

LAWRENCE BOARD OF ZONING APPEALS

AGENDA

**APRIL 6, 2017 – 6:30 P.M., CITY COMMISSION MEETING ROOM, 1ST FLOOR OF CITY HALL
AT 6TH AND MASSACHUSETTS STREET, LAWRENCE, KANSAS**

CALL THE MEETING TO ORDER

TAKE A ROLL CALL TO DETERMINE IF THERE IS A QUORUM OF MEMBERS PRESENT

ITEM NO. 1 COMMUNICATIONS

- a) Acknowledge communications to come before the Board.
- b) Board member disclosure of any ex parte contacts and/or abstentions from the discussion and vote on any agenda item under consideration.
- c) Announce any agenda items that will be deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the February 2, 2017 and March 2, 2017 meetings of the Board.

BEGIN PUBLIC HEARING:

ITEM NO. 4 APPEAL OF AN ADMINISTRATIVE DECISION REQUIRING PUBLIC IMPROVEMENTS REQUIRED AS PART OF A FINAL PLAT APPROVAL FOR NAISMITH CREEK ADDITION AT 751 W. 29TH TERRACE [SLD]

B-17-00109: Consider an appeal filed by Brian Strum, Landplan Engineering, P.A., representing Savannah Holdings, L.L.C., property owner of record of the real property at 751 W. 29th Terrace. The appeal challenges an administrative determination and certification, issued by letter dated February 3, 2017, by the Planning Director, which requires construction of a pedestrian pathway across city property to be paid for by the developer. The appeal was filed under the guidelines of Section 20-813 (f)(1) in the Land Development Code of the City of Lawrence, Kansas, 2015 edition. Reasons for filing this appeal are cited by the appellant in their appeal packet dated March 3, 2017, and received in the Planning Office on March 3, 2017.

ITEM NO. 5 VARIANCES FROM FLOODPLAIN REGULATIONS FOR THE RIVERFRONT MALL FROM FLOODWAY RESTRICTIONS AND MECHANICAL EQUIPMENT ELEVATION AT 1 RIVERFRONT PLAZA [AAM]

B-17-00124: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The first request is a variance from the code allowing an existing development to remain in the floodway as defined in Section 20-1204(b) of the City Code. The second variance is to allow certain existing mechanical equipment to remain in their current locations without being elevated 1 foot above base flood elevation as required by Section 20-1204 (e)(3)(i)(a)(1) of the City Code. The property is located at 1 Riverfront Plaza. Submitted by the City of Lawrence, the land owner of record, and Riverfront L.L.C. and Spring Hill Suites by Marriott, the structure owners of record.

ITEM NO. 6 MISCELLANEOUS

- a) Consider any other business to come before the Board.

LAWRENCE BOARD OF ZONING APPEALS
Meeting Minutes of February 2, 2017 – 6:30 p.m.

Members present: Clark, Gardner, Gascon, Mahoney, Wilbur, Wisner
Staff present: Cargill, Crick, Guntert, Larkin

ITEM NO. 1 COMMUNICATIONS

- a) There were no additional communications to come before the Board that were not included in the agenda packet.
- b) There were no abstentions.
- c) Item No. 4 has been deferred.

ITEM NO. 2 MINUTES

Consider approval of the minutes from the January 5, 2017 meeting of the Board.

ACTION TAKEN

Motioned by Gardner, seconded by Wisner, to approve the minutes from the January 5, 2017 meeting of the Board.

Motion carried 3-0-3.

BEGIN PUBLIC HEARING:

ITEM NO. 3 VARIANCE FROM THE EXTERIOR SIDE YARD BUILDING SETBACK FOR A RESIDENTIAL DWELLING; 1501 OAK HILL AVENUE [DRG]

B-16-00560: A request for a variance as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The request is for a variance from the 20 feet exterior side yard building setback standard required by Section 20-601(a) of the City Code for the RS5 (Single-Dwelling Residential) District. The applicant is seeking the variance from this code standard to allow for extra buildable envelope width on the 46.3 feet wide corner lot. The property is located at 1501 Oak Hill Avenue. Submitted by J. Dean Grob, Grob Engineering Services, LLC, for Bruce D. and Sharon L. Livingston, the property owners of record.

STAFF PRESENTATION

Guntert presented the item.

Clark asked what merits a remodel.

Guntert said they would move the house onto a new foundation, particularly because they would like to create a second buildable lot.

Gardner asked if it would be moved closer to Oak Hill Avenue.

Guntert said it would be moved closer to Summit Street.

Wilbur asked if it would be a problem to demolish and rebuild the house with the same footprint.

Guntert said staff believes there are other design options that would meet the code standards.

Gardner asked if the house can only be built 21 ft wide.

Guntert said they could potentially do a lot line adjustment to possibly allow a 36 ft wide structure.

Gascon asked to view a graph on page 21 of the packet.

They discussed different lot line adjustments and design options that are possible for the site.

APPLICANT PRESENTATION

Mr. Dean Grob, applicant, said the subdivision regulations say you can't build across two lots. The owner doesn't feel it's worth moving the house, and the original setbacks wouldn't have allowed that. He said the setback requirements allow it to be reduced to 10 ft if the property to the rear is facing the other direction. He said they could do the

Gardner asked if they want to build only one house

Mr. Grob said no, they have two lots so they would like to build on both. He said the house would have to face Oak Hill Avenue because turning it to face Summit Street would create far less buildable space.

NO PUBLIC COMMENT

ACTION TAKEN

Motioned by Gardner, seconded by Clark, to close public comment for the item.

Unanimously approved 6-0.

BOARD DISCUSSION

Mahoney said he has a hard time seeing the hardship if they tear down the house, if the only incentive is economic.

Clark asked what the minimum lot width is for the zoning designation.

Guntert said 40 ft.

Clark said a minor subdivision would only move the lot line 6 ft.

Mahoney said he has no issue with the uniqueness of the lot.

Clark agreed and agrees with staff's recommendation.

Mahoney agreed.

Wilbur agreed and supports staff's recommendation.

ACTION TAKEN

Motioned by Clark, seconded by Wilbur, to approve the variance request with the condition that the existing house is kept intact/moved onto lot 37, based on recommendations in the staff report and Board discussion.

Motion carried 4-1-1. Gascon dissented and Gardner abstained.

BOARD DISCUSSION

Gascon said the zoning code has some issues.

ITEM NO. 4 **VARIANCE FROM THE ACCESSORY DWELLING UNIT BUILDING SIZE STANDARD AND PROPERTY OWNER OCCUPANCY REQUIREMENT; 737 ELM STREET [DRG]**

B-17-00001: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The first request is for a variance from the code permitted maximum size accessory dwelling unit defined in Section 20-21(1)(i) of the City Code. The code standard limits the size of an accessory dwelling unit to no more than 33 percent of the living area of the primary dwelling or 960 square feet, whichever is less. The living area in the principal dwelling is 532 square feet which limits the size of an accessory dwelling unit to 177 square feet. The proposed size of the accessory dwelling unit is 780 square feet. The second request is a variance from the property owner occupancy requirement in RS Districts per Section 20-534(2)(iv) of the City Code. The property is located at 737 Elm. Submitted by Susan Raines, the property owner of record.

ITEM NO. 5 **APPEAL OF AN ADMINISTRATIVE DECISION INVOLVING THE DENIAL OF EVIDENCE TO SUPPORT REGISTRATION OF A 5-UNIT NON-CONFORMING RESIDENTIAL USE AT 433 OHIO STREET [DRG]**

B-16-00522: Consider an appeal filed by Paul R. Horvath, Morning Star Management, LLC, representing Jason E. Horvath, property owner of record of the real property at 433 Ohio Street. The appeal challenges an administrative determination, issued by letter dated November 21, 2016, from Ms. Sandra Day, AICP, Planner II, in the City of Lawrence Planning and Development Services Department, which determined the documentation provided to staff was not sufficient to certify registration of the property, located at 433 Ohio Street, as a five-unit non-conforming residential use. The appeal was filed under the guidelines of Section 20-1311 in the Land Development Code of the City of Lawrence, Kansas, 2015 edition. Reasons for filing this appeal are cited by the appellant in their appeal packet dated December 7, 2016, and received in the Planning Office on December 7, 2016.

STAFF PRESENTATION

Guntert presented the item.

Mahoney said in 1978 it went from RM1 to RS2. He asked if there was a grandfather clause.

Guntert said the old zoning code did have nonconforming use provisions in it, but that's referring to legal nonconforming uses, and in staff's opinion the zoning has never supported five units.

Mahoney asked if there was also a change in property owners after 1978.

Guntert said that was correct.

Wisner asked if they round down to the whole number for dwelling units.

Guntert said that's correct.

Wilbur asked about the rental license issue.

Guntert said rental licenses were issued on two separate occasions but that doesn't have any bearing on the full assessment of the property.

Clark asked staff to speak to the delineation between this type of use and a boarding house.

Guntert said these are separate units with a kitchen and bathroom in each. A boarding house shares common areas, including the kitchen, and those are site planned under today's zoning rules. He said the prior zoning did not permit boarding houses.

Clark asked what the zoning was prior to 1927.

Guntert said there was no zoning prior to 1926.

Clark asked if there were any rules prior to 1926.

Guntert said no.

Clark asked if any transition from a boarding house type to an apartment type would have required a building permit.

Guntert said it definitely would today and he believes it would have when those building improvements were probably made.

Gascon asked if staff believes it was not five units prior to 1927.

Guntert said staff has been provided no evidence that it was.

Gascon asked if a building permit would have been required prior to 1927.

Guntert said he's not sure if the City processed building permits prior to 1926.

Gascon asked what position the appellant would be in if they could prove five units before 1926.

Guntert said the burden to provide that evidence is on the appellant and so far, it has not been provided.

Gascon asked if the appellant can come back with additional evidence.

Mahoney said they are only trying to determine whether staff erred in their determination.

Larkin said the next appeal would be to District Court.

Clark thanked staff for the presentation of such an elaborate issue.

APPELLANT PRESENTATION

Mr. Paul Horvath, appellant, thanked the Board for the opportunity to appeal this decision. He said, "there are multiple issues here, and I find it ironic that our constitution says we're innocent until proven guilty and the burden of proof lies on the accuser. Here, with the zoning, I guess it works backwards, that we're basically guilty of "violating" the zoning ordinance unless we can prove otherwise. And in the process I've learned, as a property owner, a property owner in essence has to be smarter and more familiar with the law than the staff, because if the staff makes an error it falls on the property owner, not the staff. Let me say this- there are- this property has been in our family for over 20 years and during that time, we purchased it as a five unit building and we have not altered the physical structure. The property has multiple electric meters. I asked the City to provide copies of when the permit was issued for those meters because if, as I understand it, a permit is required for an electrical meter. These are more recent meters, they're on breaker boxes, it probably has essential fire alarm system, so that's an indication the breakers are more recent. So there should have been permits issued for those multiple meters which means the City- if the City staff now is correct then the City staff then was in error for issuing those meters. Ever since I've owned the property, on a multi-family property, if you

got one- in this case multiple electric meters- one gas meter, one water meter, since the City supplies water if you have a multi-family property your bill is based on number of kitchens, or units. So, your estimated bill is five times, in this case, the number of one unit. Ever since we've owned the property the City has been billing us for five units. So, as a property owner, we were very surprised when the City questions, "well are you legal non-conforming?". I always assumed that we were based on the multiple electric meters, based on the billing for five kitchens, based on the fact that we were issued two years in a row license for five units. So in essence what's happening here, and in the bigger picture what's at risk is all property owners in any older family neighborhood, single or multi-family, because in essence if anybody ever questions if your garage is built properly, is the setbacks proper, in essence if you can't show in 1926 that it was proper then you're in trouble. And technically speaking, the tenants could be told they have to move, they have to vacate, even though there's a rental license, But in the bigger picture you're opening up, I think, a can of worms because most older multi-family properties are not going to be able to show documentation going back to 1926. Now clearly we were able to show that in 1961, according to the directory, there were five different individuals living in that property, I provided the picture from circa 1960-1961. Did you provide that? Is it in the packet?"

Mr. Guntert said it should be.

Mr. Horvath said, "there's a photograph from the historic museum that shows five mailboxes, the same that are there now, and based on the car- I dunno if- this car is like 1960 or 1961. So somewhere in the early 60's this photo was taken, shows five mailboxes, those same five mailboxes are still there. There's a sister house- there were two brothers, the um, Braver brothers who ran a heating company, they built two sister houses. The sister house to this one is 1017 Rhode Island. 1017 Rhode Island the structure is very similar, um, they look similar. 1017 has an accessory building but that has five units. 1017 Rhode Island. The same as 433. So they both have five units. I used to own 1017 Rhode Island, the kitchens, the sinks are the same, circa 1926, in the property. Which tells me that they were put in there by these plumbers back when they built this house. So in summary I guess I am concerned that no property owner is secure if they can't rely on the number of electric meters, they number of billings the City is billing for in terms of the water, in terms of the licensing, we have no assurance. So the bigger issue is the problem with the code, and how it's haphazardly being enforced, it's haphazardly being enforced because they don't have the staff to go and personally inspect every property. This just happened to come up on their radar. So, questions?"

