <ul style="list-style-type: none"> <li>Community Facilities:                                     <ul style="list-style-type: none"> <li>a. Art gallery or museum</li> <li>b. Cemetery, columbarium or mausoleum</li> </ul> </li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>c. Church or other place of worship, including student center Club or lodge, private, except those whose chief activity is carried on as a business</li> <li>d. Community building, public</li> <li>e. Golf course, but not including commercially operated driving range, pitch and putt course or miniature golf course</li> <li>f. Halfway House or service-oriented rehabilitation center or residence</li> <li>g. Health center, government operated</li> <li>h. Hospital, general, not including animal</li> <li>i. Institution for children and aged, nonprofit</li> <li>j. Library or museum: public or private, open to public without charge</li> <li>k. Monastery, convent or similar institution of religious training</li> <li>l. Mortuary, funeral parlor, or undertaking establishment</li> </ul> |
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- m. Nursing home or rest home
- n. Parish house, nunnery, rectory, etc.
- o. Park, playground, or playfield, public
- p. Private Recreation Facility (exclusive of family swimming pools and swimming pools that are accessory uses to hotels, motels and apartments)
- q. Rehabilitation center for handicapped persons
- r. Sanitarium
- s. School, nursery or day care for children
- t. School, public, parochial, or private, non-profit:
  - 1. Grades nine and below including kindergarten
  - 2. Grades ten and above
- u. Swimming pool, accessory
- v. Theatre, live

Public Utilities:

- a. Electrical substation
- b. Gas regulator station
- c. Radio or television transmitter or tower
- d. Sewage disposal plant, private
- e. Telephone exchange but not including garage, shop, or service
- f. Water filtration plant, pumping station, elevated storage or reservoir

Similar Uses

All other uses which (1) are similar to the listed uses in function, traffic-generating capacity, and effects on other land uses and (2) are not included in any other group.

Accessory Uses

- C. Kevin Nunnink, professional Real Estate Appraiser for JVJ claims that soil characteristics on the Subject Property require extraordinary development techniques which will increase costs to the extent that development of the Subject Property for residential purposes will be unfeasible. We disagree. The evidence shows that over 1/3 of the area of the City of Lawrence is developed over soils with characteristics similar to those of the Subject Property. The low strength, high shrink and swell characteristics of the soil are prevalent over much of the urbanized area, and contractors routinely install foundation drains and backfill with sand or gravel to reduce possible structural damage to foundations. (Exhibit #6, Sec.2, pp.102; Exhibit 21). Charles Hedges, a professional Real Estate Appraiser, testified that the soil conditions do not make residential development unfeasible and cited examples of residential developments on the same or similar soil. He further pointed out that the cost of residential development on this site may be lower than the cost of residential development in areas of the City, where rock in the subsoil is a problem (JVJ Exhibit #11, p. 10)(Staff response to Real Estate Appraisal by Kevin Nunnink dated 11-04-87)(Real Estate Analysis for the JVJ site dated 10-20-87 by Charles Hedges, p.5)
- D. There was conflicting testimony regarding the best use of the site. Kevin Nunnink reported that the highest and best use of the site was for retail commercial development. Charles Hedges, a professional real estate appraiser, testified that the Subject Property has good use and good value at the present time, and that it will continue to have good use and good value if the requested rezoning is denied. In his opinion, the highest and best use of the Subject Property is for residential use



with the future possibility of some C-5 or C-2 commercial uses along Iowa Street similar to other C-5 uses in the neighborhood. (JVJ Exhibit #11, p. 10)(Staff response to Real Estate Appraisal by Kevin Nunnink dated 11-04-87)(Real Estate Analysis for the JVJ site dated 10-20-87 by Charles Hedges, p.5)

