



PLANNING COMMISSION MEETING
January 23, 2019
Meeting Action Summary

January 23, 2019 – 6:30 p.m.

Commissioners present: Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, Willey

Staff present: McCullough, Crick, Day, Ewert, Kobe, Larkin, M. Miller, Mortensen, Weik

GENERAL BUSINESS

PLANNING COMMISSION ACTION SUMMARY

No minutes to receive.

COMMITTEE REPORTS

No reports to receive from any committees that met over the past month.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- Ex parte:
Commissioner Willey said she received an email from Nick Kuzmyak regarding the SmartCode agenda items 13A-13D.
- No abstentions.

GENERAL PUBLIC COMMENT

No general public comment.

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**ITEM NO. 1 PRELIMINARY PLAT FOR LEGEND TRAIL ADDITION NO. 3; NW OF
GEORGE WILLIAMS WAY & LAKE ESTATES DR (MKM)**

PP-18-00574: Consider a Preliminary Plat for Legend Trail Addition No. 3, a one-lot residential subdivision of approximately 3.47 acres located NW of George Williams Way and Lake Estates Drive. Submitted by Castle Rock LC and BG Consultants, Inc. on behalf of Jell Inc, property owner of record.

STAFF PRESENTATION

Mary Miller presented the item.

APPLICANT PRESENTATION

David Hamby, BG Consultants, said he was working with the school district to vacate the easement.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

No commission discussion.

ACTION TAKEN

Motioned by Commissioner Butler, seconded by Commissioner Carttar, to approve the Preliminary Plat, PP-18-00574, for Legend Trail Addition No. 3.

Unanimously approved 9-0, with Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor.

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**ITEM NO. 2 PRELIMINARY PLAT FOR NORTH LAWRENCE ADDITION NO. 20; 729
ELM ST (KCK)**

PP-18-00568: Consider a Preliminary Plat for North Lawrence Addition No. 20, two lots, located at 729 Elm St. Submitted by Grob Engineering on behalf of Dorothy Miltner, property owner of record.

STAFF PRESENTATION

Kyle Kobe presented the item.

APPLICANT PRESENTATION

Dean Grob, Grob Engineering Services, was present for questions.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

No commission discussion.

ACTION TAKEN

Motioned by Commissioner Sinclair, seconded by Commissioner Weaver, to approve the Preliminary Plat, PP-18-00568, for North Lawrence Addition No. 20.

Unanimously approved 9-0 with Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor.

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**ITEM NO. 3 PRELIMINARY PLAT FOR OREAD WEST NO. 18; NW CORNER W 18TH ST
& RESEARCH PARK DR (BJP)**

PP-18-00569: Consider a Preliminary Plat for Oread West No. 18, one lot, located at the northwest corner of W. 18th Street and Research Park Drive (Plate No. U15768A04). Submitted by Grob Engineering on behalf of 1217Y LLC, property owner of record.

STAFF PRESENTATION

Becky Pepper presented the item.

APPLICANT PRESENTATION

Dean Grob, Grob Engineering Services, was present for questions.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

No commission discussion.

ACTION TAKEN

Motioned by Commissioner Struckhoff, seconded by Commissioner Paden, to approve the Preliminary Plat, PP-18-00569, for Oread West No. 18.

Unanimously approved 9-0 with Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor.

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ITEM NO. 4 VARIANCE FOR W. MORRIS ADDITION NO. 1; 1801 W 23RD ST & 1807 W 23RD ST (SLD)

MS-18-00567: Consider a variance for reduction in right-of-way width from 150' to 100' for W. 23rd Street, associated with a Minor Subdivision for W. Morris Addition No. 1 (Starbucks), located at 1801 W 23rd St and 1807 W 23rd St and the tract of land known as Ridge Court. Submitted by Landplan Engineering for Team Players LLC and Emira-One LLC, property owners of record.

STAFF PRESENTATION

Sandra Day presented the item.

APPLICANT PRESENTATION

CL Maurer, Landplan Engineering, was present for questions.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

Commissioner Sinclair asked about the letter from First Med regarding Ridge Court being closed.

Day said the question of Ridge Court was not an item in front of Planning Commission this evening.

Maurer said Ridge Court was an access way owned by the bank and the bank was in charge of the maintenance. He said the bank and two other property owners have come to an agreement.

McCullough said the letter was a moot issue and the issues had been resolved.

ACTION TAKEN

Motioned by Commissioner Struckhoff, seconded by Commissioner Sinclair, to approve the variance requested for a minor subdivision, MS-18-00567, to reducing the right-of-way, required per Section 20-810(a)(5) for a principal arterial street, from 150 feet to 100 feet in accordance with the provisions for 1801 and 1807 W. 23rd Street.

Unanimously approved 9-0, with Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor.

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**ITEM NO. 5 VARIANCE FOR UNIVERSITY FIELD SUBDIVISION NO. 6; 1739 W 19TH
TERR (LRM)**

MS-18-00562: Consider a variance to reduce lot width from 60' to 50', associated with a Minor Subdivision for University Field Subdivision No. 6, located at 1739 W 19th Terr. Submitted by Grob Engineering Services LLC for Mountain Top LLC, property owner of record.

STAFF PRESENTATION

Luke Mortensen presented the item.

APPLICANT PRESENTATION

Dean Grob, Grob Engineering Services, was present for questions. He showed a drawing of the placement of the house.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

Commissioner Willey said she was in favor of infill.

Mortensen said he received several calls from neighbors who were concerned about the construction process but had no concerns about the variance.

ACTION TAKEN

Motioned by Commissioner Struckhoff, seconded by Commissioner Sands, to approve the variance requested for a minor subdivision, MS-18-00562, to reduce the lot width, required per Section 20-810(a)(2)(1) for Lot 3 University Field Subdivision No. 6, from 60 feet to 46 feet in accordance with the provisions per section 20-813(g) of the Land Development Code for property located at 1739 W. 19th Terrace.

Unanimously approved 9-0, with Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor.