Wilbur asked if he feels the City has certified this as legal non-conforming because they've billed it as five units.

Horvath said yes, they've paid for five units since they purchased the property. He said there are four electric meters, and he understands you must show conformity with the code to obtain multiple meters.

Gascon asked if Horvath knows the current use for 1017 Rhode Island Street.

Horvath said there are five units there.

Gascon asked if it was an approved non-conforming use when he owned it, or if he knows.

Horvath said it's probably the same situation. He said he's owned many properties that would be very difficult to show documentation all the way back to 1926. He spoke about crafting an ordinance that would help navigate this issue, one that he feels will only become more prevalent since banks will not lend on properties that aren't legal non-conforming.

NO PUBLIC COMMENT

ACTION TAKEN

Motioned by Gascon, seconded by Gardner, to close public comment for the item.

Unanimously approved 6-0.

BOARD DISCUSSION

Mahoney said he understands this is a frustrating situation for the appellant, but if it is not the property owner's responsibility to know the history of a property, he's not sure who else would.

Wilbur said the City has sent confusing signals.

Mahoney agreed.

Wilbur said he doesn't see an error in the correspondence over the past year, but nothing specifically says the error has to be within the past year.

Mahoney said his issue is with the lack of evidence that the property has ever been a conforming use.

Wilbur agreed but also thinks there's some kind of passive approval if the City is billing and licensing five units.

Mahoney said it would take more time and resources than is possible to actively enforce that code. This particular property was brought to staff's attention by an appraiser.

Wilbur implied that rental inspections should catch these situations.

Mahoney said he understands that rental inspections are based on adherence to building code.

Larkin said that's correct. He said that any mistake by the City in providing water meters and/or rental licenses is an estoppel issue because City staff doesn't have the authority to change the law to make a property conforming. Only the City Commission has that authority.

Gardner said it's been a five unit rental for at least 57 years.

Guntert said there are five mailboxes in the provided picture, but that could mean five people living in a home, it doesn't definitely mean there were five units.

Gascon feels the argument referencing the "sister" house on Rhode Island Street is compelling because he thought it was the same house. He feels the zoning code is failing and talked about the lack of code that supports density.

Mahoney said he agrees it's an unfortunate situation but unfortunately their task this evening is to determine whether staff erred in their determination.

ACTION TAKEN

Motioned by Mahoney, seconded by Clark, to approve staff's decision to issue their written determination that the property at 433 Ohio Street cannot be certified as a legal non-conforming use based on the evidence provided by the appellant, the zoning history of the property, staff's presentation and Board discussion.

Motion carried 3-2-1, with Wisner and Gardner dissenting and Gascon abstaining due to lack of evidence.

Horvath asked if there's another appeal to this Board.

Larkin clarified that if new evidence is brought forward it can be reopened and brought forward at the next meeting. Otherwise, he said Findings of Fact would be prepared based on the action taken this evening.

They discussed process going forward and what evidence they feel is pertinent.

Guntert said staff emailed Mr. Horvath and asked if he had additional information before this meeting and no new information was received.

ITEM NO. 6 MISCELLANEOUS

a) Consider any other business to come before the Board.

Clark said he received an email about a meeting at the Library.

Mahoney said that meeting is for representatives of City advisory boards to educate the public about how each board functions.

ADJOURN 7:56 PM

LAWRENCE BOARD OF ZONING APPEALS
Meeting Minutes of March 2, 2017 – 6:30 p.m.

Members present: Clark, Holley, Mahoney, Wilbur

Staff present: Cargill, Crick, Larkin, Walthall

ITEM NO. 1 COMMUNICATIONS

- a) There were no communications not included in the agenda packet.
- b) There were no abstentions.
- c) Item No 2 and Item No 4 have been deferred.

ITEM NO. 2 MINUTES

The minutes from the February 2, 2017 meeting of the Board were deferred.

**ITEM NO. 3 ADOPT FINDINGS OF FACT FOR BOARD OF ZONING APPEALS
DECISION UPHOLDING STAFF'S ADMINISTRATIVE DECISION
DENYING THE SUFFICIENCY OF APPELLANT'S EVIDENCE TO SUPPORT
REGISTRATION OF A 5-UNIT NON-CONFORMING RESIDENTIAL USE
AT 433 OHIO STREET**

Consider adopting findings of fact as reasons for the Board's decision in the matter of the following appeal:

B-16-00522: Consider an appeal filed by Paul R. Horvath, Morning Star Management, LLC, representing Jason E. Horvath, property owner of record of the real property at 433 Ohio Street. The appeal challenges an administrative determination, issued by letter dated November 21, 2016, from Ms. Sandra Day, AICP, Planner II, in the City of Lawrence Planning and Development Services Department, which determined the documentation provided to staff was not sufficient to certify registration of the property, located at 433 Ohio Street, as a five-unit non-conforming residential use. The appeal was filed under the guidelines of Section 20-1311 in the Land Development Code of the City of Lawrence, Kansas, 2015 edition. Reasons for filing this appeal are cited by the appellant in their appeal packet dated December 7, 2016, and received in the Planning Office on December 7, 2016.

ACTION TAKEN

Motioned by Mahoney, seconded by Clark, to adopt the Findings of Fact in the matter of appeal B-16-00522.

Unanimously approved 4-0.

PUBLIC COMMENT

Mr. Paul Horvath, appellant, said he submitted new evidence in the appeal and planned to ask that the Board defer its decision for 30 days.

Mahoney explained that the action required this evening was only to adopt Findings of Fact based on the Board's decision last month.

Horvath assumed his new evidence would be considered before the Findings of Fact were considered.

Clark said the aforementioned documents were included with the agenda packet.

Mahoney confirmed that the new evidence was available in the packet for review before the Board made a decision this evening.

Horvath felt he overlooked the physical structure as evidence so he presented that to the Planning Commission and assumed it would be considered this evening, and the item possibly deferred to consider his new information.

Mahoney asked staff if there has been any communication regarding Mr. Horvath's new evidence.

Mr. Jeff Crick said his evidence was included in the agenda packet and he was informed that the Findings of Fact would be considered this evening. He explained that the agenda item was advertised for the adoption of the Findings of Fact only.

Mahoney said he just wanted to confirm there was no additional action by the City.

Crick said unless action was taken prior to his acquisition of the case, he doesn't believe there is anything new to report.

Horvath asked if the Board can defer the item for 30 days to give the Planning Commission a chance to review his new information.

Mahoney said he was under the impression that only the Findings of Fact would be considered this evening and that Mr. Horvath's new evidence was provided for consideration before action was taken.

Mr. Randy Larkin said that is correct. He's not aware of any change to Planning Staff's recommendation.

Horvath said he submitted his information to David Guntert and thought the Planning Commission, not the Board of Zoning Appeals (BZA), would be able to overturn the decision.

Larkin said Planning Commission isn't involved with the case, the BZA hears the appeal and any further appeal would go to the District Court.

Crick said he does not believe staff has changed the recommendation.

Mahoney said the additional information hasn't changed his decision from last month, and the Board has voted on the matter.

BEGIN PUBLIC HEARING:

ITEM NO. 4 VARIANCE FROM THE ACCESSORY DWELLING UNIT BUILDING SIZE STANDARD AND RESIDENTIAL DRIVEWAY PAVEMENT STANDARD; 737 ELM STREET

B-17-00001: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2016 edition. The first request is a variance from the code permitted maximum size accessory dwelling unit defined in Section 20-534(2)(i) of the City Code. The code provision limits the size of an accessory dwelling unit to no more than 33 percent of the living area in the primary dwelling or 960 square feet,

Deferred by
Applicant

whichever is less. According to the Douglas County Appraiser's Office, the living area in the principal dwelling is 532 square feet which limits the size of an accessory dwelling unit to 177 square feet. The proposed size of the accessory dwelling unit is 675 square feet. The second variance is from the residential driveway pavement standards contained in Section 20-913(e) of the City Code. The applicant seeks a variance to allow the use of gravel to surface the driveway in order to reduce the impact of storm water runoff. The property is located at 737 Elm. Submitted by Susan Raines, the property owner of record. This item was deferred by the applicant from the February 2nd meeting.

ITEM NO. 5 MISCELLANEOUS

- a) Consider any other business to come before the Board.

ADJOURN 6:40 PM

ITEM NO. 4 APPEAL OF AN ADMINISTRATIVE DECISION INVOLVING THE REQUIREMENT TO CONSTRUCT A PEDESTRIAN PATHWAY CONNECTING THE PROPOSED DEVELOPMENT WITH THE NAISMITH PARK MULTI-USE PATH AS PART OF THE NAISMITH CREEK ADDITION RESIDENTIAL SUBDIVISION LOCATED AT 751 W 29th TERRACE [SLD]

B-17-00109: Consider an appeal filed by Brian Sturm, Landplan Engineering, PA, representing Savannah Holdings, LLC, property owner of record of the real property at 751 W. 29th Terrace. The appeal challenges an administrative determination and certification, issued by letter dated February 3, 2017, by the Planning Director, which requires construction of a pedestrian pathway across city property to be paid for by the developer. The appeal was filed under the guidelines of Section 20-813 (f)(1) in the Land Development Code of the City of Lawrence, Kansas, 2015 edition. Reasons for filing this appeal are cited by the appellant in their appeal packet dated March 3, 2017, and received in the Planning Office on March 3, 2017.

MATTER BEFORE THE BZA

The only question before the Board of Zoning Appeals is: **Did Staff err when it issued a written determination including a requirement that the applicant construct and pay for a pedestrian pathway across City property connecting the subdivision to an existing paved recreation path.**

REASON FOR THE APPEAL

Section 20-813 (f) of the Land Development Code states, "Unless otherwise provided, a person aggrieved by a decision of the Planning Director under these Subdivision Regulations may appeal the decision to the Lawrence Board of Zoning Appeals in accordance with Section 20-1311 of the City Code." Section 20-1311 authorizes the Board of Zoning Appeals to "hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of the provisions of this Development Code."

On December 28, 2016 the applicant submitted an application for a Final Plat for Naismith Creek Addition. The subdivision plat includes 66 lots and two tracts of land. Tract A is located in Block Two, between Lots 12 and 13. The purpose of Tract A is for the construction of a pedestrian connection between the subdivision and Naismith Valley Park. The tract terminates at the west property line and is the common property line with the City of Lawrence – Naismith Valley Park.

The Final Plat is a last step in the development process that has included annexation (A-13-00437), zoning (Z-13-00438 and Z-16-00219/00220) and preliminary platting (PP-16-00221) to facilitate the orderly development of the area initiated in 2013. The area included in the Final Plat is part of a larger tract of land that included 25 acres acquired by the City of Lawrence for a pump station, an 8-acre tract acquired by Menard's for commercial development, and 21-acres of floodplain that was dedicated to the City of Lawrence for the extension of the Naismith Valley Park by the property owner. Throughout the development of this area, the staff reports made clear an intent to extend the recreation path to the subdivision. The original plan had been to extend a path around the south side of the residential development with a connection near the 31st and Louisiana intersection.

During the review of the preliminary plat additional assessment of a path alignment was made by the City Stormwater Engineer and the City Parks Staff. The dedication of the property to the City included

the extensive floodplain area of the original tract with the developable portions retained for the residential development. The additional assessment concluded that the area south of the subdivision was not sufficiently wide enough to extend the path without encroaching into the floodplain. Additionally, this alignment would have required multiple stream crossings of Naismith Creek which would be financially cost prohibitive. An alternative location was considered along the north property line within the utility easement. This option was discarded because multiple properties would be encumbered by the path and potential conflicts with the major sanitary sewer utility project on going in the area. A compromise alternative was the establishment of a pedestrian pathway to be located at the west end of the subdivision from the public sidewalk, in the subdivision, to the existing paved recreation path that connects to Missouri Street.