- E. Exhibits 10 through 19 show that no land adjacent to the Subject Property is in urban use. West of the site, farm buildings and pasture land lie across the street. South and east of the site are grainfields, and north of the site a gravel road and a grainfield separate this site from any urban development.
- F. JVJ asserts that the Subject Property is unsuitable for residential use because it is adjacent to Iowa Street and across the street from the southern tip of a band of land zoned C-5 along the east side of Iowa Street south of 31st Street. We disagree. The evidence show that sites in many areas of the City of Lawrence have been developed for residential purposes, including single-family, adjacent to major streets and that screening techniques such as fencing or landscaping protect those properties directly adjacent to the roadway. Staff Exhibits #6, Sec. 2, p.7; and Staff Exhibit #7)
- G. Residential zoning districts and development exist adjacent to major thoroughfares in a number of areas in Lawrence, including Springwood Heights, Alvamar Estates, Prairie Meadows Estates and Westwood Addition. (Staff Exhibit #6, Sec. 2, p.7)
- H. Residential zoning and development exist along major streets and adjacent to commercial development on 23rd Street East of Louisiana, on Iowa Street south of 9th and in many other areas of the city. The commercial containment policy of Plan '95 has been effectively implemented in other areas. (Staff Exhibit #1, JVJ Exhibit #6)
- I. Agricultural or residential development of the Subject Property is more in harmony with the river and floodplain area than an intense commercial use. Agricultural or residential development will allow more of the wetland area to be preserved because of the limited impervious cover associated with such developments as compared to the extent of impervious cover required for a regional shopping mall.
- J. The C-4 zoning category permits the kind of uses that are found in a regional mall. It also permits manufacturing and wholesale uses and is recommended as a district for miscellaneous and wholesale uses. These uses may not be compatible with land uses in the vicinity of the subject property. ( Transcript 10-21-87, p. 57, ln. 8-20; p. 67 ln. 12-25)



- K. Contrary to JVJ's claim, there has been no shift from downtown as the regional retail center of Lawrence. Paul Vogel, JVJ's market expert states in his report that "The current dominant retail focal point of the Lawrence market is the downtown retail district." John Melaniphy similarly testified and indicated in his report that downtown is the primary retail center in the City. As an example, 79% of all apparel and accessory stores in Lawrence are located in downtown representing 114,000 square feet of the total of 141,500 square feet in all of Lawrence devoted to such use. While Lawrence has a significant amount of retail located outside of the downtown, it is disbursed throughout Lawrence and not concentrated in any single location.
- L. JVJ further argues that because the referendum eliminates downtown from contention as the site for further retail expansion, that the Subject Property is the only other site which is appropriate for such use. We reject this argument. The Subject Property is an inappropriate site for the location of a regional retail center.
  1. The Subject Property is located on the southernmost fringe of the City of Lawrence and, as such, is located far from the existing concentration of the population of the City of Lawrence which is to the north and east and is located far from the western portion of the City where population growth has started and is expected to continue to occur.
  2. The Subject Property is not located along any major east/west arterial therefore, not readily accessible to the site from the east and west where the population is and will be concentrated. The South Lawrence Trafficway would alleviate this difficulty to some extent but not completely. More importantly, the South Lawrence Trafficway has not been built, has not been funded and may never be constructed. Therefore, accessibility to the Subject property is a problem.
  3. The Subject Property's poor accessibility will cause substantially increased traffic congestion at several of the City's most congested intersections because such intersections lie along the major east/west routes which Lawrence residents would have to take to reach the Subject Property.
- M. We conclude that the site is suitable for the uses it is restricted to in the RS-1 zoning district.

VI. THE EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES.

1. If the Subject Property is developed as a regional shopping mall, real estate speculation would likely increase the sale price of some nearby properties, however, the traffic, noise, litter, pollution and glare of lights will diminish the value of adjacent lands for residential use. The uses permitted in the C-4 Zoning District would have a substantial detrimental impact upon adjacent residential land use. ( Transcript 10-21-87,p.68. ln.2)
2. Both applicant and staff have provided testimony and evidence that regional malls typically stimulate further commercial development i.e., spin-off development in the areas where shopping malls are located. Spin-off development will create additional traffic, noise, pollution and probably litter and glaring lights and will extend the impact of the mall further from the Subject Property. ( Transcript 10-21-87, p.15, ln 1-16)(p.7, Staff Exhibit #6)
3. The location of a regional retail mall on the Subject Property will be contrary to careful planning which was done with regard to the appropriate location of commercial and residential areas in the Lawrence/Douglas County area as reflected in Plan'95 and the Douglas County Guide Plan. Much of the spin-off commercial development will occur in strip commercial form contrary to the policies of Plan'95.
4. A regional mall with its large parking surface will negatively impact the wildlife habitat on nearby properties and along the Wakarusa River south of this site.

VII. THE LENGTH OF TIME THE SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED.

1. The northern portion of the Subject Property was rezoned from A to RS-1 at the time of the annexation to the City in 1979. The southern portion was rezoned from FP to RS-1 on April 1, 1986.
2. The entire site has been in agricultural use, a use permitted in the RS-1 District each year since it was annexed to the City and rezoned.
3. The owners claim to have attempted to market the Subject Property for residential use without success. Charles Hedges, however, testified that such attempt was made in approximately 1981 when the residential real estate market was very poor and that the price being asked for the

Subject Property was far too high for land to be used for residential purposes. ( Transcript 10-21- 87, p. 74, ln 21-25; p. 75, ln 1-25; p. 76, ln 1-2)

# VIII.

## THE RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE PLANTIFFS' PROPERTY AS COMPARED TO THE HARDSHIPS IMPOSED UPON THE INDIVIDUAL LANDOWNER.