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ITEM NO. 6 VARIANCE FOR PARKWAY PLAZA; 3512 CLINTON PKWY (LRM)

FDP-18-00575: Consider a variance to reduce a peripheral setback from 30' to 20' for the construction of 240 sq. ft. freezer addition to the existing structure, associated with a revised Final Development Plan for Parkway Plaza PCD, 23rd Street Brewery, located at 3512 Clinton Pkwy. Submitted by Tim A. Herndon Planning & Design on behalf of Llewellyn Land, LLC, property owner of record.

STAFF PRESENTATION

Luke Mortensen presented the item.

APPLICANT PRESENTATION

Tim Herndon, Tim A. Herndon Planning & Design, agreed with the staff report and was present for questions.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

Commissioner Willey asked if the setback pertained to the building envelope but not the parking or trash enclosure.

Mortensen said yes. He showed the site on the overhead. He said screening would be subject to the community design guidelines.

Commissioner Sinclair asked how many feet from the multi-use pathway.

Commissioner Willey said it was a pretty minor ask to allow a local business to maintain what they were already doing in the community.

Mortensen said there was roughly 30' between the addition and the walkway.

Commissioner Sands said he was in support of it.

ACTION TAKEN

Motioned by Commissioner Sands, seconded by Commissioner Paden, to approve the variance requested for a final development plan, FDP-18-00575, to reduce the required peripheral setback, per Section 20-1008(d)(2) of the 1966 Zoning Code, for a planned commercial development, from 30 feet to 20 feet for property located at 3512 Clinton Parkway.

Unanimously approved 9-0, with Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor.

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**ITEM NO. 7 CONDITIONAL USE PERMIT FOR BIG SPRINGS QUARRY; 2 N 1700 RD
(MKM)**

CUP-18-00570: Consider an amended Conditional Use Permit to reduce the amount of the performance/reclamation bond required for Big Springs Quarry, located at 2 N 1700 Rd, Lecompton. Submitted by Submitted by Mid-States Ventures LLC, for Mid-States Ventures LLC, Nancy J Hughes, James R Meek, Thomas R Meek, and Bonnie M Nichols, Trustee, property owners of record.

STAFF PRESENTATION

Mary Miller presented the item.

APPLICANT PRESENTATION

Rich Eckert, Mid-States Ventures, talked about actual reclamation costs.

Cole Anderson was present for questions.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

Commissioner Willey asked the applicant what year Mid-States took over the Big Springs Quarry from Martin Marietta.

Eckhart said 2007.

Commissioner Willey asked if the original high insurance bond was due to the mess that Martin Marietta left behind when they finished quarrying at the site.

Miller said the bond was set in 1990 with the original application. She said the consultant submitted a letter with simple math stating how many acres and how much it would cost.

Commissioner Sinclair asked the applicant to monetize the difference in cost to Big Springs between \$10,000 an acre and \$3,000 an acre.

Eckert said a ballpark figure would be \$10,000 for the \$10,000.

Commissioner Sinclair said the bond comes into play if Big Springs goes under and another company needs to take over to clean up the site.

Eckert said for \$3,000 Hamm could do it.

Commissioner Sands asked if Shawnee County was consulted.

Miller said she did not hear back from Shawnee County. She said other counties she talked to were not able to find why the performance bonds were set where they were because they were created in the past.

Commissioner Sands inquired about the difference for operation in Shawnee County versus Douglas County.

Eckert said it was a different operation. He said the amount was set before his time by Shawnee County. He said Big Springs was not quarrying on the Shawnee County side and currently paying zero.

Commissioner Willey said she was bothered by the deep discrepancy between other quarry operations. She wondered where the \$10,000 number came from.

Miller said in 2008 an application was submitted to revise the Conditional Use Permit and the performance bond was requested to be reduced. She said staff asked for the cost of reclamation and the applicant provided three bids which came out to a little over \$10,000 per acre.

Commissioner Willey said the issue of the bonding wasn't so much what it would cost the current business to reclaim but if they were not available how to charge someone to do it afterward. She said she was tempted to go with the \$3,000 because of the discrepancy in the county but it was possible the others could be wrong.

Commissioner Sands said the county engineer based the estimate on a 10 year old set of three bids.

Commissioner Carpenter said prices only go up, not down. He said the list looked like a lot of old sweetheart deals before reclamation was required. He was unsure when everything changed to require reclamation. He said if anything, the rest of the county was too low. He said \$40,000 was probably too high but he was hesitant to deviate from that. He felt the bonding took into account some of the unpredictable and unknowns.

Commissioner Sands asked what a new quarry operation would be bonded at per acre.

Miller said the site consultant would estimate it based on the site specifics.

McCullough said Planning Commission should think about the intent of the bond, to provide enough funding for the worst-case scenario. He said the taxpayer would be the next source of funding if not through the bond.

Commissioner Butler said it was disproportionate to have such a high bond. She said she did not like focusing on numbers used in 2008 for present day. She would like to see bids with today's numbers.

Commissioner Sands asked if this item would go to County Commission.

McCullough said yes.

Commissioner Willey asked if the applicant was comfortable providing updated bids.

Eckert said he would rather the item be deferred than take the staff recommendation of \$10,000.

Commissioner Weaver asked about continued maintenance.

Eckert said it would depend on the property. He said if the property belongs to a land owner it would be their responsibility to maintain.

Commissioner Struckhoff said he did not have an issue with the county engineer recommendation of \$10,000. He expressed concern about the competitiveness and discrepancy in the bond requirements. He said he wants to be sure the county is financially covered for worst-case scenarios.

ACTION TAKEN

Motioned by Commissioner Butler, seconded by Commissioner Carpenter, to move to defer the Conditional Use Permit to allow the applicant time to seek current bids on reclaiming the quarry.

Commissioner Paden said she was comfortable with \$10,000 and felt it was better to be safe. She said state wide it seemed low. She asked about a timeframe for fees to increase.

Miller said the State was potentially looking to increase fees to \$2,500 per acre but that she did not know a timeframe of when that might happen.