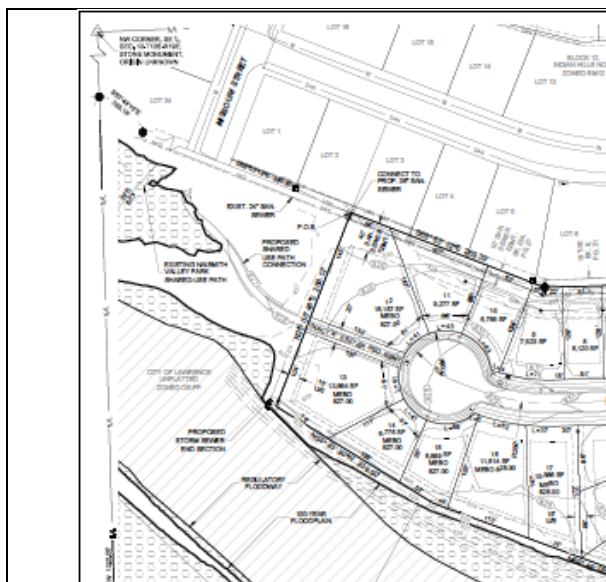


Figure 1: Proposed Preliminary Plat with Connection Shown

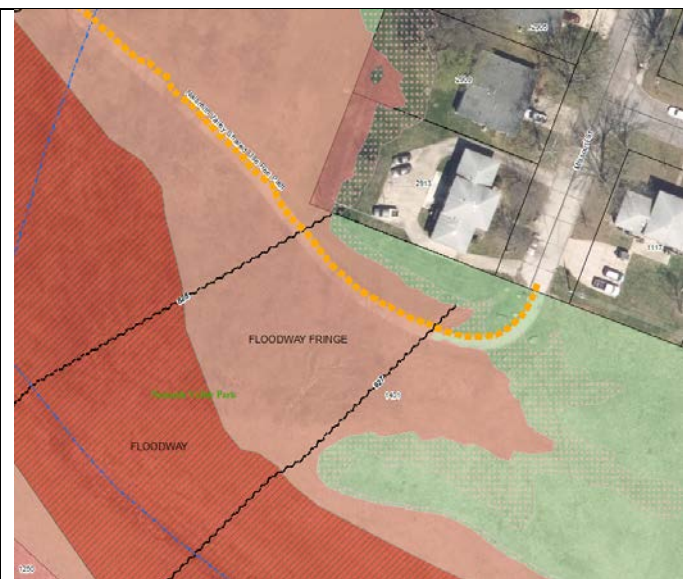


Figure 2: Existing Recreation Path

Prior to recording a final plat the applicant is required to submit for review and approval public improvement plans and provide a guarantee for said public improvements. The public improvement plans have been submitted and approved pending the outcome of the BZA action. The plans currently show the construction of the new pedestrian path. A guarantee provided by the developer for the construction of the public improvements is still required and shall include the full cost of the 10' path across City property to connect to the existing Naismith Valley Multi-Use Path.

ATTACHMENTS

1. Applicants Reason for Appeal
2. Document from Applicant Regarding Easement
3. Final Plat Drawing
4. Staff Report
5. Administrative Determination Letter
6. City Commission Action Approval Letter
7. Lawrence Loop Trail Map – Draft
8. Subdivision Connections Map

CURRENT ZONING AND LAND USE

Current Zoning & Land Use:	RS5 and RS5-FP (Single-Dwelling Residential and Floodplain Overlay) District; undeveloped land proposed for detached residential dwelling development.
Surrounding Zoning and Land Use:	RM12 (Multi-Dwelling Residential) District to the north, along W. 29 th Terrace. Existing duplex and triplex dwellings. OS-FP (Open space Floodplain Overlay) District to the east, west and south. Existing Naismith Valley Park.

BACKGROUND SUMMARY

The Lawrence Parks and Recreation master plan asserts that the most important parks and recreation facility to residents are walking and biking trails, neighborhood parks, public landscaping/flower gardens, playgrounds for children, and nature centers/natural trails.

These planning principles are implemented through the regulatory requirements set out in the City Code and through the subdivision regulations. To that end, public sidewalks and pedestrian pathway connections are required with all new development. The applicant proposed to construct a segment of the pedestrian path (on and across a tract of land) within the subdivision. The sidewalk would terminate with no extension to a receiving connection of an existing sidewalk or pedestrian pathway.

This project was not recommended for any additional dedications related to open space. The applicant had previously transferred ownership of the undevelopable portion of the property to the City for the extension of the park. This application requires the extension of a pedestrian pathway from the subdivision to the existing paved path.

Attached to this report are the proposed subdivision plat drawing and two maps that show the Lawrence Loop Trail route and an exhibit that highlights subdivisions with pathway connects to the Loop and other feeder trails to the non-motorized system. As neighborhoods develop and build out a key consideration is establishing multi modes of connectivity as the area is developing. Public streets and sidewalks in addition to connecting links between subdivisions to other segments of the non-motorized system provide a cohesive development pattern and optimize connections within and between subdivisions and neighborhoods.

Sidewalk	A paved, surfaced, or leveled area, paralleling and usually separated from the Street, used as a pedestrian walkway.
Pedestrian Easement	A strip of land dedicated for public use which is dedicated across a Block for the purpose of providing pedestrian Access to adjacent areas.
Pedestrian Way	A public walk dedicated entirely through a Block, from Street to Street, or providing Access to a school, park, recreation area, employment or shopping center.

LAND DEVELOPMENT CODE

ARTICLE 8 SUBDIVISION REGULATIONS

20-801 (a) Purpose and Intent

(1)(i) Provide for harmonious and orderly development of land within the City and...by making provisions for adequate open space, continuity of the transportation network, reaction areas, drainage, utilities, and related easements, light and air and other public needs.

(1)(ii) Contribute to conditions conducive to health, safety, aesthetics, conveniences, property, and efficiency; and

(1)(iii) Provide for the conservation and protection of human and natural resources.

(2)(ii) Provide for the conservation of existing neighborhoods and facilitate the development of new neighborhoods. Coordinate the development of each parcel of land with the existing community and facilitate the proper of adjoin land.

(2)(vi) Ensure that the cost of improvements, which benefit primarily the Tract of land being developed, be borne primarily by the Owners of Developers of the Tracts, and that the cost of improvements that provide benefits to the subject tract and the community as a whole be shared by the developer and the community.

(2)(ix) Encourage the reduction of vehicular congestion and support multi-modal transportation design standards in a manner that supports multi-nodal transportation.

20-809 (d) Major Subdivisions Criteria for Review

(3) The proposed Major subdivision and all lots within its conform fully with the standards set forth in Section 20-810.

(4) The proposed lots and all other aspects of the proposed Major Subdivision conforms with the current Comprehensive Plan of Lawrence and Douglas County; and watershed/sub-basin plans, sector or Neighborhood Plans

(6)_The proposed Major Subdivision shall provide for a logical connection of Streets between adjacent Subdivisions taking into consideration constraints from steep topography and other natural features that may limit street connectivity but allow for pedestrian connectivity, shall conform with adopted watershed/sub-basin plans, sector or neighborhood Plan for Street layout.

20-809 (f) Preliminary Plat Contents

(2) Existing Conditions

(3) Proposed Improvements

(3)(vi) Site proposed for dedication as drainage way, park, school or other public purposes.

20-809 (k) Final Plat Application

20-809 (p) Processing after Approval of Final Plat

(2) Upon approval and acceptance of all Final Plats that create new street/roads or other public improvements, detailed street/Road and/or utility plans shall be submitted to and approved by either the County Engineer or City Engineer, as applicable, prior to recording the Final Plat and these plans shall include:

(2)(ii) Plan, profile, ditch grades, and cross sections of all street/Roads, Alleys and other public ways.

20-810 (d) Subdivision Design Standards

(1) Blocks General The lengths, widths, and shapes of Blocks shall be determined with due regard to:

(1) (i) Limitations and *opportunities of* Topography and other physical features such as utilities, Floodplains, Jurisdictional Wetlands and natural storm drainage patterns;

(1) (ii) Provision of building sites adequate for the uses contemplated;

(1) (iii) Zoning requirements as to Lot sizes and dimensions; and

(1) (iv) Need for convenient Access, circulation, and control of Street traffic for safety.

(2) Length –

(i) (a) There are Pedestrian Ways at intervals of 700 feet or less, replacing the connection that would exist as a Sidewalk along the Street; and

20-810 (h) Easements –

(4) Pedestrian Easements

(4) (i) Pedestrian Easements shall be required when Block lengths for Local Streets exceed 800 feet in length. Such Easements shall extend entirely across the width of the Block at approximately the midpoint of the Block.

(4) (ii) Additional Pedestrian Easements should be required within the City and Urban Growth Area to provide pedestrian connections from a Subdivision to schools, parks, shopping, employment or other nearby uses and to link pedestrian routes in adjacent Subdivisions or neighborhoods, including a pedestrian connection at the terminus of each Cul-de-sac.

(4) (iii) Easements for Pedestrian Ways shall have a minimum width of 12 feet.

(4) (iv) The Planning Commission may waive this requirement where, due to Topography or physical barriers, the Pedestrian Easement would not form a logical part of the larger pedestrian circulation system through the approval of the Preliminary Plat.

20-810 (i) Parks, Open Space Schools and Other Public Facilities

The Planning Commission shall encourage the donation, reservation, or Dedication of sites for parks, open space, schools and other public facilities in accordance with the Lawrence Parks and Recreation Comprehensive Master Plan.

20-811 Public Improvement Standards

20-811 (a) General Public Improvement Construction Standards

(1) Standards

All Public Improvements, including but not limited to water, sanitary sewer, Streets, curbs, gutters, storm sewers and storm drainage, roundabouts, pedestrian facilities, Traffic Calming Devices or traffic control devices shall comply with the construction standards established by the City Engineer or County Engineer, as applicable. Such standards are incorporated herein by reference.

20-811 (c) Sidewalks and Pedestrian Ways

20-811 (c) (1) City of Lawrence and Urban Growth Areas

(1) (ii) Sidewalks shall be constructed in accordance with standards and specifications adopted by the applicable Governing Body.

(1) (v) Pedestrian Ways

a. Where an approved Preliminary Plat shows a Pedestrian Way other than a Sidewalk, an improved Pedestrian Way not less than five feet wide in the Easement space dedicated for that purpose shall be provided by the Subdivider.

b. Pedestrian Way Easements shall be improved in accordance with adopted City construction standards for Sidewalks and shall conform to all accessibility requirements of the Americans with Disabilities Act.

c. Completion of such Improvements shall be guaranteed in accordance with Section 20-811(h)(2) or subject to site plan review or non-residential development standards.

d. The responsibility for paving the Pedestrian Way shall be the Developer's, and these Pedestrian Ways shall be constructed concurrent with the paving of the most adjacent Roadway, unless otherwise provided by the Planning Director in acting on the Final Plat.

e. The responsibility for maintenance of the Pedestrian Way shall be that of adjacent property Owners or the Home Owners Association for the Subdivision.

20-811 (c) (1) (vi) Public Improvement Petitions shall include the construction of Sidewalks or Pedestrian Ways, except where the Planning Commission has specifically waived the installation as provided in Section 20-811(c)(1)(iii) above. The total cost of all Sidewalks or Pedestrian Way Improvements shall be borne by the property benefited in the improvement district.

20-811 (h) Completion of Public Improvements.

Before a Final Plat or Minor Subdivision/Replat may be recorded, the Subdivider shall:

(1) Provide written certification from the City or County Engineer, as applicable, that all required Public Improvements in that portion of a Subdivision authorized for development have been completed in accordance with applicable Design and Public Improvement Standards of this Article; or

(2) Provide for one or more of the following means of ensuring completion of required Public Improvements:

(i) Public Improvement Petition

(ii) Cash Escrow deposit

(iii) Irrevocable Letter of Credit

MATTER BEFORE THE BZA

The only question before the Board of Zoning Appeals is: **Did Staff err when it issued a written determination including a requirement that the developer construct and pay for the pedestrian pathway connection between the existing recreation path and the proposed subdivision?**

ACTION REQUESTED:

Find no error was made in the conclusions and written notification, dated February 3, 2017, issued to Landplan Engineering.



Please indicate the reason for appeal:

(Alternatively, attach a letter to the Planning Director.)

The applicant objects to the requirement described in the administrative determination as "a pedestrian connection to Naismith Valley Park will be provided with this development." Specifically, the applicant objects to the requirement that they finance the installation of the portion of this shared use path that would rest upon City-owned property. This pedestrian connection is depicted in both the approved Preliminary Plat and the approved Street, Storm & Waterline Improvement Plans for the project. While the applicant understands the need for this connection, they do not feel as though they should be compelled to pay for the portion which would pass through City property. Nor do they feel as though the City has the authority to compel them to do so. The cost of installing ±250 linear feet of 10-foot wide shared use path through City property is ±\$10,500. The Subdivision Regulations do not require that proposed subdivisions provide connections to existing adjacent shared use paths. Furthermore, the applicant has expended great effort and cost to work with City staff over a period of decades to support trail development in this part of the City. The City-owned property in question was in fact donated to the City by the applicant in 2013. That land donation of more than 16 acres included property on both sides of Naismith Creek and carried an appraised value of \$98,400. When the City first developed this portion of the Naismith Valley which connects to Missouri Street in 1997, they approached the applicant with an offer to purchase a permanent easement at a price of \$20,500 (see attached). At that time, the applicant understood that a future eastward extension of the trail was likely and, rather than accept the City's offer, generously choose instead to negotiate a temporary easement at the cost of just \$10 (see attached). The applicant has long anticipated the need and importance of expanding this shared use path network. They have saved the City many thousands of dollars through cooperative easement agreements and land donations. They ask that the small stretch of trail which is to be built across City-owned property be paid for by the City.