1. Exhibit #6 and the testimony and report of Charles Hedges, professional real estate appraiser, indicate that the value of the applicants property will not be destroyed if action is not taken to rezone this property. The applicants representative has stated that denial of the requested change would destroy the value of the property, but has provided no evidence or testimony to support any impending destruction. Kevin Nunnink's report asserted that the site could not be used economically for residential of agricultural use. We find that the Subject Property has value as agricultural land and has value for residential use, and will continue to have value if the rezoning is denied. The value of the property will not be destroyed. (Staff Exhibit #6, Sec. 2, p.10)(Real Estate Analysis, proposed mall site, JVJ proposal Charles Hedges, P.6) There has been no public policy adopted and no action taken by the Planning Commission or either the City or County Governing Bodies that will raise development expectations for other than the uses to which the property has been restricted. The opposite is true. The property is zoned for residential purposes, is planned for residential purposes by Plan '95 and the adopted public policies suggest a regional mall is inappropriate at this location. Furthermore, a similar zoning request was denied in 1981.
2. Evidence and testimony submitted by applicant and by staff show that a regional mall at this location will stimulate additional intense development in the vicinity. (P.6 Applicants response to Staff Report, 10-8-87)(p.14, Staff Exhibit #6, Sec. 2)
3. Large public expenditures for engineering and capital improvements would be needed to accommodate a shift from a planned growth pattern, which is generally occurring to the west and northwest portion of the city, to a southerly growth pattern stimulated by a mall on the Subject Property. Utilities and streets have been extended west to accommodate that growth. (Staff Exhibit #6, Sec. 2, p.14)
4. Considerable evidence and testimony has been submitted to show that a regional mall of the size proposed would have an adverse impact upon downtown. The applicant provided testimony and evidence from Realty Development Research that an adverse impact would be relatively low. The staff provided Appendix 5 regarding the impact of suburban malls on downtowns and has quoted a number of studies in the staff report that



show that suburban malls do have a substantial adverse impact upon downtowns. The most severe impact has been in cities with populations less than 200,000. (Staff Exhibit #6, Sec. 2, p.12)

5. Most of the witness testimony presented by staff and the public has related to the adverse impact on the Central Business District. Downtown Consultant, Ralph Basile, Economist John Melaniphy, Planner Lawrence Alexander and Planner Myles Schachter, all testified that a regional mall would impact downtown Lawrence. Staff Exhibit 6, as well as testimony from the planning staff, their expert witnesses and the general public affirm the adverse impacts that a suburban mall would have on downtown Lawrence. Staff Exhibit 6, Appendix 4, outlines that since 1950, the amount of public investment to downtown Lawrence has been over \$38.5 million (1987) dollars and that the maintenance of downtown has been and remains a high priority. (Staff Exhibit 6, Appendix 4).

The staff's witness, John Melaniphy, a real estate economist, testified after reviewing the Lawrence Square Proposal that if a mall were built downtown, Lawrence would experience a decline in sales and that it would be an adverse impact upon downtown. ( Transcript 10/7/87, p. 154, ln 1-5).

Economist John Melaniphy testified that based on his experience, a community the size of Lawrence would be adversely affected by a mall. He testified that some downtown retailers would relocate to the mall. Downtown activity, meaning people, would decrease significantly. Downtown sales would decline, vacancies would occur and some of the stores would remain vacant. He testified that there are numerous examples of this happening around the country. ( Transcript 10/7/87, p. 155, ln 13-25; p. 156, ln 1-3).

Economist John Melaniphy testified that the downtown retail area would contract if a mall were built because there would not be as much need for retail space. He testified that the university and the student body spending habits would not be sufficient to overcome the demand that will be lost for retail space in the downtown area. ( Transcript 10/7/87, p. 156, ln 3-7.)

Economist John Melaniphy testified that rent for some stores would ultimately decline because of long-term vacancies. As rent structures are lowered, they will be rented to more undesirable stores who could not have previously afforded space within the downtown area. (Transcript 10/7/87, p. 156, ln 7-14).