Eckert said no bill had been filed in the House or the Senate.

Commissioner Sinclair said the State Statute would be a minimum. He said he was open to deferring the item even though he would rather make a decision.

Motion carried 8-1, with Commissioner Paden voting against the motion. Commissioners Butler, Carpenter, Carttar, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor of deferral.

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ITEM NO. 8 SPECIAL USE PERMIT FOR THE DARE CENTER; 944 KENTUCKY ST (MKM)

SUP-18-00564: Consider a Special Use Permit for a *Temporary Shelter* for The DARE Center, located at 944 Kentucky St. Submitted by the Coalition for Homeless Concerns Inc on behalf of James Dunn, property owner of record.

STAFF PRESENTATION

Mary Miller presented the item.

APPLICANT PRESENTATION

Loring Henderson, The DARE (Drop In And Rest) Center, said the facility would be open 2:30pm-6:30pm and serve the homeless population downtown. He said LINK closes at 2:30pm. He said many of the people downtown were not staying at the homeless shelter. He said there would be no programs or case managers but they would be a referral center. He said Ruth Stromberg, Freedom House, would provide some faith based activities at the center. He said his number would be available for the neighborhood to call him at any time regarding concerns.

Ruth Stromberg, Freedom House, expressed her passion for helping the homeless population.

PUBLIC COMMENT

Phil Hemphill, 937 Kentucky St, expressed concern about security for the neighborhood. He said the shelter would not take responsibility for their clients once they left the site. He said the homeless urinate, defecate, damage property, and trespass in the neighborhood. He said The Lawrence Community Shelter was supposed to be a one stop for all services. He said the community recreation center and library provide space for homeless to congregate. He asked Planning Commission to deny the Special Use Permit.

Guy Neighbors supported the Special Use Permit.

Lois Schneider, 1015 Kentucky St, said she had no issues from the nearby LINK. She said she understood the need for a drop in center but it needed to be strict. She asked that it only be granted for one year. She felt it needed to be monitored properly. She said she had to build a privacy fence to keep people from cutting through her property. She said she was willing to accept the drop in center if it was run correctly. She expected the City to make sure it was well taken care of and funded properly.

Jenny Robinson said the drop in center would be assisting those not served by the Lawrence Community Shelter. She spoke in favor of the Special Use Permit.

Mike Blumenthal, 1001 Kentucky St, expressed opposition to the Special Use Permit. He said he was concerned for his teenage daughter having to walk past the location. He did not feel it made common sense to have 20-50 homeless people congregating in his front yard. He said there was no plan for how the homeless would leave the site. He felt the applicant was good but the location was in the wrong place. He asked Planning Commission to deny the Special Use Permit, but if approved only permitted for one year. He said the neighbors would protest the Special Use Permit.

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Paul DeGeorge, business owner of Wonder Fair at 841 Massachusetts St, voiced his support for the project. He said he was satisfied by the business plan put forward. He said the homeless were members of the community and had the right to exist and be present in public spaces.

Phil Dwyer, business owner of D & D Tire at 1000 Vermont St, asked Planning Commission to deny the Special Use Permit.

APPLICANT CLOSING COMMENTS

Henderson said it was a common sense proposal because Lawrence is a community and downtown is a place where homeless people go. He took exception to the comment about homeless people bothering or being a danger to teenage girls.

Stromberg felt they had a responsibility to break the cycle of poverty and this was the opportunity to do so.

COMMISSION DISCUSSION

Commissioner Carttar asked the applicant about rules for behavior. He wondered what the consequences would be for clients who fail to follow the rules.

Henderson said initially something would be said to the client and then if the behavior continued they would be told they could not come back for a period of time, depending on the severity of the issue.

Commissioner Willey said social services was an allowed use in the zoning district. She said it specifically has clientele of people who have no nighttime home. She asked if that was a legal form of discrimination in the Code.

McCullough said approximately 10 years ago staff did a lot of work in the Code regarding homeless issues. He said temporary shelter was defined in a very specific way in the Code and social service agency was also defined in a very specific way. He said this fit the definition of temporary shelter which required a Special Use Permit. He said as defined it did not have to be overnight. He said the issue of serving a population that did not have a regular nighttime residence was within that definition.

Larkin said typically those types of laws apply toward group homes within residential areas. He said that was typically where case law was from.

McCullough said they could be accessory to some religious institutions up to a certain threshold. He said they were not permitted by right in any zoning district. He said it was built to support the model of Family Promise at the time.

Commissioner Carpenter asked the applicant about training for volunteers.

Henderson said he was in the process of writing a training manual. He said the volunteers would receive regular training in such things as suicide prevention, violence, and opioid addiction.

Commissioner Carpenter asked how many volunteers would be part of the center.

Henderson said approximately 28 people a week.

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Commissioner Carpenter asked what would be considered loitering on the premises.

Henderson said clients could hang out on the back side of the building and not seen from 10th & Kentucky Streets. He said loitering would be considered hanging out on the Kentucky side visible to the neighbors. He said there would be some coming and going on the 10th Street side from people coming from LINK. He said clients hanging out on the front porch or smoking on the front porch would not be wanted.

Commissioner Carpenter said the last City bus leaves about an hour after the DARE center would close.

Henderson said clients currently hang out some place now. He said it was the best he could do. He said if there was a severe blizzard he would see where clients were going and try to get them there.

Commissioner Butler said she was pleased to see this and felt it was needed in the community. She said she struggled with the issue of neighbors having the "not in our backyard mentality." She agreed that the suggestion of individuals/teenage girls not being able to walk through the area without harm coming to them was not appropriate. She supported the Special Use Permit. She said part of the responsibility of law enforcement was to make sure people were safe and not doing illegal things they should not be doing in public spaces. She felt the facility would benefit the community.

Sands asked staff about the burden to the applicant for only a one year permit.

Miller said the application process would take about 3 months and cost \$725.