Law Offices
ALLEN, COOLEY & ALLEN
201 Mercantile Bank Tower
900 Massachusetts Street
LAWRENCE, KANSAS 66044-2868
(913) 843-0222
Fax (913) 843-0254

Gerald L. Cooley
Milton P. Allen, Jr.
John M. Cooley
Michelle A. Davis
Randall F. Larkin

Milton P. Allen, Sr. (1914-1988)

January 24, 1997

Bruce Francis Snodgrass
Joan Snodgrass
1352 N 1300 Road
Lawrence, Kansas 66046

Dear Mr. and Mrs. Snodgrass:

The City of Lawrence, Kansas, has determined to acquire by direct purchase or through eminent domain proceedings, a permanent easement for the construction and maintenance of a Hike and Bike Path, together with a temporary construction easement, all as described on Exhibit "A" hereto.

The temporary easement shall terminate on February 1, 1999, or ninety (90) days after completion of the improvement, whichever shall first occur. Upon such termination date, the Grantee will leave the area of the temporary easement free of litter and debris and shall cause such area to be of a level and grade compatible with that of the area.

Mr. Thomas L. Monniger was selected by the City to appraise the value of your property for the purpose of making an offer to you for the purchase of the above-described interest(s) in and to the real estate. Mr. Monniger either viewed your real estate in your presence on at least one of his visits, or you were given the opportunity to view the property with him. Mr. Monniger made a written report of his appraisal of your property, with Marion R. Johnson making a review appraisal of Mr. Monniger's appraisal.

The City of Lawrence, Kansas, hereby offers you the sum of \$20,500.00 for the interest(s) in the above-described real estate as stated, the same being \$3,540.00 for the temporary easement and \$16,960.00 for the permanent easement. Such offer represents the highest value as set forth in either Mr. Monniger's appraisal or the review appraisal made by Mr. Johnson, and is deemed to be just compensation for said property, and such determination:

- (1) is based on the fair market value of the property;
- (2) is based on the City's inspection of the property and its consideration of the independently prepared appraisal made by a competent professional appraiser and reviewed by the review appraiser;
- (3) is not less than the approved appraised value of the property; and
- (4) disregards any decrease or increase in the fair market value of the property caused by the contemplated project.

Fair market value is defined as the price a willing seller not obliged to sell will take for his property and the price a willing buyer not obliged to buy will pay for the property.

The above offer will not be altered unless additional value information or evidence is presented or otherwise becomes known to the City of Lawrence, Kansas. In such case, it will then be necessary to have an administrative review to determine if the offer should be changed.

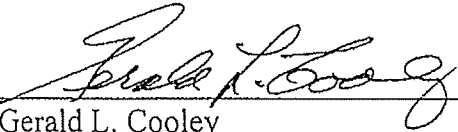
Should the offer not be acceptable to you, our only alternative under established procedure is to proceed under the laws of eminent domain to acquire the required interest(s) in you real estate.

The fifteen items set forth at K.S.A. 26-513, a copy of which is attached hereto as Exhibit "B," if applicable to your property, were considered in ascertaining the amount of compensation and damages. Other factors may also have been considered. They were not considered as separate items of damages, but were considered only as they affect the total compensation and damages established by the appraiser.

It is hoped that you will respond to this offer by February 7, 1997. If you agree to accept the offer each of you will please sign the original of this document in the place hereinafter provided and deliver it to me at the above address. If you are unable to accept the offer by February 7, 1997, please call me. I am available to address your questions and concerns upon your request.

Further, upon your acceptance of said offer to purchase and upon payment to you of the offer price, you will be required to execute, acknowledge, and deliver to the City of Lawrence, Kansas, an easement(s) thereby granting to the purchaser the stated use of the real estate as described in Exhibit "A" affixed hereto.

THE CITY OF LAWRENCE, KANSAS



Gerald L. Cooley
City Attorney

ACCEPTANCE OF OFFER TO PURCHASE

We, the undersigned, being all of the owners of the above-described real estate, together with all improvements thereon, do hereby elect to accept the above offer of the City of Lawrence, Kansas, to purchase the stated interest(s) in and to said real estate.

IN WITNESS WHEREOF, we have hereunto set our hands on this _____ day
of _____, 19____.

Bruce Francis Snodgrass

Joan Snodgrass

**RECEIPT OF ACCEPTANCE OF WRITTEN
OFFER TO PURCHASE**

I, Raymond J. Hummert, the duly appointed and acting City Clerk for the City of Lawrence, Kansas, do hereby acknowledge receipt of the above-executed Acceptance of Offer to Purchase the stated interest(s) in the afore-described real estate, this _____ day of _____, 19____, at _____ o'clock __m.

Raymond J. Hummert
City Clerk for the City of Lawrence, Kansas

EXHIBIT A

A tract of land in the Southeast Quarter of Section 12, Township 13 South, Range 19 East of the Sixth Principal Meridian, described as follows:

Beginning at a point on the South line of Indian Hills No. 2, a subdivision in the City of Lawrence, Kansas, 28.91 feet East of the Southeast corner of Lot 34, Block 10 of said Indian Hills No. 2; thence South $48^{\circ}09'39''$ West, 42.89 feet; thence North $81^{\circ}02'50''$ West, 42.89 feet; thence North $55^{\circ}39'04''$ West, 62.38 feet; thence North $41^{\circ}33'43''$ West, 126.09 feet; thence North $49^{\circ}11'35''$ West, 335.49 feet; thence South $14^{\circ}32'16''$ East, 24.91 feet; thence South $48^{\circ}32'43''$ East, 148.15 feet; thence South $41^{\circ}33'43''$ East, 158.57 feet; thence South $55^{\circ}39'04''$ East, 99.04 feet; thence North $72^{\circ}16'05''$ East, 65.18 feet; thence North $24^{\circ}29'15''$ East, 33.13 feet to the South line of said Indian Hills No. 2; thence West along said South line to the Point of Beginning,

together with a 10-foot wide temporary construction easement described as follows:

Beginning at a point on the South line of Indian Hills No. 2, a subdivision in the City of Lawrence, Kansas, 28.91 feet East of the Southeast corner of Lot 34, Block 10 of said Indian Hills No. 2; thence South $48^{\circ}09'39''$ West, 42.89 feet; thence North $81^{\circ}02'50''$ West, 42.89 feet; thence North $55^{\circ}39'04''$ West, 62.38 feet; thence North $41^{\circ}33'43''$ West, 126.09 feet; thence South $49^{\circ}11'35''$ East, 52.71 feet; thence South $41^{\circ}33'43''$ East, 72.98 feet; thence South $55^{\circ}39'04''$ East, 59.93 feet; thence South $81^{\circ}02'50''$ East, 37.99 feet; thence North $48^{\circ}09'39''$ East, 36.02 feet to the South line of said Indian Hills No. 2; thence North $67^{\circ}10'00''$ West, along said South line to the Point of Beginning.

is less than the amount paid to the clerk of the court pursuant to K.S.A. 26-507, the judge shall enter judgment in favor of the plaintiff for the return of the difference, with interest.

(b) If the money paid to the clerk of the court under K.S.A. 26-507 is paid before July 1, 1982, the judgment shall bear interest as follows:

1. On and after the date of the payment to the clerk and before July 1, 1982, at the rate of 6% per annum; and

2. on and after July 1, 1982, and until the date the judgment is paid, at the rate provided by K.S.A. 16-204 and amendments thereto.

(c) If the money paid to the clerk of the court under K.S.A. 26-507 is paid on or after July 1, 1982, the judgment shall bear interest, on and after the date of the payment to the clerk and until the date the judgment is paid, at the rate provided by K.S.A. 16-204 and amendments thereto.

History: L. 1963, ch. 234, § 11; L. 1982, ch. 88, § 2; July 1.

Research and Practice Aids:

Eminent Domain ⇨ 238(7).

C.J.S. Eminent Domain § 366 et seq.

CASE ANNOTATIONS

1. Specific reference to interest on eminent domain judgments controls over general provision. *Schwartz v. Western Power & Gas Co., Inc.*, 203 K. 844, 851, 494 P.2d 1113.

2. Special statute applicable only to condemnation appeals taken under eminent domain procedure act, 26-501 et seq. *Herman v. City of Wichita*, 223 K. 63, 68, 69, 612 P.2d 588.

3. Determination of rate of post-judgment interest. *Mainhardt v. Kansas Power & Light Co.*, 8 K.A.2d 471, 473, 661 P.2d 820 (1983).

4. Applicability of 16-204 regarding postjudgment interest rate noted. *Evans v. Provident Life & Accident Ins. Co.*, 15 K.A.2d 97, 112, 803 P.2d 1033 (1991).

26-512. Same; making surveys and location. The prospective condemner or its agents may enter upon the land and make examinations, surveys and maps thereof, and such entry shall constitute no cause of action in favor of the owners of the land, except for actual damages thereto.

History: L. 1963, ch. 234, § 12; Jan. 1, 1964.

Research and Practice Aids:

Eminent Domain ⇨ 77.

C.J.S. Eminent Domain § 192.

26-513. Same; compensation. (a) *Necessity*. Private property shall not be taken or damaged for public use without just compensation.

(b) *Taking entire tract*. If the entire tract of land or interest therein is taken, the measure of compensation is the value of the property or interest at the time of the taking.

(c) *Partial taking*. If only a part of a tract of land or interest is taken, the compensation and measure of damages are the difference between the value of the entire property or interest immediately before the taking, and the value of that portion of the tract or interest remaining immediately after the taking.

(d) *Factors to be considered*. In ascertaining the amount of compensation and damages as above defined, the following factors, without restriction because of enumeration, shall be given consideration if shown to exist but they are not to be considered as separate items of damages, but are to be considered only as they affect the total compensation and damage under the provisions of subsections (b) and (c) of this section:

1. The most advantageous use to which the property is reasonably adaptable.

2. Access to the property remaining.

3. Appearance of the property remaining, if appearance is an element of value in connection with any use for which the property is reasonably adaptable.

4. Productivity, convenience, use to be made of the property taken, or use of the property remaining.

5. View, ventilation and light, to the extent that they are beneficial attributes to the use of which the remaining property is devoted or to which it is reasonably adaptable.

6. Severance or division of a tract, whether the severance is initial or is in aggravation of a previous severance; changes of grade and loss or impairment of access by means of underpass or overpass incidental to changing the character or design of an existing improvement being considered as in aggravation of a previous severance, if in connection with the taking of additional land and needed to make the change in the improvement.

7. Loss of trees and shrubbery to the extent that they affect the value of the land taken, and to the extent that their loss impairs the value of the land remaining.

8. Cost of new fences or loss of fences and the cost of replacing them with fences of like quality, to the extent that such loss affects the value of the property remaining.

9. Destruction of a legal nonconforming use.

10. Damage to property abutting on a right-of-way due to change of grade where accompanied by a taking of land.

11. Proximity of new improvement to improvements remaining on condemnee's land.

12. Loss of or damage to growing crops.

13. That the property could be or had been adapted to a use which was profitably carried on.

14. Cost of new drains or loss of drains and the cost of replacing them with drains of like quality, to the extent that such loss affects the value of the property remaining.

15. Cost of new private roads or passageways or loss of private roads or passageways and the cost of replacing them with private roads or passageways of like quality, to the extent that such loss affects the value of the property remaining.

History: L. 1963, ch. 234, § 13; L. 1969, ch. 196, § 2; July 1.

Research and Practice Aids:

Eminent Domain \Leftrightarrow 69, 126.

C.J.S. Eminent Domain §§ 96, 136 et seq.

Law Review and Bar Journal References:

"The Eminent Domain Procedure Act," Marion Beatty, 32 J.B.A.K. 130 (1964).

"1969 Kansas Legislature—A Review of Enactment," Robert F. Bennett, 38 J.B.A.K. 59, 127 (1969).

Survey of Kansas law on real and personal property (1965-1969), 18 K.L.R. 427, 436 (1970).

Elimination of nonconforming uses; mobile homes in Kansas, Gerald E. Hertach, 20 K.L.R. 87, 107 (1971).

"Lateral Support—An Inversely Condemnable Property Right," George A. Gaitas, 13 W.L.J. 248, 249, 251 (1974).

Attorney General's Opinions:

Annexation of lands located in water districts; title to facilities; agreement; compensation. 85-166.

Condemnation in cities; authority to condemn property which includes burial plot. 86-46.

Eminent domain; procedure act; human remains; compensation. 88-73.

CASE ANNOTATIONS

1. Doctrine of burden of proof not applicable to condemnation proceedings. *City of Wichita v. Jennings*, 199 K. 621, 626, 433 P.2d 351.

2. Subsection (c) considered; verdict of jury was "within the range" of the evidence. *Kansas State Highway Commission v. Roepke*, 200 K. 660, 663, 665, 438 P.2d 122.

3. Compensation is necessary replacement in taking of property of one governmental agency by another. *City of Wichita v. Unified School District No. 259*, 201 K. 110, 439 P.2d 162.

4. Evidence establishing value of entire property before taking was properly taken. *Humphries v. State Highway Commission*, 201 K. 544, 546, 549, 442 P.2d 475.