Economist John Melaniphy testified that what usually happens to downtowns is the building maintenances decline because of vacancies and blight begins to occur. He concluded that commercial blight leads to residential blight in the surrounding inner neighborhoods. ( Transcript 10/7/87, p. 156, ln 18-21)

A conclusion reached by several studies correlated by the Urban Institute is that regional shopping malls -- those with at least 300,000 square feet and two department stores with 75,000 square feet each-- have had a substantial adverse impact in most of the downtown areas where conditions before and after the mall was constructed were examined. (Staff Exhibit, Sec. 3, p. 12).

Appendix 5, Staff Exhibit 6, documents the impacts of suburban shopping malls on Central Business Districts. According to an article published in 1983 by The Urban Institute, it states, "Based on the review of data from several cities in upstate New York, Maryland, and Virginia, up to 40 percent of new mall sales in smaller cities are diverted from the central business districts." (Staff Exhibit 6, Appendix 5, p. 1).

Plan '95 states that the specific functions of the CBD should be as follows:

To serve as the major source in fulfilling the community's shopping needs. It should remain the retail core first and foremost;

To provide space for office functions;

To provide the basic supply of both commercial and public entertainment services;

To provide peripheral areas of moderate to dense residential development designed to complement the overall CBD function;

To provide for cultural and aesthetic facilities and services in the form of the performing arts as well as related facilities, such as historic or art museums and libraries;

To provide for the community social needs, such as club and organizational meeting facilities;

To provide space for most of the governmental offices and facilities;

To provide space for many health services;

To provide for convention and hotel/motel facilities;

To provide the economic, physical and aesthetic environment around which the populace can develop an intense pride in the community, a focal point for identification and drawing together for common interests, a meeting place where people can communicate and relax -- in the heart of the city.

6. We conclude that a regional mall will have an adverse impact upon downtown Lawrence and will tend to attract activity away from downtown. Therefore, the mall will challenge downtown's role as the cultural, social, and retail center of the community.

7. Malls such as the one proposed are privately owned and, therefore, the common areas are not public space. Testimony indicated that there have been instances where First Amendment rights of free speech were regulated in these areas in some cities. ( Transcript 10-21-87, p.137, ln 3-23)
8. A regional shopping mall on the Subject Property will increase crime and traffic control problems in the vicinity. The large numbers of people attracted to the site will require an increased level of police activity to deal with traffic accidents, theft, and various other incidents. A regional mall on this site would divide police resources and would require another new police district. Each of the suburban malls sampled (Topeka, Overland Park and Kansas City, Kansas) required additional personnel resources. (Letter from Laurie Mauley dated November 4, 1987) and (accompanying Wall Street Journal article dated September 10, 1987).(Response to staff inquiry from Assistant Chief of Police Olin dated September 1, 1987 and November 10, 1987 Staff Exhibit #6, Appendix 1.)
9. There was conflicting testimony on the issue of leakage i.e., the amount of dollars being spent by persons in the Lawrence trade area in areas outside the Lawrence trade area. Ron Jones, a planner who testified on behalf of the Planning Office reaffirmed that in his opinion there is no leakage. Vogel of RDR who testified on behalf of JVJ indicated very substantial leakage from the Lawrence market. John Melaniphy who testified on behalf of the Planning Office identified leakage of a much lesser magnitude than JVJ. The downtown plan which is incorporated in the Comprehensive Plan indicates that there is leakage but of a substantially smaller amount than projected by JVJ but greater than that found by Melaniphy.
10. After reviewing all of the evidence on the issue of leakage, it appears that JVJ's leakage figures are questionable. In part, this results from the size of the trade area identified by JVJ. As appears from the map of the trade area, JVJ's trade area includes areas east and west of Lawrence which realistically are not and can not be expected to become, with the addition of Lawrence Square, part of the Lawrence/Douglas County trade area. In particular, areas located on the western fringe of the trade area are closer to and more easily accessible to larger malls located in Topeka, Kansas. On the east side, areas are included which are closer and more accessible, because of the proximity to K-10, to several larger malls in Kansas City, Kansas and Johnson County.
11. JVJ has attempted to use these inflated leakage figures to bolster its argument that its mall will recapture these dollars and not adversely impact downtown retail. We reject this argument. The weight of the evidence was that a regional center on the site chosen by JVJ will siphon retail sales from the downtown area and lead to its decline and eventual blight. Even JVJ admitted at several points in its testimony and documentation that its development will adversely impact downtown. According to JVJ, however, downtown will not experience the severe



decline of other downtowns impacted by suburban mall development because it is "adjacent" to the University of Kansas campus and will become a downtown oriented to the student market. This argument is flawed for a number of reasons. First, the University of Kansas campus is not immediately adjacent to downtown. Moreover, it is unrealistic that the substantial sales which will be lost (estimated at \$14 million by Mr. Melaniphy) could be replaced by catering to the student population.