Sands said he was in favor. He said four hours a day was a reasonable amount of time. He said he was concerned about only having two volunteers there at one time. He said this was a common sense approach to providing a limited amount of services to a part of the community that struggles to find services elsewhere. He said it was part of a bigger picture of serving the community.

Commissioner Sinclair asked staff to explain the process of enforcing a Special Use Permit if granted 3 years and things went south.

McCullough said the management plan and conditions lay out the plan for the Special Use Permit. He said if the center was operating outside of the hours of operation, for example, staff would investigate and seek compliance, and/or bring the Special Use Permit to the Commission requesting revocation of the use, if necessary. He said another option for compliance was for the applicant to seek revising the conditions. He said immediate issues of life/safety would involve police and fire.

Commissioner Sinclair asked if there was a congregation area in the back when the previous drop-in shelter was there.

Henderson said there was. He said there was a large carport awning but it was removed when the Lawrence Community Shelter moved. He said the back had always been used as a congregation area.

Commissioner Willey asked the applicant he was the operator of the previous drop in center from 2001-2003.

Henderson said no, Tammy Clark was the Director of the Community Drop In Center which occupied half of the building. He said the Lawrence Open Shelter moved into the other half of the building. He said the two organizations merged and he became the Director of the Lawrence Community Shelter.

Commissioner Willey wondered if there was something to tell the neighbors about it being a better situation than the previous drop in center.

Henderson said the previous drop in center was a different entity than the Lawrence Community Shelter. He said neither organization had a management plan when they first started. He said the management plan came after the two organizations combined.

Commissioner Willey said this use filled a gap and need in the community. She said the four hour gap after LINK closes fit well with this. She said this was the first time she had seen a protest petition in the works prior to City Commission.

McCullough said there was a 14 day protest petition period and that staff would determine if it was valid. He said if valid there needed to be 4 out of 5 super majority vote by City Commission.

Commissioner Willey said one year may not be enough time to gather data if things are working. She said maybe two years duration would be better.

Commissioner Paden said she was not opposed to the Special Use Permit but parents do worry about children. She said dismissing people's concerns was not the way to go when there was a population with trauma and trouble they were trying to work through. She said it was important for neighbors to feel safe in their neighborhood. She said she would like to see a shorter time limit on the Special Use Permit. She said the community needed to provide resources for vulnerable populations.

Commissioner Willey said part of the management plan could include monitoring outside the building, at the street level, too.

Commissioner Paden said she would like to see programs that give people purpose.

Commissioner Carpenter said in working with members of the homeless population sometimes behaviors can appear threatening. He said they were members of the community. He said the proposal was filling a gap and he liked the idea of a drop in shelter. He said there would be issues and that was why it was a Special Use Permit. He said usually Special Use Permits had a timeframe of five years so he was comfortable with three years to see how it works. He said he would hope the neighbors would get to know the staff and volunteers and be involved. He said the drop in shelter worked at the site before.

Commissioner Struckhoff said in looking at the original Special Use Permit he did not see an occupancy limit. He said the occupancy limit was a strong restriction and he liked it. He felt the limited hours was appropriate. He said he was comfortable with the three year limit but would support a shorter duration.

ACTION TAKEN

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Motioned by Commissioner Paden, seconded by Commissioner Carpenter, to approve the Special Use Permit, SUP-18-00564, for the DARE drop-in center, and forwarding the item to the City Commission with a recommendation of approval subject to the conditions in the staff report.

Commissioner Paden asked about the management plan where it said there would be no computers on site.

Henderson said the library had computers. He said he met with library staff and they were comfortable with that.

Commissioner Sands said he would vote in favor although he liked the idea of reducing the time limit of the Special Use Permit.

Motion amended by Commissioner Paden, seconded by Commissioner Sands, to approve the Special Use Permit, SUP-18-00564, for the DARE drop-in center, and forwarding the item to the City Commission with a recommendation of approval subject to the following conditions (deleted text is ~~struckthrough~~ and new text is shown in **bold**):

1. Provision of an executed site plan performance agreement prior to the release of the approved plans for building permit.
2. The drop-in center, a *Temporary Shelter* use, is subject to the provisions laid out in the Operation and Management Plan and attachments except as enhanced or modified by the following:
 - a. The maximum occupancy of the shelter is limited to no more than twenty (20) homeless guests and a total of thirty (30) total individuals including volunteers, counselors, interns, etc.
 - b. A minimum of two staff/volunteers shall be present on the site during operational hours.
 - c. Hours of operation are limited to 2:30 PM to 6:30 PM seven days per week.
 - d. No loitering or outdoor use is permitted on the property outside of the operating hours.
3. ~~The active property maintenance code violation on the property must be resolved prior to the release of the approved plans for building permit.~~
4. The special use permit shall expire **two** ~~three~~ years from the date of publication of the approving ordinance in the newspaper.
5. The Center will provide an annual report to the City Commission by March 1 each year which shall include the following information about the prior year's activity at the shelter:
 - a. The number of volunteers trained
 - b. The number of guests served
 - c. The date and outcome of the annual public meeting.

Commissioner Carttar said he would have supported the three years because the conditions were adequate. He said he would support the two year limit.

Commissioner Sinclair said City Commission was the final decision maker. He said he would vote against the motion because he did not think further time limits needed to be made.

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Approved 5-4, with Commissioners Butler, Carpenter, Sinclair, and Weaver voting against the motion. Commissioners Carttar, Paden, Sands, Struckhoff, and Willey voted in favor of the motion.

Commissioners Butler, Carpenter, and Sinclair said they were not against the Special Use Permit, just the reduced time limit.

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**ITEM NO. 9 SPECIAL USE PERMIT FOR SHORT TERM RENTAL; 508 FLORIDA ST
(BJP)**

SUP-18-00556: Consider a Special Use Permit for a non-owner occupied short-term rental located at 508 Florida St in RM24 (Multi-Dwelling Residential) Zoning District. Submitted by Carrie Jackson on behalf of Jose Velasco, property owner of record.