5. No error in permitting landowner's witnesses to testify as to separate items of damage resulting from partial taking. *Dibble v. State Highway Commission*, 204 K. 111, 112, 460 P.2d 584.

6. Cost of removal by lessee of personalty from leased premises for reasonable distance is not compensable element of damage. *City of Manhattan v. Eriksen*, 204 K. 150, 153, 154, 155, 460 P.2d 522.

7. Applied; 63-413 does not provide procedure for exercising right of eminent domain, but merely designates interests which highway commission may acquire through such procedure. *State Highway Commission v. Moore*, 204 K. 502, 504, 464 P.2d 188.

8. Cost of removal by lessee of his personalty not an element of damage for which compensation is allowed. *Phillips Petroleum Co. v. Bradley*, 205 K. 242, 248, 468 P.2d 95.

9. Subsection (c) mentioned in determining rights of condemner in eminent domain proceeding (dissenting opinion). *City of Bonner Springs v. Coleman*, 206 K. 689, 700, 481 P.2d 950.

10. Legislature intent relating to just compensation and market value (dissenting opinion). *State Highway Commission v. Lee*, 207 K. 254, 313, 465 P.2d 310.

11. Where plaintiff establishes no "before" and "after" value, verdict not within range established by defendant cannot stand. *City of Wichita v. May's Company, Inc.*, 212 K. 153, 155, 156, 510 P.2d 154.

12. Mentioned; no misconduct in awarding damages where jury added experts' estimated values and divided total obtained by number of experts. *Hogue v. Kansas Power & Light Co.*, 212 K. 339, 345, 347, 510 P.2d 1308.

13. Mentioned; purchase of corporate utility on expiration of franchise is statutory contract right and value not determined under law of eminent domain. *City of Kiowa v. Central Telephone & Utilities Corporation*, 213 K. 169, 172, 515 P.2d 795.

14. Applied; unit rule method of valuation stated and applied; partial taking; award not based on improper evidence. *Rostine v. City of Hutchinson*, 219 K. 320, 323, 548 P.2d 756.

15. Compensable damages for taking access to motel; parol evidence upheld. *Kohn Enterprises, Inc. v. City of Overland Park*, 221 K. 230, 233, 559 P.2d 771.

16. Contention property damaged by factor specified in section; changing street to controlled access facility constituted taking private property for public use. *Teachers Insurance & Annuity Ass'n of America v. City of Wichita*, 221 K. 325, 329, 559 P.2d 347.

17. Subsection (c) applied; swine producing property did not qualify for "special use" determination of value. In re *Central Kansas Electric Coop., Inc.*, 224 K. 308, 316, 317, 582 P.2d 225.

18. Method of establishing value of property upheld; no abuse of discretion in admission of testimony or evidence. *Ellis v. City of Kansas City*, 225 K. 168, 170, 171, 589 P.2d 552.

19. Subsections (a) and (b) mentioned; error to use the substitute facilities method of determining compensation in eminent domain proceedings against a church's property. *Urban Renewal Agency of Wichita v. Gospel Mission Church*, 4 K.A.2d 101, 103, 105, 603 P.2d 209.

20. On issue of value jury is not bound by expert opinion evidence; all evidence may be considered. *Kansas Power & Light Co. v. Floersch*, 4 K.A.2d 440, 608 P.2d 1023.

21. Condemnation proceeding not improper; comparable market values should be used where available. *Consultation, Inc. v. City of Lawrence*, 5 K.A.2d 486, 487, 619 P.2d 150.

22. Trial court did not abuse discretion in excluding evidence of specific value of leasehold interest but allowing

TEMPORARY EASEMENT AGREEMENT

This Temporary Easement Agreement (the "Easement") is granted effective this 1st day of May, 1997 (the "Effective Date"), by Snodgrass Holdings, L.C., a Kansas limited liability company ("GRANTOR"), to the City of Lawrence, Kansas, a municipal corporation ("GRANTEE").

RECITALS

- A. GRANTOR is the owner of a tract of real estate hereinafter described as "Tract A," legally described as follows:

A tract of land in the Southeast Quarter of Section 12, Township 13 South, Range 19 East of the Sixth Principal Meridian, described as follows:

Beginning at the Southwest corner of Lot 34, Block 10, Indian Hills No. 2, a subdivision in the City of Lawrence, Douglas County, Kansas; thence South 67°10'00" East, along the South line of said subdivision, 649.39 feet; thence South 90°00'00" East, along said South line, 1110.43 feet; thence North 00°00'00" East, along said South line, 125.00 feet; thence South 90°00'00" East, along said South line, 55.05 feet; thence Easterly along said South line, on a curve to the left with a radius of 380.00 feet, an arc length of 195.95 feet; thence South 00°00'00" West, 174.40 feet; thence South 90°00'00" East, 425.00 feet to the West right-of-way line of Louisiana Street; thence South 00°04'30" East, along said West right-of-way line, 19.87 feet; thence South 89°55'30" West, along said West right-of-way line, 35.00 feet; thence South 01°11'14" West, along said West right-of-way line, 640.94 feet to the North right-of-way line of 31st Street; thence South 89°23'20" West, along said North right-of-way line, 1159.47 feet; thence North 00°36'40" West, along said North right-of-way line, 40.00 feet; thence South 89°23'20" West, along said North right-of-way line, 105.00 feet; thence South 00°36'40" East, along said North right-of-way line, 120.00 feet; thence South 89°23'20" West, along said North right-of-way line, 133.46 feet; thence North 02°18'58" West, 50.16 feet; thence North 64°39'50" West, 732.68 feet; thence North 49°08'29" West, 688.63 feet to the West line of said quarter section; thence North 00°00'05" East, along said West line, 412.71 feet; thence South 49°11'35" East, 335.49 feet to the point of beginning. The above contains 36.669 acres, more or less. (See map attached as Exhibit A for schematic view of property).

- B. GRANTEE desires to construct a bicycle and pedestrian path across a portion of Tract A, extending from property that it owns adjacent to the northwest corner of Tract A, generally known as Naismith Park, to Missouri Street, a public right-of-way; and
- C. GRANTOR has agreed to grant a temporary easement for construction of the bicycle and pedestrian path, and for ingress and egress for use exclusively as a bicycle and pedestrian path across a portion of Tract A, all in accordance with the conditions of this Easement.

AGREEMENT

NOW, THEREFORE, in consideration of ten dollars (\$10.00), the promises and obligations contained in this Easement and for other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereby enter into the following agreements:

1. EASEMENT FOR INGRESS AND EGRESS. Unless terminated earlier in accordance with this Agreement, GRANTOR hereby grants, establishes and dedicates along and over a portion of Tract A, for construction, maintenance

and use, a temporary easement for pedestrian and bicycle ingress and egress, which Easement shall run with the land and shall be for the benefit of GRANTEE, described as follows:

A tract of land in the Southeast Quarter of Section 12, Township 13 South, Range 19 East of the Sixth Principal Meridian, described as follows:

Beginning at the Southwest corner of Lot 34, Block 10, of Indian Hills No. 2, a Subdivision in the City of Lawrence, Kansas; thence South 67°10' East along the South line of said Indian Hills No. 2 Subdivision, 199.00 feet; thence South 24°29'15" West, 32.89 feet; thence South 72°16'05" West, 65.18 feet; thence North 55°39'04" West, 99.04 feet; thence North 44°56'05" West, 306.15 feet; thence North 14°32'16" West, 24.91 feet; thence South 49°11'35" East, 259.69 feet to the Point of Beginning. (See map attached as Exhibit B for schematic view of property).

2. USE AND MAINTENANCE.

- a. The use of this Easement shall be held by GRANTEE for the uses and purposes described herein.
- b. No building, structure, obstruction, or other improvement of any kind which interferes with the intended use of the Easement shall be constructed, installed, or maintained in or upon this Easement; provided, however, the following shall apply:
 - (1) GRANTOR may place dirt and fill material in the Easement so long as such material does not block access or impede use of the bicycle and pedestrian path;
 - (2) GRANTOR may, during the course of making improvements to Tract A, such as digging sewer, electric, gas, and other utility lines, and building streets, temporarily block ingress and egress over the easement, so long as GRANTOR takes reasonable steps to minimize such disruption to the use of the Easement.
- c. GRANTEE shall be responsible to maintain the Easement, at its own cost and expense, in such a state of repair so that it may be used in the manner described herein, and for the purposes set forth in this Easement. GRANTEE shall use reasonable efforts to keep the Easement free of litter, trash, and other debris. GRANTEE shall also be responsible for the cost to repair any damage done to the concrete or asphalt pedestrian and bicycle path caused by GRANTOR in the course of making improvements to Tract A, including but not limited to items such as digging sewer, electric, gas, and other utility lines, and building streets across such path, subject to the conditions stated in Section 2.b.(2) above. Upon the termination of this Easement, GRANTEE shall be responsible for removing the bicycle and pedestrian path, and restoring the easement area located on TRACT A to its previous, or better, condition. GRANTEE will not be responsible for removing any dirt or ~~fill~~ material placed in said easement under Section 2.b.(1).
- d. ^{fill} GRANTEE shall indemnify and hold harmless GRANTOR, its officers, members, owners, managers, employees, and agents, from and against (a) any and all claims based upon, arising out of, or in any way related to the general public or GRANTEE's use of the Easement and/or bicycle and pedestrian path, any damage or injury caused by a member of the general public using the Easement and/or bicycle and pedestrian path, whether on or off of Tract A, and (b) any and all fees (including attorneys' fees), costs and other expenses incurred by or on behalf of GRANTOR in the investigation of or defense against any and all such claims, payable upon demand.

3. **RIGHT TO ENJOIN.** In the event of any violation or threatened violation by the owners, lessee, or occupant of Tract A of any of the terms, restrictions, covenants, or conditions provided herein, GRANTEE shall have the right to enjoin such violation, or threatened violation, in a court of competent jurisdiction.

4. **MODIFICATION.** This Easement may be extended, modified, or amended only with the written consent of GRANTOR and GRANTEE. This Easement Agreement may not be assigned and any purported assignment of this Easement Agreement or any interest therein shall be void and of no force and effect.
5. **TERMINATION.** This Easement and GRANTEE's rights and obligations under this Easement shall terminate and be of no further force and effect two (2) years after the Effective Date, or six (6) months after written notice of termination from either party to the other, whichever shall first occur. Prior to the expiration or termination of this Easement, GRANTOR AND GRANTEE hereby agree that if no alternate bicycle and pedestrian path has been agreed to by the parties, or GRANTEE gives notice to GRANTOR that it desires for the temporary easement location to become the permanent location for the Easement, the parties agree to negotiate in good faith to determine the fair market value of the property to be paid to GRANTOR for the Easement. If the parties fail to agree on such fair market value within a reasonable period of time, GRANTEE may initiate condemnation proceedings against GRANTOR, and GRANTOR hereby agrees to continue give GRANTEE the right to use the Easement, consistent with the terms of this Agreement, until the conclusion of such litigation.
6. **AUTHORITY.** Each of the parties to this Agreement represents and warrants that it has the requisite power and authority to execute this Agreement.
7. **LIENS.** GRANTEE shall not permit any claim, lien, or other encumbrance arising from the construction of the concrete or asphalt bicycle and pedestrian path to accrue against or attach to Tract A or the interest of GRANTOR in adjacent lands.

IN WITNESS WHEREOF, this Easement is duly approved and executed as of the Effective Date.

GRANTOR:

SNODGRASS HOLDINGS, L.C.

a Kansas limited liability company

By: Bruce F. Snodgrass
Bruce F. Snodgrass, Manager

GRANTEE:

CITY OF LAWRENCE, KANSAS,

a municipal corporation

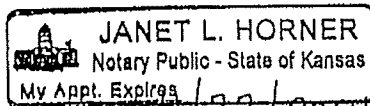
By: Michael Wildgen
Michael Wildgen, City Manager

ATTEST:

By: [Signature]
City Clerk

STATE OF KANSAS)
)
) SS:
COUNTY OF DOUGLAS)

This foregoing instrument was acknowledged before me this 22nd day of May, 1997, by Bruce F. Snodgrass, Manager of Snodgrass Holdings, L.C., a Kansas limited liability company, on behalf of such company.



My Appointment Expires: 1/22/2001

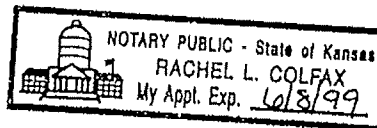
Janet L. Horner
Notary Public

STATE OF KANSAS)
)
) SS:
COUNTY OF DOUGLAS)

This foregoing instrument was acknowledged before me this 23 day of May, 1997, by Michael Wildgen, City Manager of the City of Lawrence, Kansas, a municipal corporation, on behalf of said City of Lawrence, Kansas.