## IX. TRAFFIC CONSIDERATIONS

1. The traffic generated by the use of the Subject Property for a suburban mall will increase traffic congestion at the already failing intersection of 23rd and Iowa, and will create congestion and traffic hazards along every intersection on Iowa Street between 23rd and 31st Streets in the vicinity of the Subject Property. (Staff Exhibit 6, Sec. 5, p. 16)
2. The traffic generated by the use of the Subject Property for a suburban mall will increase traffic by at least 22% on Louisiana Street between 23rd Street and Armstrong Road, a minor arterial street that intersects a single-family neighborhood and passes by an elementary and junior high school site. (Staff Exhibit 6, Sec. 5, p. 13)( Transcript 10/7/87, p. 116, ln 20-25; Transcript 10/21/87, p. 25, ln 2-7)
3. Site traffic volumes from a 365,737 sq. ft. suburban mall would be significant. (Staff Exhibit 6, Sec. 6, p. 16; Transcript 10/7/87, p. 119, ln 14-18)
4. The applicant's proposal to pave Armstrong Road two lanes wide between Iowa Street and Louisiana Street may be inadequate. Armstrong Road should be improved to adequately carry at least 22% (25,174 vehicle trip ends per week) of the traffic accessing the Subject Property. (Staff Exhibit 6, Sec. 5, p. 18)

The applicant's proposal to finance the widening of Armstrong Road through a special benefit district is unacceptable. The improvement of this road to serve the adjacent properties is premature. It would place an unfair burden on these properties and would force them to bear the cost of an improvement made necessary by the regional mall. The costs for this improvement to provide for the safe and efficient access to the Subject Property should be borne by the developer. (Staff Exhibit 6, Sec. 5, pp. 18 & 20; Transcript 10/7/87, p. 122, ln 3-9)

5. Without the proposed development of a suburban mall on the Subject Property, the widening of Armstrong Road to four lanes will not be necessary in the immediate future. (Staff Exhibit 6, Sec. 5, p. 20; Transcript 10/7/87, p. 122, ln 3-8)

6. The applicant's proposal to provide a separate right turn lane on the northbound approach and a left turn lane on the eastbound approach at the intersection of 27th and Iowa Streets is inadequate. The entire intersection should be redesigned to function properly. The lane widths on the eastbound and westbound approaches should be widened. (Staff Exhibit 7, Traffic Analysis, p. 8; Staff Exhibit 6, Appendix 1, letter from George Williams dated 10/6/87; Transcript 10/7/87, p. 115, ln 16-23)
7. The applicant's suggestion that construction of the South Lawrence Trafficway will alleviate site-generated volumes on the existing roadways is incorrect. The route chosen by Lawrence residents to travel to the Subject Property will be the most direct with the least travel time. Residents in the eastern and western portions of the city are unlikely to backtrack to gain access to the South Lawrence Trafficway as it is currently proposed, but would rather use the existing roadways. (Transcript 10/7/87, pps. 120, ln 19-25; p. 121, ln 1-4)(Staff Exhibit 7, Traffic Analysis, p. 20; Staff Exhibit 6, Sec. 5, p. 18)
- 7a. The applicant's design plan for site access to the subject property is linked with the existence of the South Lawrence Trafficway and is premature since no approval has been granted regarding the alignment of the South Lawrence Trafficway.(Staff Exhibit 7, Traffic Analysis, pps. 20-21)(Staff Exhibit 6, Sec. 5, p. 18)( Transcript 10-7-87; p. 121, ln 4-13)
8. The applicant's proposal to narrow the lane widths at the intersection of 23rd and Iowa is unacceptable. The westbound approach of 23rd Street and the northbound and southbound approaches of Iowa Street are major truck routes, and a decrease in lane widths would create an additional traffic safety hazard at this already congested intersection. (Transcript 10/7/87, p. 115, ln 12-15 & p. 128, ln 14-20)
9. The applicant does not believe that major roadway improvements other than restriping the intersection of 23rd and Iowa and adding a separate right-turn lane on the east approach at the intersection of 27th and Iowa, are going to be necessary to handle the site-generated traffic generated by the development of the Subject Property. The planning analysis, as outlined in the 1985 Highway Capacity Manual (see Staff Report, Sec. 5, pp. 3-5), used to evaluate the capacity of intersections along Iowa Street in the vicinity of the Subject Property indicate that on weekdays every intersection would be rated near or over capacity, and would require improvements to handle additional site-generated and projected traffic. (Staff Exhibit 7, Traffic Analysis, pp. 8 & 18; Staff Exhibit 6, Sec. 5, p. 7)
10. The applicant's proposal that no improvements are needed at the intersection of 25th and Iowa Street is unacceptable. Separate signal phasing for Iowa Street traffic is recommended and an additional lane on