STAFF PRESENTATION

Becky Pepper presented the item.

APPLICANT PRESENTATION

Guy Neighbors said it seemed dangerous to rent rooms to different people. He felt the number of cars should be more of an issue than the number of people staying in the building. He said he had not seen an instance where people were using a short-term rental as a party houses. He said guests and hosts were rated through sites such as Airbnb.

Carrie Jackson asked if the occupancy number included children or just adults. She said the property was kept in beautiful condition in order to get good ratings. She said bad ratings would mean they would receive no guests.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

Pepper said the occupancy limit was four unrelated people in RM24 zoning district. She said a family of six, for example, did not have to meet that unrelated occupancy limit.

McCullough said minors under the age of 18 did not count toward the occupancy. He said occupancy limits existed for long-term rentals and not created for the short-term rental use.

Commissioner Butler asked for the definition of family.

McCullough said essentially related by blood, marriage, adoption, or legal relation.

Commissioner Willey said Planning Commission had a robust discussion on the topic in 2018. She said she was in favor of the special use permit.

ACTION TAKEN

Motioned by Commissioner Carttar, seconded by Commissioner Sands, to approve a Special Use Permit, SUP-18-00556, for a non-owner occupied *Short Term Rental* use located at 508 Florida Street and forwarding the request to the City Commission with a recommendation of approval, subject to the following conditions:

1. Per Section 20-554(3)(i) of the Land Development Code, all properties containing a *Short-Term Rental* Use shall comply with the occupancy limits of the zoning district in which the property is located. The subject property is zoned RM24 (Multi-Dwelling Residential) District, which allows a maximum number of 4 unrelated occupants per dwelling unit.

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2. Per Section 20-901 of the Land Development Code, the maximum number of available guest rooms associated with the non-owner occupied *Short-Term Rental* use may not exceed the number of off-street vehicle parking spaces available on the property. The off-street parking available for the subject property is 2 spaces; therefore, the maximum number of guest rooms that may be rented on a short-term basis is 2.
3. Per Section 20-554(3)(iii), the dwelling unit and site shall remain residential in appearance and characteristics. Internal or external changes that will make the dwelling unit and site appear less residential in character or function are prohibited. Examples of such prohibited alterations include, but are not limited to: construction of parking lots, paving of required setbacks, or the addition of commercial-like exterior lighting.
4. Per Section 6-13A04(a) of the City Code, a short-term rental license is required to be obtained annually from the Planning and Development Services Department. If the short-term rental license lapses for a period more than 12 consecutive months, the special use permit will be assumed to be abandoned. Reinstatement of the use will require review and approval of a new special use permit application.

Unanimously approved 9-0. Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voted in favor.

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**ITEM NO. 10 SPECIAL USE PERMIT FOR SHORT TERM RENTAL; 815 ALABAMA ST
(KEW)**

SUP-18-00563: Consider a Special Use Permit for a non-owner occupied short-term rental located at 815 Alabama St in RS5 (Single-Dwelling Residential) Zoning District. Submitted by Angela Nascimento on behalf of William Price, property owner of record.

STAFF PRESENTATION

Katherine Weik presented the item.

APPLICANT PRESENTATION

Angela Nascimento said she had made many improvements to the property. She wondered if the fee would be annual.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

Weik said the annual short-term rental license registration fee was approximately \$67.00. She stated the Special Use Permit application fee was a one-time fee of \$725.00. She said to maintain the Special Use Permit the license registration would need to be renewed annually or it would lapse.

Commissioner Struckhoff said the license period was one year. He wondered how the lapse would occur after 12 months.

Weik said staff was trying to find a threshold where it would be considered abandoned or no longer in compliance. She said it would be assumed that in that period after renewal the rental registration staff would have contacted the property owner. After a certain number of contact attempts it would become apparent it would not be renewed.

McCullough said there was a provision in the Code that defined abandonment of a non-conforming use as a 12 month period. He said an owner could not legally operate without a license. He said the 12 month period of abandonment had more to do with the Special Use Permit and not the license itself.

Commissioner Willey asked what the fee was for the owner occupied short-term rental.

Weik said \$67 annual license fee.

Commissioner Paden asked the applicant if she paid for repairs to the property but wasn't the owner.

Nascimento said yes.

ACTION TAKEN

Motioned by Commissioner Struckhoff, seconded by Commissioner Paden, to approve a Special Use Permit, SUP-18-00563, for a non-owner occupied *Short Term Rental* use located at 815 Alabama Street and forwarding the request to the City Commission with a recommendation of approval, subject to the following conditions:

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1. Per Section 20-554(3)(i) of the Land Development Code, all properties containing a *Short-Term Rental* Use shall comply with the occupancy limits of the zoning district in which the property is located. The subject property is zoned RS5 (Single-Dwelling Residential) District. The zoning district in this area is single-family residential; therefore, a maximum of 3 unrelated occupants are permitted per dwelling unit.
2. Per Section 20-601 of the Land Development Code, the maximum number of available guest rooms associated with the non-owner occupied *Short-Term Rental* use may not exceed the number of off-street vehicle parking spaces available on the property. The off-street parking available for the subject property is four spaces; therefore, the maximum number of guest rooms that may be rented on a short-term basis is limited to four.
3. Per Section 20-554(3)(iii), the dwelling unit and site shall remain residential in appearance and characteristics. Internal or external changes that will make the dwelling unit and site appear less residential in character or function are prohibited. Examples of such prohibited alterations include, but are not limited to: construction of parking lots, paving of required setbacks, or the addition of commercial-like exterior lighting.
4. Per Section 6-13A04(a) of the City Code, a short-term rental license is required to be obtained annually from the Planning and Development Services Department. If the short-term rental license lapses for a period more than 12 consecutive months, the special use permit will be assumed to be abandoned. Reinstatement of the use will require review and approval of a new special use application.

Unanimously approved 9-0. Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voted in favor.