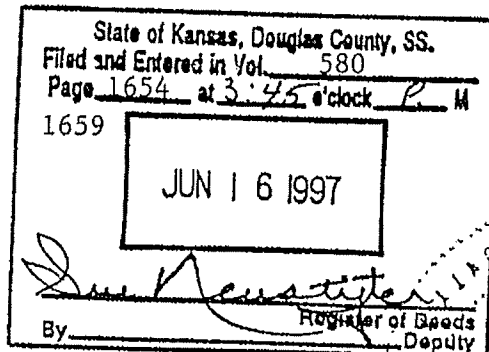
My Appointment Expires: 6/8/99
g:\wnf\kunodgr5.ear

Rachel L. Colfax
Notary Public



NO. 117412
INDEX
NUMERICAL INDEX
12-13-1995 City & County

CERTIFICATION
I, Raymond J. Hummert, City Clerk for the City of Lawrence, Kansas, do hereby certify this to be a true and exact copy of Temporary Easement Agreement on file in my office.
Raymond J. Hummert
Raymond J. Hummert, City Clerk



ORIGINAL COMPARED WITH RECORD

JES
1/14/77EXHIBIT A

LEGAL DESCRIPTION:

A TRACT OF LAND IN THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 13 SOUTH, RANGE 19 EAST OF THE SIXTH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 34, BLOCK 10, INDIAN HILLS NO. 2, A SUBDIVISION IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS; THENCE SOUTH $67^{\circ}10'00''$ EAST, ALONG THE SOUTH LINE OF SAID SUBDIVISION, 649.39 FEET; THENCE SOUTH $90^{\circ}00'00''$ EAST, ALONG SAID SOUTH LINE, 1110.43 FEET; THENCE NORTH $00^{\circ}00'00''$ EAST, ALONG SAID SOUTH LINE, 125.00 FEET; THENCE SOUTH $90^{\circ}00'00''$ EAST, ALONG SAID SOUTH LINE, 55.05 FEET; THENCE EASTERLY ALONG SAID SOUTH LINE, ON A CURVE TO THE LEFT WITH A RADIUS OF 380.00 FEET, AN ARC LENGTH OF 195.95 FEET; THENCE SOUTH $00^{\circ}00'00''$ WEST, 174.40 FEET; THENCE SOUTH $90^{\circ}00'00''$ EAST, 425.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF LOUISIANA STREET; THENCE SOUTH $00^{\circ}04'30''$ EAST, ALONG SAID WEST RIGHT-OF-WAY LINE, 19.87 FEET; THENCE SOUTH $89^{\circ}55'30''$ WEST, ALONG SAID WEST RIGHT-OF-WAY LINE, 35.00 FEET; THENCE SOUTH $01^{\circ}11'14''$ WEST, ALONG SAID WEST RIGHT-OF-WAY LINE, 640.94 FEET TO THE NORTH RIGHT-OF-WAY LINE OF 31ST STREET; THENCE SOUTH $89^{\circ}23'20''$ WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 1159.47 FEET; THENCE NORTH $00^{\circ}36'40''$ WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 40.00 FEET; THENCE SOUTH $89^{\circ}23'20''$ WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 105.00 FEET; THENCE SOUTH $00^{\circ}36'40''$ EAST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 120.00 FEET; THENCE SOUTH $89^{\circ}23'20''$ WEST, ALONG SAID NORTH RIGHT-OF-WAY LINE, 133.46 FEET; THENCE NORTH $02^{\circ}18'58''$ WEST, 50.16 FEET; THENCE NORTH $64^{\circ}39'50''$ WEST, 732.68 FEET; THENCE NORTH $49^{\circ}08'29''$ WEST, 688.63 FEET TO THE WEST LINE OF SAID QUARTER SECTION; THENCE NORTH $00^{\circ}00'05''$ EAST, ALONG SAID WEST LINE, 412.71 FEET; THENCE SOUTH $49^{\circ}11'35''$ EAST, 335.49 FEET TO THE POINT OF BEGINNING. THE ABOVE CONTAINS 36.669 ACRES, MORE OR LESS.

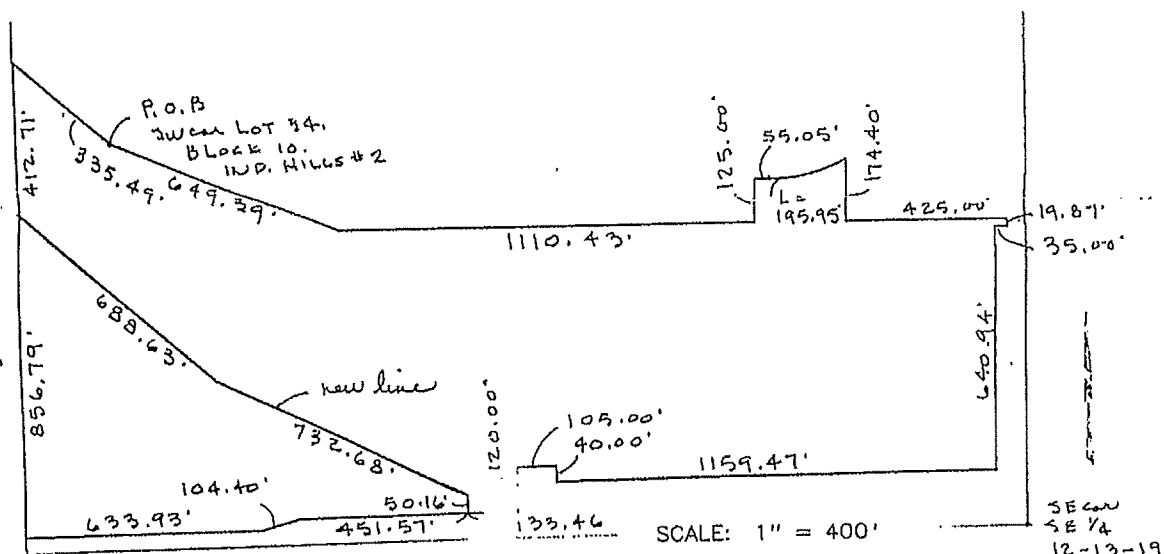
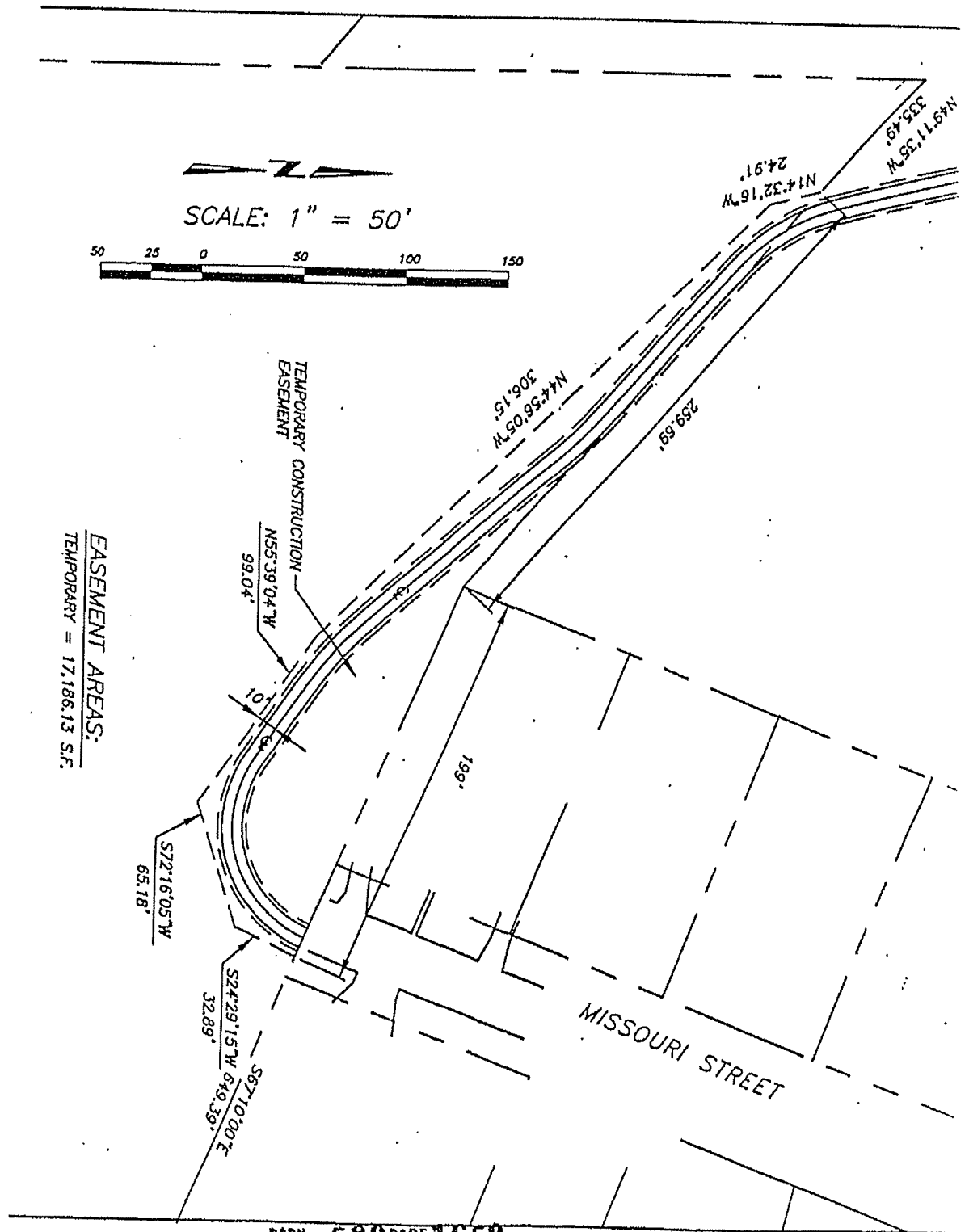
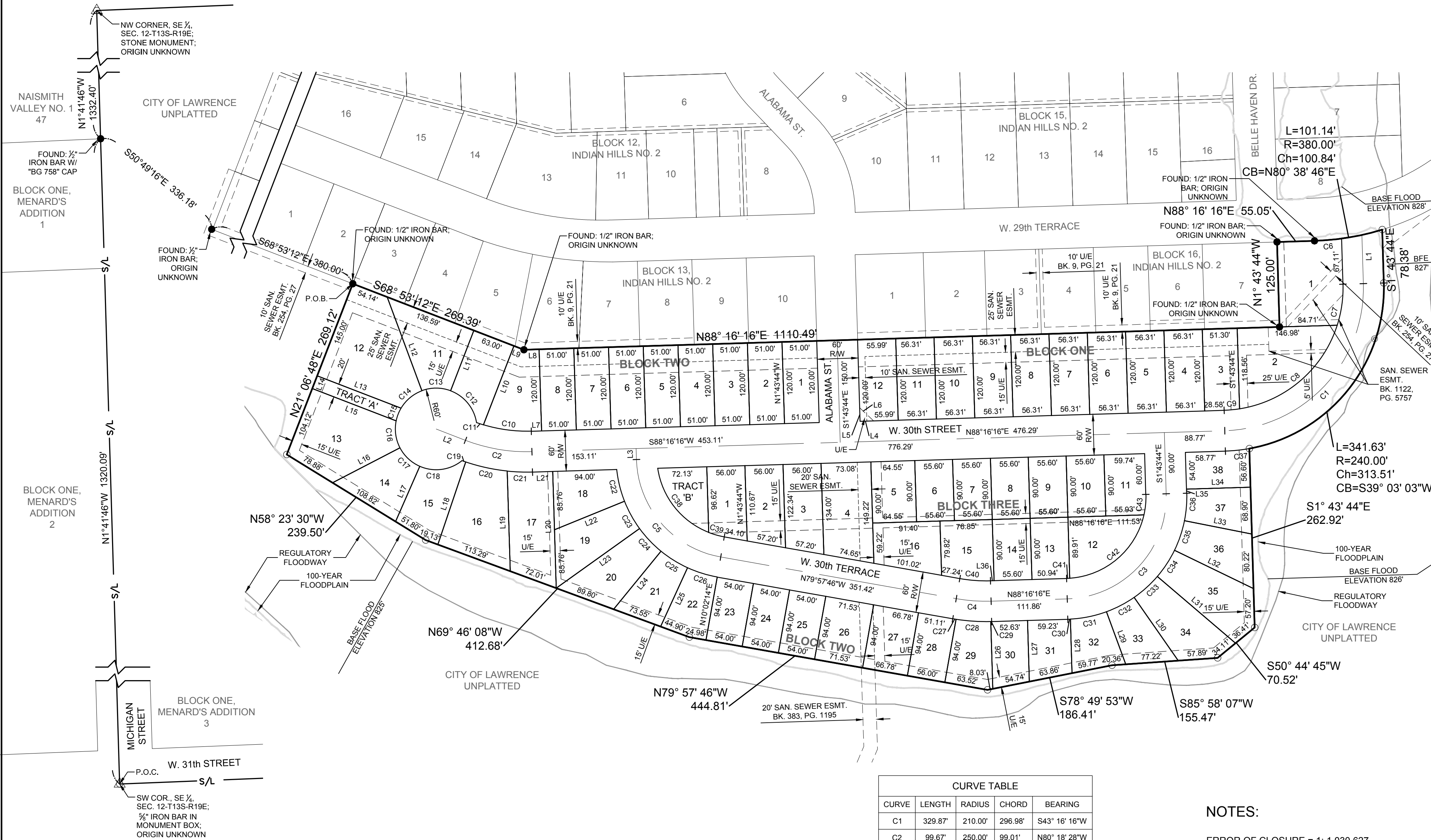