the eastbound and westbound approaches is warranted to accommodate turning movements from the additional site-generated traffic. (Staff Exhibit 6, Sec. 5, p. 10; Staff Exhibit 7, Traffic Analysis, p. 8; Appendix 1, letter from George Williams dated 10/6/87)

11. The applicant's proposal that no improvements are needed at the intersection of 31st and Iowa Streets is unacceptable. The addition of projected and site-generated traffic by the proposed development of a suburban mall indicate this intersection would have a near capacity rating and the intersection should be addressed more thoroughly by the applicants. (Staff Exhibit 6, Sec. 5, p. 10; Staff Exhibit 7, Traffic Analysis, p. 8; Appendix 1, letter from George Williams dated 10/6/87)
12. The problems of site-generated traffic will be exacerbated by the effects of spin-off development by the development of Subject Property as a suburban mall. (Transcript 10/21/87, pps. 24, ln 12-25 & p. 39, ln 4-12)
13. The proposed suburban mall will increase traffic congestion on Iowa Street during the p.m. peak hour. According to the 1985 Trip Generation Manual, 960 vehicles would be entering this site and 1022 vehicles would be exiting the site on a weekday during the p.m. peak hour. This is compared to 1987 existing traffic volumes which show only 10 vehicles entering Armstrong Road and 10 vehicles exiting from Armstrong Road on a weekday during the p.m. peak hour. (Staff Exhibit 6, Appendix 7d)
14. The intersection of 23rd and Iowa is ranked second in the city for economic losses incurred by accidents and is ranked 25th in the actual number of accidents. The intersection of 23rd and Iowa is considered to be a critical intersection in terms of safety hazards. The addition of traffic volumes from the site-generated traffic of a 365,737 sq. ft. mall will exacerbate the safety hazards at this intersection. (Staff Exhibit 6, Appendix 17, Memorandum of staff response to Barton-Aschman comments on October 21, 1987)
15. At the intersection of 31st and Iowa, on a weekday during the p.m. peak hour, a comparison of 1987 Existing Traffic Volumes and 1989 Total Traffic Volumes (including site-generated traffic from a mall and projected traffic increases) reveal the following increases:
  - a. Southbound traffic on Iowa Street will increase from 975 vehicles per hour in 1987 to 1420 vehicles per hour in 1989;
  - b. Northbound traffic on Iowa Street will increase from 450 vehicles per hour in 1987 to 1005 vehicles per hour in 1989;

- c. Eastbound traffic on 31st Street will increase from 335 vehicles per hour in 1987 to 395 vehicles per hour in 1989; and,
- d. Westbound traffic on 31st Street will increase from 545 vehicles per hour in 1987 to 615 vehicles per hour in 1989.

(Staff Exhibit 6, Appendices 7a and 7c)

- 16. We conclude that major improvements are required to accommodate existing traffic, site-generated traffic and projected traffic for the design year of the proposed regional mall on the Subject Property.

X. PROFESSIONAL STAFF RECOMMENDATION:

The Planning Staff recommended denial of the request to rezone 61.4 acres from RS-1 to C-4 on October 21st, 1988, for the reasons outlined in the staff report.

XI. PLANNING COMMISSION RECOMMENDATION:

The Lawrence-Douglas County Metropolitan Planning Commission at its meeting on the 21st of March, 1988, recommended on a unanimous vote denial of the request to rezone 61.4 acres from RS-1 to C-4 based upon the above findings of fact.

XII. CITY COMMISSION ACTION:

The Lawrence City Commission at their meeting on April 12th, 1988, approved the amended findings of fact on a unanimous 5-0 vote.

The Lawrence City Commission at their meeting on April 12th, 1988, on a unanimous 5-0 vote denied the rezoning request for Z-7-11-87 61.4 acres from RS-1 to C-4 located in the SE corner of So. Iowa and Armstrong Road based on their adopted findings of fact.