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ITEM NO. 11 SPECIAL USE PERMIT FOR SHORT TERM RENTAL; 888 NEW HAMPSHIRE ST (KEW)

SUP-18-00565: Consider a Special Use Permit for non-owner occupied short-term rentals located at 888 New Hampshire St, Units 208, 209, & 216 in CD (Downtown Commercial) Zoning District. Submitted by First Management Inc on behalf of 100 E 9th LLC, property owner of record.

STAFF PRESENTATION

Katherine Weik presented the item.

APPLICANT PRESENTATION

Amanda Habiger, First Management, was present for questions.

PUBLIC COMMENT

Courtney Shipley said there was a hotel south of the property and wondered about the difference in parking requirements.

Weik said in the CD zoning district there was an exemption for parking. She said although parking was not required the hotel did provide parking.

COMMISSION DISCUSSION

Commissioner Sands said this was one of the cases that was in a more dense and multi-family area. He felt this was one of the dangers of short-term rentals and said there was potential for people to snatch up property and use it as investment property. He felt it was exacerbating housing issues.

Commissioner Paden asked if the applicant would pay the fee three times.

Weik said the applicant could register the three units under one fee because all three units were in the same structure.

McCullough said it would require three separate rental licenses but that the Special Use Permit would go with the property.

Commissioner Willey said she was comfortable with only three units and would support the Special Use Permit. She said they were still feeling their way with the new regulations.

Commissioner Sands wondered if this was the beginning of a wave.

Commissioner Paden said this was very much a commercial venture.

McCullough said the industry has evolved quickly. He said some multi-dwelling management companies were trying to churn some lease profit from un-occupied units.

Commissioner Sands wondered about a complaint in one unit applying to all units.

McCullough said it would be possible. He said it would depend on the nature of the complaint. He said revocation was a process and not automatic.

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Commissioner Willey asked about units being used for short-term rental other than the ones approved.

McCullough said it could trigger a look into whether the applicant would need to amend the Special Use Permit to capture more units.

ACTION TAKEN

Motioned by Commissioner Sinclair, seconded by Commissioner Weaver, to approve a Special Use Permit, SUP-18-00565, for a non-owner occupied *Short Term Rental* use located at 888 New Hampshire Street and forwarding the request to the City Commission with a recommendation of approval, subject to the following conditions:

1. Per Section 20-554(3)(i) of the Land Development Code, all properties containing a *Short-Term Rental* Use shall comply with the occupancy limits of the zoning district in which the property is located. The subject property is zoned CD-UC (Downtown Commercial with Conservation Overlay) District. The approved site plan designated this structure for multi-dwelling apartments; therefore, a maximum of 4 unrelated occupants are permitted per dwelling unit.
2. Per Section 20-601 of the Land Development Code, the maximum number of available guest rooms associated with the *Non-owner Short-Term Rental* use may not exceed the number of off-street vehicle parking spaces available on the property. Off-street parking is not required in the CD district per Section 20-901(f); therefore, the maximum number of guest rooms that may be rented on a short-term basis is not limited by parking.
3. Per Section 20-554(3)(iii), the dwelling unit and site shall remain residential in appearance and characteristics. Internal or external changes that will make the dwelling unit and site appear less residential in character or function are prohibited. Examples of such prohibited alterations include, but are not limited to: construction of parking lots, paving of required setbacks, or the addition of commercial-like exterior lighting.
4. Per Section 6-13A04(a) of the City Code, a short-term rental license is required to be obtained annually from the Planning and Development Services Department. If the short-term rental license lapses for a period more than 12 consecutive months, the special use permit will be assumed to be abandoned. Reinstatement of the use will require review and approval of a new special use application.

Commissioner Carttar said this gave him pause and he would vote against it.

Commissioner Carpenter felt this deserved more discussion and more tweaks so he would vote against the motion.

Commissioner Sands said there was a fine line between property rights and the rules established.

Commissioner Willey said she would vote in favor in order to have people start to fall into compliance and evaluate the rules if needed.

Motion carried 6-3, with Commissioners Carpenter, Carttar, and Sands voting against the motion. Commissioners Butler, Paden, Sinclair, Struckhoff, Weaver, and Willey voted in favor.

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**ITEM NO. 12 SPECIAL USE PERMIT FOR SHORT TERM RENTAL; 921 HOLIDAY DR
(MKM)**

SUP-18-00572: Consider a Special Use Permit for a non-owner occupied short-term rental located at 921 Holiday Dr in PUD (Planned Unit Development) Zoning District. Submitted by Bingham Investment LLC, property owner of record.

STAFF PRESENTATION

Mary Miller presented the item.

APPLICANT PRESENTATION

Ron and Carlie Bingham said they purchased the property six months ago as an investment property and have greatly improved the house.

PUBLIC COMMENT

Sheri Ellenbecker expressed concern for the safety of children walking in the neighborhood without sidewalks and increased traffic. She said she did not have an issue with owner occupied short-term rentals but saw non-owner occupied short-term rentals as hotels. She wondered who would be enforcing whether the renters were related. She said she expected to have neighbors, not a hotel with a lockbox.

APPLICANT CLOSING COMMENTS

Ron Bingham said he was only going to offer the house to a single person or single family and not rent to a different guest in each room. He said he had rented to two guests already and had no issues. He understood the concerns expressed. He said he owned other rental properties and had been thanked by neighbors for increasing the property values.

Carlie Bingham said she was very particular about who rented the house and only rented to those that have rented previously on Airbnb. She said she is available to guests but also has a local host in Lawrence that would check on the house.

COMMISSION DISCUSSION

Commissioner Struckhoff said Holiday Drive was a very nice street and this was one of the nicer properties on the street.

Willey said the concern was the property being a four unit hotel.

Bingham said the house had been rented twice and one of the families used all five bedrooms. He said parking was available in the driveway for six vehicles but it would overlap the right-of-way.

Miller said all off-street parking had to be on the property and off the right-of-way.

McCullough said the code requirement was one parking space per guest room. He said the five bedrooms was not the issue. The issues was that without seeking a variance they could not get to the five rooms with the parking on-site with two parking spots in the garage and two in the driveway.