EXHIBIT B





LOT AREA TABLE			
LOT NO.	SQ. FT.	ACRES	BLOCK
1	11,700	0.269	BLOCK ONE
2	12,134	0.279	BLOCK ONE
3	6,146	0.141	BLOCK ONE
4	6,757	0.155	BLOCK ONE
5	6,757	0.155	BLOCK ONE
6	6,757	0.155	BLOCK ONE
7	6,757	0.155	BLOCK ONE
8	6,757	0.155	BLOCK ONE
9	6,757	0.155	BLOCK ONE
10	6,757	0.155	BLOCK ONE
11	6,757	0.155	BLOCK ONE
12	6,718	0.154	BLOCK ONE
1	6,120	0.140	BLOCK TWO
2	6,120	0.140	BLOCK TWO
3	6,120	0.140	BLOCK TWO
4	6,120	0.140	BLOCK TWO
5	6,120	0.140	BLOCK TWO
6	6,120	0.140	BLOCK TWO
7	6,120	0.140	BLOCK TWO
8	6,120	0.140	BLOCK TWO
9	7,523	0.173	BLOCK TWO
10	6,755	0.155	BLOCK TWO
11	9,277	0.213	BLOCK TWO
12	16,167	0.371	BLOCK TWO
13	13,864	0.318	BLOCK TWO
14	6,776	0.156	BLOCK TWO
15	6,889	0.158	BLOCK TWO
16	11,614	0.267	BLOCK TWO
17	10,586	0.243	BLOCK TWO
18	6,615	0.152	BLOCK TWO
19	7,841	0.180	BLOCK TWO
20	8,040	0.185	BLOCK TWO
21	5,937	0.136	BLOCK TWO

LOT AREA TABLE			
LOT NO.	SQ. FT.	ACRES	BLOCK
22	5,455	0.125	BLOCK TWO
23	5,076	0.117	BLOCK TWO
24	5,076	0.117	BLOCK TWO
25	5,076	0.117	BLOCK TWO
26	6,724	0.154	BLOCK TWO
27	6,278	0.144	BLOCK TWO
28	5,264	0.121	BLOCK TWO
29	5,906	0.136	BLOCK TWO
30	5,092	0.117	BLOCK TWO
31	5,328	0.122	BLOCK TWO
32	5,194	0.119	BLOCK TWO
33	5,581	0.128	BLOCK TWO
34	8,703	0.200	BLOCK TWO
35	9,625	0.221	BLOCK TWO
36	6,847	0.157	BLOCK TWO
37	5,526	0.127	BLOCK TWO
38	5,106	0.117	BLOCK TWO
TRACT 'B'			
1	5,853	0.134	BLOCK THREE
2	6,524	0.150	BLOCK THREE
3	7,177	0.165	BLOCK THREE
4	10,349	0.238	BLOCK THREE
5	5,809	0.133	BLOCK THREE
6	5,004	0.115	BLOCK THREE
7	5,004	0.115	BLOCK THREE
8	5,004	0.115	BLOCK THREE
9	5,004	0.115	BLOCK THREE
10	5,004	0.115	BLOCK THREE
11	5,339	0.123	BLOCK THREE
12	7,328	0.168	BLOCK THREE
13	5,004	0.115	BLOCK THREE
14	5,004	0.115	BLOCK THREE
15	6,650	0.153	BLOCK THREE
16	6,876	0.158	BLOCK THREE

MEBO TABLE		
LOT NO.	ELEV.	BLOCK
1	829.00	BLOCK ONE
2	828.00	BLOCK ONE
12	827.00	BLOCK TWO
13	827.00	BLOCK TWO
14	827.00	BLOCK TWO
15	827.00	BLOCK TWO
16	826.00	BLOCK TWO
17	826.00	BLOCK TWO
19	826.00	BLOCK TWO
20	826.00	BLOCK TWO
21	826.00	BLOCK TWO
22	826.00	BLOCK TWO
23	826.00	BLOCK TWO
24	826.00	BLOCK TWO
25	826.00	BLOCK TWO
26	826.00	BLOCK TWO
27	826.00	BLOCK TWO
28	826.00	BLOCK TWO
29	826.00	BLOCK TWO
30	826.00	BLOCK TWO
31	826.00	BLOCK TWO
32	826.00	BLOCK TWO
33	826.00	BLOCK TWO
34	826.00	BLOCK TWO
35	828.00	BLOCK TWO
36	828.00	BLOCK TWO
37	828.00	BLOCK TWO
38	828.00	BLOCK TWO

LINE TABLE		
LINE NO.	LENGTH	BEARING
L1	71.49'	S1° 43' 44"E
L2	46.22'	N88° 53' 12"W
L3	16.24'	N1° 43' 44"W
L4	20.00'	N88° 16' 16"E
L5	20.00'	N1° 43' 44"W
L6	28.28'	S46° 43' 44"E
L7	15.11'	S88° 16' 16"W
L8	22.43'	N88° 16' 16"E
L9	15.66'	S68° 53' 12"E
L10	124.39'	S21° 06' 48"W
L11	95.01'	S21° 06' 48"W
L12	146.84'	S20° 21' 01"E
L13	131.93'	S68° 53' 12"E
L14	20.00'	N21° 06' 48"E
L15	131.93'	N68° 53' 12"W
L16	111.46'	N62° 34' 36"E
L17	88.46'	N23° 38' 11"E
L18	127.82'	N18° 40' 54"E
L19	147.06'	N1° 43' 44"W
L20	85.76'	S1° 43' 44"E
L21	29.64'	N88° 16' 16"E
L22	111.02'	N67° 48' 32"E
L23	150.33'	N54° 26' 41"E
L24	109.94'	N39° 15' 42"E
L25	94.90'	N24° 36' 41"E
L26	98.78'	N1° 43' 44"W
L27	89.83'	N1° 43' 44"W
L28	79.36'	N1° 43' 44"W
L29	82.21'	N20° 11' 56"W
L30	113.24'	N34° 50' 57"W
L31	151.05'	N49° 29' 58"W
L32	129.12'	N64° 08' 59"W
L33	101.13'	N78° 48' 01"W
L34	94.00'	S88° 16' 16"W
L35	6.00'	N1° 43' 44"W
L36	5.32'	N88° 16' 16"E

CURVE TABLE				
CURVE	LENGTH	RADIUS	CHORD	BEARING
C1	329.87'	210.00'	296.98'	S43° 16' 16"W
C2	99.67'	250.00'	99.01'	N80° 18' 28"W
C3	235.62'	150.00'	212.13'	S43° 16' 16"W
C4	51.34'	250.00'	51.25'	N85° 50' 45"W
C5	204.82'	150.00'	189.27'	N40° 50' 45"W
C6	40.02'	380.00'	40.01'	N85° 15' 13"E
C7	61.17'	180.00'	60.88'	S8° 00' 25"W
C8	198.78'	180.00'	188.83'	S49° 22' 47"W
C9	22.79'	180.00'	22.77'	S84° 38' 39"W
C10	71.28'	220.00'	70.97'	N82° 26' 48"W
C11	10.73'	220.00'	10.73'	N71° 46' 02"W
C12	63.11'	59.98'	60.24'	N39° 06' 23"W
C13	43.05'	59.96'	42.14'	N89° 47' 09"W
C14	40.78'	60.00'	40.00'	S50° 10' 43"W
C15	20.09'	60.00'	20.00'	S21° 06' 48"W
C16	40.78'	60.00'	40.00'	S7° 57' 07"E
C17	40.78'	60.00'	40.00'	S46° 53' 46"E
C18	65.54'	60.00'	62.33'	N82° 20' 22"E
C19	6.11'	280.00'	6.11'	S70° 41' 35"E
C20	62.48'	280.00'	62.35'	S77° 42' 40"E
C21	37.26'	280.00'	37.23'	S87° 54' 59"E
C22	48.14'	180.00'	48.00'	S13° 46' 31"E
C23	46.03'	180.00'	45.90'	S28° 45' 46"E
C24	46.03'	180.00'	45.90'	S43° 24' 47"E
C25	46.03'	180.00'	45.90'	S58° 03' 48"E
C26	45.79'	180.00'	45.66'	S72° 40' 32"E
C27	4.89'	196.22'	4.89'	N79° 57' 46"W
C28	51.24'	284.94'	51.17'	S86° 15' 13"E
C29	1.37'	280.00'	1.37'	N88° 24' 41"E
C30	3.77'	169.22'	3.77'	N87° 40' 15"E
C31	54.25'	180.00'	54.05'	N78° 26' 08"E
C32	46.03'	180.00'	45.90'	N62° 28' 33"E
C33	46.03'	180.00'	45.90'	N47° 49' 32"E
C34	46.03'	180.00'	45.90'	N33° 10' 31"E
C35	46.03'	180.00'	45.90'	N18° 31' 30"E
C36	40.62'	180.00'	40.53'	N4° 44' 08"E
C37	35.36'	240.00'	35.32'	N84° 03' 03"E
C38	126.32'	120.00'	120.57'	N38° 28' 14"W
C39	23.74'	120.00'	23.70'	S74° 17' 43"E
C40	45.18'	220.00'	45.10'	S85° 50' 45"E
C41	4.66'	120.00'	4.66'	S87° 09' 31"W
C42	153.51'	120.00'	143.26'	S49° 23' 51"W
C43	30.32'	120.00'	30.24'	N5° 30' 36"E

NOTES:

ERROR OF CLOSURE = 1: 1,030,627

BASIS OF THE BEARINGS FOR THIS PLAT IS KANSAS STATE PLANE NORTH.

STREET TREES SHALL BE PROVIDED IN ACCORDANCE WITH THE MASTER STREET TREE PLAN FILED WITH THE REGISTER OF DEEDS IN BOOK __, PAGE __, IF STREET TREES DIE, THE PROPERTY OWNER IS RESPONSIBLE FOR REPLANTING TREES WITHIN ONE YEAR. NO TREES ON THE RIGHT-OF-WAY CAN BE REMOVED WITHOUT THE PERMISSION OF THE CITY OF LAWRENCE PARKS DEPARTMENT. THE CITY IS HEREBY GRANTED TEMPORARY RIGHT OF ENTRY TO PLANT THE REQUIRED STREET TREES PURSUANT TO SECTION 20-811 (g) OF THE SUBDIVISION REGULATIONS. TREES WITHIN THE RIGHT-OF-WAY REQUIRE TREE ROOT PROTECTION WITHIN A 10' RADIUS OF THE TREE TRUNK.

STREET TREES SHALL BE PROVIDED IN ACCORDANCE WITH THE MASTER STREET TREE PLAN FILED WITH THE REGISTER OF DEEDS. BOOK __, PAGE __.

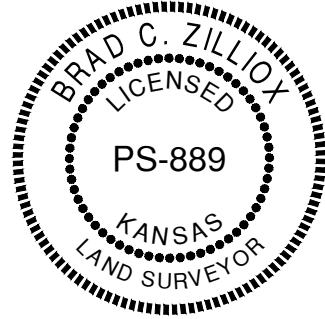
TRACT 'A' WILL BE A PRIVATELY OWNED DEDICATED PEDESTRIAN EASEMENT. TRACT 'B' WILL BE PRIVATELY OWNED NEIGHBORHOOD COMMON OPEN SPACE. THE DEVELOPER IS RESPONSIBLE FOR ESTABLISHING OWNERSHIP AND MAINTENANCE OF BOTH TRACTS VIA INDIVIDUAL OWNER MAINTENANCE OR MAINTENANCE BY OWNERS ASSOCIATION.

ALL LOTS WITHIN THE SUBDIVISION WILL BE PINNED IN ACCORDANCE WITH SECTION 20-811(K) OF THE SUBDIVISION REGULATIONS.

A PORTION OF THE W. 30th STREET RIGHT-OF-WAY LIES WITHIN A DESIGNATED "SPEIAL FLOOD HAZARD AREA" AS DEFINED BY FLOOD INSURANCE RATE MAP (FIRM); PANEL NO. 186, MAP NUMBER 20045C0186D, DOUGLAS COUNTY, KANSAS, BEARING AN EFFECTIVE DATE OF SEPTEMBER 2, 2015.