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Commissioner Carttar asked about the potential for a variance since no pedestrian traffic was being blocked with no sidewalk.

McCullough said a variance would go to the Board of Zoning Appeals.

Commissioner Willey said the intention of the parking was to try and balance additional traffic and people. She said the parking restrictions meant no more traffic in the neighborhood than if it were a long-term rental, just not the same people from week to week. She stated whether that was the right balance they were still figuring it out.

McCullough said the parking was a way to limit the scope.

Ellenbecker wondered how relatives would be verified.

McCullough said in the licensing portion of short-term rental is an acknowledgement signed form that the applicant has read and received the occupancy limits. He said it is a complaint based enforcement mechanism. He said enforcing occupancy was a challenge for staff. He stated it was enough of an issue for a proprietor that they were going to want to stay within the limits. He said if needed, staff would gather evidence and pursue enforcement similar to long-term rentals. He said it would take a little bit of observation by the neighborhood.

Commissioner Willey asked the applicant if he would be willing to share his contact information with neighbors.

Bingham said yes, the adjacent neighbors had his contact information.

Commissioner Carttar said the idea behind the language in the code was to give structure to the relationship between landlords and renters and provide enforcement structure. He said there were some areas that Code & Enforcement could not guarantee everyone was happy. He said the Bingham's cultivating a relationship with neighbors goes a long way. He said he would vote in favor of the Special Use Permit.

ACTION TAKEN

Motioned by Commissioner Butler, seconded by Commissioner Carttar, to approve a Special Use Permit, SUP-18-00572, for a non-owner occupied *Short Term Rental* use located at 921 Holiday Drive and forwarding the request to the City Commission with a recommendation of approval, subject to the following conditions:

1. Per Section 20-554(3)(i) of the Land Development Code, all properties containing a *Short-Term Rental* Use shall comply with the occupancy limits of the zoning district in which the property is located. The subject property is zoned PUD-[Holiday Hills No. 7] (Planned Unit Development) District. This was an overlay district which relied on the base underlying district, in this case RS-2 (Single Family Residential) District, and the approved development plan for the permitted uses and density. The approved plan designated this area for single-family residential uses; therefore, a maximum of 3 unrelated occupants are permitted per dwelling unit.
2. Per Section 20-601 of the Land Development Code, the maximum number of available guest rooms associated with the *Non-owner Short-Term Rental* use may not exceed the

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number of off-street vehicle parking spaces available on the property. The off-street parking available for the subject property is four spaces; therefore, the maximum number of guest rooms that may be rented on a short-term basis is limited to four.

3. Per Section 20-554(3)(iii), the dwelling unit and site shall remain residential in appearance and characteristics. Internal or external changes that will make the dwelling unit and site appear less residential in character or function are prohibited. Examples of such prohibited alterations include, but are not limited to: construction of parking lots, paving of required setbacks, or the addition of commercial-like exterior lighting.
4. Per Section 6-13A04(a) of the City Code, a short-term rental license is required to be obtained annually from the Planning and Development Services Department. If the short-term rental license lapses for a period more than 12 consecutive months, the special use permit will be assumed to be abandoned. Reinstatement of the use will require review and approval of a new special use permit application.

Unanimously approved 9-0, with Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor.

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ITEM NO. 13A COMMUNITY INFILL PLAN; SMARTCODE (SLD)

Consider a request to establish a Community Infill Plan associated with a SmartCode application at 1401 W 23rd St & 1300 W 24th St. Submitted by Opus Development Company LLC, for George B. Leinmiller and Marlene J. Leinmiller, property owners of record.

ITEM NO. 13B REZONING 5.2 ACRES FROM CS & RM32 TO SMARTCODE T-5; 1401 W 23RD ST & 1300 W 24TH ST (SLD)

Z-18-00536: Consider a request to rezone approximately 5.2 acres from CS (Strip Commercial) District & RM32 (Multi-Dwelling Residential) District to SmartCode T-5, located at 1401 W 23rd St & 1300 W 24th St. Submitted by Opus Development Company LLC, for George B. Leinmiller and Marlene J. Leinmiller, property owners of record.

ITEM NO. 13C PRELIMINARY DEVELOPMENT PLAN; 1401 W 23RD ST & 1300 W 24TH ST (SLD)

PDP-18-00537: Consider a Preliminary Development Plan (Community Infill Plan - SmartCode) for 23rd Street Mixed Use development including 119 residential units for a density of 27 dwelling units per acre and 8,811 square feet of retail space on property located at 1401 W 23rd St & 1300 W 24th St. Submitted by Opus Development Company LLC, for George B. Leinmiller and Marlene J. Leinmiller, property owners of record.

ITEM NO. 13D VARIANCE FOR 23RD STREET; 1401 W 23RD ST & 1300 W 24TH ST (SLD)

MS-18-00535: Consider a variance for right-of-way width for 23rd Street, associated with a Minor Subdivision for 1401 W 23rd St & 1300 W 24th St. Submitted by Opus Development Company LLC, for George B. Leinmiller and Marlene J. Leinmiller, property owners of record.

STAFF PRESENTATION

Sandra Day presented Items 13A-13D together.

APPLICANT PRESENTATION

Rita D'Agostino, Opus Development, provided background information on the company.

Patrick Watkins said it was a unique property with unique design constraints. He said using the SmartCode was a great accomplishment. He felt the SmartCode was designed specifically for properties like this one. He said incentives were not being requested. He said the developer held several neighborhood meetings and solicited input from the surrounding neighborhoods. He said they only received positive feedback. He felt there was adequate parking at the site. He asked for action as soon as possible so development could stay on target.

PUBLIC COMMENT

Michael Almon, Sustainability Action Network, felt the project could be enhanced with bikeways. He showed pictures from the letter he submitted that was included in the packet. He expressed concern about the frontage on 23rd Street not being able to accommodate a 10' wide shared-use path. He said the existing 10' wide shared-use path on Naismith conflicted with two major driveways; Natural

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Grocers and the proposed site. He felt the driveways should be combined into one with a shared-use cross access agreement to minimize vehicle conflict.

Nick Kuzmyak, 417 Alabama, said he supported the project but wondered why mixed-use zoning was not considered. He felt it would do everything that the SmartCode could.

APPLICANT CLOSING COMMENTS

Watkins said he was present for questions that Planning Commission may have.

COMMISSION DISCUSSION

Commissioner Carpenter asked the applicant why they chose to use the SmartCode.

Watkins said he was not involved in the project early on and did not know the exact reason. He said the project implements the elements desired in the SmartCode, such as infill, multi-modal aspects, mixed-uses, and compact design. He said Opus Development had experience with transect zoning issues across the country and had success with them.

Ben Angelo, Opus Development, said the intent would be that 23rd Street would use the SmartCode over time. He said they felt the SmartCode was a better route to take than traditional codes.

McCullough said staff talked about it being a single project use of the SmartCode. He said one of the regulating plans was for 19th and Haskell. He said it was the smallest single parcel closest to this model in the Placemaking literature developed for Lawrence. He said staff looked at the Louisiana Purchase site, Checkers area, and Iowa area. He said this would be one project within that developing area. He said the real benefit in using the SmartCode versus the Development Code was the parking requirements. He said the SmartCode was attempting to address many of the values evolving in discussions with the comprehensive plan and parking requirements. He said staff thought it was a good time to see it in action. He said if they were going to talk about reducing parking requirements to encourage less vehicle travel miles it was time to put it to a test.

Day said the SmartCode had a couple of specific chapters that dealt with site specific developments. She said had the applicant chosen a property already approved Planning Commission would likely only be seeing the rezoning. She said there were many more steps to go through.

Commissioner Sands asked what protection the SmartCode provided in giving some guarantee of the final project.

Day said it gives the same kinds of assurances that a preliminary plan or neighborhood plan would.

McCullough said the applicant would have to comply with the community infill plan.

Commissioner Willey said the T-5 concept was a great fit. She said it was maybe not as progressive as a SmartCode project should be. She felt there was too much parking. She felt it was a great location because of the grocery stores, restaurants, the University of Kansas, bicycle paths, parks, etc. She felt the civic space was too small.

Commissioner Struckhoff agreed that there was too much parking. He said parking would not bleed into the neighborhoods at this location. He said people would adapt to less parking. He liked the

location to services and goods. He was excited about the project but felt there was room for tweaking it.

Commissioner Carttar thanked Michael Almon for his comments. He encouraged the applicant to take the multi-modal notion and run with it. He said the future of 23rd Street depended on increased pedestrian and bicycle traffic.

Commissioner Paden said the bicycle plan was identified as a future 10' shared use path.

Commissioner Willey said there was a need for civic space on that portion of the project on 23rd Street. She asked the applicant about the terrace labeled as civic space.

Gary Schuberth, Opus Development, said the terrace would support the retail tenants by being an open outdoor terrace and could be accessed from the public sidewalk. He said regarding the parking the project exceeded the parking minimum.

Commissioner Willey suggested bioswales to mitigate water runoff from the parking lot.

Schuberth said the project met all of the stormwater management requirements.

Judd Claussen, Phelps Engineering, said he would continue to look at options to enhance the bike oasis. He said the entire site drains toward the southeast corner.

ACTION TAKEN on 13D

Motioned by Commissioner Sands, seconded by Commissioner Carttar, to approve the variance requested for a minor subdivision, MS-18-00535, reducing the right-of-way required per Section 20-810(a)(5) for a principal arterial street, from 150 feet to 110 feet in accordance with the provisions for 1401 W. 23rd Street.

Approved 9-0, with Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor.

ACTION TAKEN on Item 13B

Motioned by Commissioner Carttar, seconded by Commissioner Sands, to approve the request to rezone (Z-18-00536) approximately 5.2 acres from CS (Strip Commercial) District & RM32 (Multi-Dwelling Residential) District to SmartCode T-5 (Urban Center Zone) based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Approved 9-0, with Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor.

ACTION TAKEN on Items 13A & 13C

Motioned by Commissioner Struckhoff, seconded by Commissioner Sands, to approve the Preliminary Development Plan (PDP-18-00537)/Infill Community Plan – SmartCode, based upon the findings of fact presented in the body of the staff report, and forwarding a recommendation for approval to the City Commission with the following revisions recommended for the project:

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- Optimizing multi-modal transportation.
- Making space available for a future recreation path along W. 23rd Street.
- Connecting the project via a sidewalk to Naismith Drive south of 1301 W. 23rd Street (Natural Grocer).
- Goal of reducing parking appropriately.
- Implementing best management practices for greener stormwater management, such as bioswales.

Approved 9-0, with Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor.

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ITEM NO. 14 TEXT AMENDMENT TO SUBDIVISION REGULATIONS; RESIDENTIAL PARCELS (MKM)

TA-18-00251: Consider a Text Amendment to the Subdivision Regulations revising the frontage and width requirements for Residential Development Parcels which front on, and take access from, a principal arterial to allow the creation of two Residential Development Parcels with a minimum of 1,320 ft of frontage; provided they share an access point on the roadway. *Initiated by Planning Commission on 5/23/18. Deferred by Planning Commission on 9/26/18.*

ACTION TAKEN

Motioned by Commissioner Struckhoff, seconded by Commissioner Carttar, to defer Item 14.

Motion carried 9-0, with Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor to defer.

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MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

MISC NO. 1 COMPREHENSIVE PLAN

Receive tentative schedule for Planning Commission discussion of the draft *Plan 2040*.

Motion by Commissioner Willey, seconded by Commissioner Carpenter, to accept the schedule for discussion of the draft *Plan 2040*.

Motion carried 9-0, with Commissioners Butler, Carpenter, Carttar, Paden, Sands, Sinclair, Struckhoff, Weaver, and Willey voting in favor.

ADJOURN 12:18am