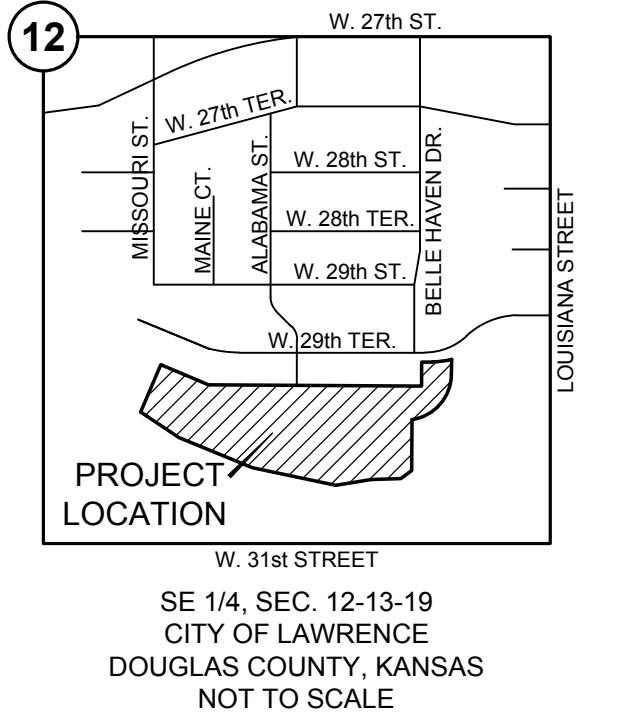
CERTIFICATION:

I HEREBY CERTIFY THAT THE PLATTED AREA AND THE LOCATION MAP SHOWN HEREON ARE THE RESULTS OF A FIELD SURVEY PERFORMED UNDER MY DIRECT SUPERVISION ON AUGUST 17, 2016. THIS SURVEY CONFORMS TO THE KANSAS MINIMUM STANDARDS FOR BOUNDARY SURVEYS.



BRAD C. ZILLOX, P.S. #889
1310 WAKARUSA DRIVE, SUITE 100
LAWRENCE, KS 66049
785.843.7530

LOCATION MAP:

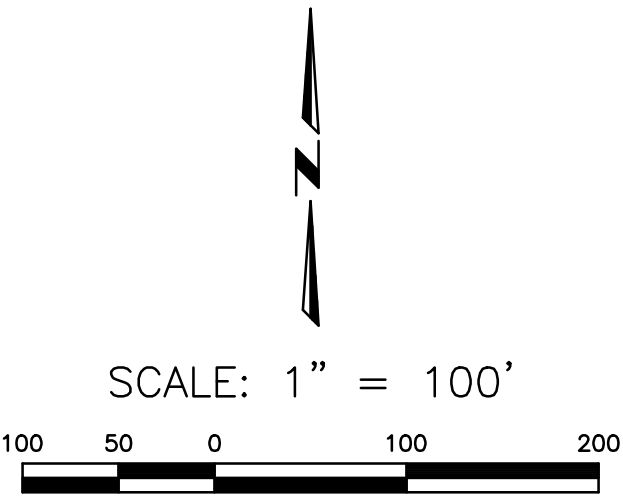


MONUMENTATION:

- FOUND: IRON BAR, AS NOTED
- SET: 1/2" x 24" BAR W/ "PS 889" CAP
- △ FOUND: SECTION CORNER FROM REFERENCE TIES, OR AS NOTED

LEGEND:

- U/E UTILITY EASEMENT
- R/W RIGHT-OF-WAY



LEGAL DESCRIPTION:

A TRACT OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 12, TOWNSHIP 13 SOUTH, RANGE 19 EAST OF THE SIXTH PRINCIPAL MERIDIAN, IN DOUGLAS COUNTY, KANSAS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 12, THENCE NORTH 01°41'46" WEST, ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER, 1,320.09 FEET TO THE SOUTHEAST CORNER OF LOT 47, NAISMITH VALLEY NO. 1, A REPLAT OF A PART OF MEADOW LEA ESTATES; THENCE SOUTH 50°49'16" EAST, 336.18 FEET TO THE SOUTHWEST CORNER OF LOT 34, BLOCK 10, INDIAN HILLS NO. 2, AN ADDITION TO THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS; THENCE SOUTH 68°53'12" EAST, ALONG THE SOUTHERLY LINE OF SAID ADDITION, 380.00 FEET TO THE SOUTHEAST CORNER OF LOT 2, BLOCK 13, OF SAID ADDITION AND THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 68°53'12" EAST, ALONG THE SOUTHERLY LINE OF SAID ADDITION, 269.39 FEET TO THE ANGLE POINT ON THE SOUTH LINE OF LOT 6, BLOCK 13 OF SAID ADDITION; THENCE NORTH 88°16'16" EAST, ALONG THE SOUTH LINE OF SAID ADDITION, A MEASURED DISTANCE OF 1,110.49 FEET TO THE SOUTHEAST CORNER OF LOT 7, BLOCK 16 OF SAID ADDITION; THENCE NORTH 1°43'44" WEST, ALONG THE EAST LINE OF SAID LOT, 125.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF WEST 29th TERRACE; THENCE NORTH 88°16'16" EAST, ALONG SAID SOUTH RIGHT-OF-WAY LINE, 55.05 FEET; THENCE CONTINUING ALONG SAID SOUTH RIGHT-OF-WAY LINE ON A CURVE TO THE LEFT HAVING A RADIUS OF 380.00 FEET, AN ARC LENGTH OF 101.14 FEET, A CHORD BEARING NORTH 80°38'46" EAST AND A CHORD LENGTH OF 100.84 FEET; THENCE SOUTH 1°43'44" EAST, 78.38 FEET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 240.00 FEET, AN ARC LENGTH OF 341.63 FEET, A CHORD BEARING SOUTH 39°03'03" WEST AND A CHORD LENGTH OF 313.51 FEET; THENCE SOUTH 1°43'44" EAST, 262.92 FEET; THENCE SOUTH 50°44'45" WEST, 70.52 FEET; THENCE SOUTH 85°58'07" WEST, 155.47 FEET; THENCE SOUTH 78°49'53" WEST, 186.41 FEET; THENCE NORTH 79°57'48" WEST, 444.81 FEET; THENCE NORTH 69°46'08" WEST, 412.68 FEET; THENCE NORTH 58°23'30" WEST, 239.50 FEET; NORTH 21°06'48" EAST, 269.12 FEET TO THE POINT OF BEGINNING. CONTAINS 14.530 ACRES, MORE OR LESS.

DEDICATION:

BE IT KNOWN TO ALL MEN THAT I, THE UNDERSIGNED OWNER OF THE ABOVE DESCRIBED TRACT OF LAND, HAVE HAD CAUSE FOR THE SAME TO BE SURVEYED AND PLATTED UNDER THE NAME OF "NAISMITH CREEK ADDITION" AND HAVE CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS AND STREETS, AS SHOWN AND FULLY DEFINED ON THIS PLAT, ALL STREETS, DRIVES, ROADS, ETC. SHOWN ON THIS PLAT AND NOT HERETOFORE DEDICATED TO PUBLIC USE ARE HEREBY SO DEDICATED. EASEMENTS ARE HEREBY GRANTED TO THE CITY OF LAWRENCE AND PUBLIC UTILITY COMPANIES FOR THE CONSTRUCTION, INSTALLATION AND MAINTENANCE OF UTILITIES IN, OVER, UNDER AND ACROSS THOSE AREAS OUTLINED ON THIS PLAT AS "UTILITY EASEMENT" OR "U/E". EASEMENTS ARE HEREBY GRANTED TO THE CITY OF LAWRENCE FOR THE CONSTRUCTION, INSTALLATION AND MAINTENANCE OF A SANITARY SEWER LINE, A MUNICIPAL UTILITY, IN, OVER, UNDER, AND ACROSS THE THOSE AREAS OUTLINED ON THIS PLAT AS "SANITARY. SEWER EASEMENT."

BRUCE F. SNODGRASS, MEMBER
SAVANNAH HOLDINGS, LLC

ACKNOWLEDGEMENT:

STATE OF KANSAS
COUNTY OF DOUGLAS

BE IT REMEMBERED THAT ON THIS __ DAY OF __, 2017, BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC, IN AND FOR SAID DOUGLAS COUNTY AND KANSAS, CAME BRUCE F. SNODGRASS, A MEMBER OF SAVANNAH HOLDINGS, LLC, WHO IS PERSONALLY KNOWN TO ME TO BE THE SAME PERSON WHO EXECUTED THE FOREGOING INSTRUMENT OF WRITING AND DULY ACKNOWLEDGES THE EXECUTION OF THE SAME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY SEAL ON THE DAY AND YEAR LAST WRITTEN ABOVE.

NOTARY PUBLIC

MY COMMISSION EXPIRES

ENDORSEMENTS:

APPROVED AS A MAJOR SUBDIVISION UNDER THE
SUBDIVISION REGULATIONS OF THE CITY OF LAWRENCE
& THE UNINCORPORATED AREAS OF DOUGLAS COUNTY

ASSOCIATED PRELIMINARY PLAT APPROVED BY
THE LAWRENCE-DOUGLAS COUNTY PLANNING
COMMISSION, DOUGLAS, COUNTY, KANSAS

SCOTT MCCULLOUGH DATE
DIRECTOR, PLANNING & DEVELOPMENT SERVICES

PATRICK KELLY DATE
CHAIR

RIGHTS-OF-WAY AND EASEMENTS ACCEPTED BY
CITY COMMISSION, LAWRENCE, KANSAS

LESLIE SODEN DATE
MAYOR

SHERRI RIEDEMANN DATE
CITY CLERK

REVIEWED IN COMPLIANCE
WITH K.S.A.58-2005

MICHAEL D. KELLY, P.S. #869 DATE
DOUGLAS COUNTY SURVEYOR

FILING RECORD:

STATE OF KANSAS
COUNTY OF DOUGLAS

THIS IS TO CERTIFY THAT THIS INSTRUMENT WAS FILED FOR RECORD IN THE OFFICE OF THE DOUGLAS COUNTY REGISTER OF DEEDS ON THIS __ DAY OF __, 2017, AND IS DULY RECORDED AT __ AM/PM, IN PLAT BOOK __ PAGE __.

REGISTER OF DEEDS
KAY PENNELL

A FINAL PLAT OF NAISMITH CREEK ADDITION

A SUBDIVISION IN THE CITY OF LAWRENCE,
DOUGLAS COUNTY, KANSAS

SE 1/4, SEC. 12-T13S-R19E



ADMINISTRATIVE DETERMINATION & CERTIFICATION

FINAL PLAT

Naismith Creek Addition, PF-16-00558

2/2/2017

PF-16-00558: Final Plat for Naismith Creek Addition, a 66 lot residential subdivision located south of W. 29th Terrace and west of Louisiana Street. Submitted by Landplan Engineering, for Savanna Holdings LC, property owner of record.

ADMINISTRATIVE DETERMINATION: The Planning Director approves the above-described Final Plat based upon the certification in the body of this report.

KEY POINTS

- Proposed final plat is consistent with the approved preliminary plat.
- Project will extend the local street network within the existing neighborhood.
- A pedestrian connection to Naismith Valley Park will be provided with this development.

SUBDIVISION CITATIONS TO CONSIDER

- This application is being reviewed under the Subdivision Regulations for Lawrence and Unincorporated Douglas County, effective Jan 1, 2007.

ASSOCIATED CASES

- A-13-00437; Annexation of 14.53 Acres, Ord. No. 8953
- Z-13-00348; A to RM12D and RM12D-FP, Ord. No. 8954
- Z-16-00219; RM12D to RS5
- Z-16-00220; RM12D-FP to RS5-FP
- PP-16-00221; approved by the Planning Commission on July 25, 2016
- FP-16-00555; approved on January 31, 2017

OTHER ACTION REQUIRED

- City Commission acceptance of dedication, of easements and rights-of-way as shown on the Final Plat.
- Submittal and approval of Public Improvement Plans and provision and acceptance of means of assurance of completion prior to the recording of the final plat at the Douglas County Register of Deeds.
- Recordation of final plat at the Douglas County Register of Deeds.
- Application and release of Building Permits prior to development.

PLANNING DIRECTOR CERTIFICATION (Section 20-809(m))

The final plat conforms to the content requirements of Section 20-809 of the Subdivision Regulations and is consistent with the Preliminary Plat (PP-16-00221) approved by the Planning Commission, subject to the satisfaction of the conditions of approval. The Planning Director hereby approves the final plat and certifies that the final plat:

- (i). Conforms to the Preliminary Plat previously approved by the Planning Commission.**
The final plat conforms to the approved Preliminary Plat.
- (ii). Satisfies any conditions of approval imposed by the Planning Commission.**
The Planning Commission approved the Preliminary Plat with two conditions. The Preliminary Plat was revised to meet the conditions of approval.

- (iii). Includes the same proposed dedications, subject to only minor technical adjustments.

The final plat includes the same dedications accepted by the City Commission.

- (iv). Represents a plat for which all required public improvements have been completed or for which adequate guarantee of improvements has been provided.

Public improvements will be required for this development. The applicant is working with City staff to coordinate work in the area and to develop a phasing plan to allow for construction of houses as improvements in the area are completed. A guarantee for improvements is a requirement of recording the Final Plat.

- (v). Is otherwise consistent with the requirements of the Subdivision Regulations for a final plat.

The final plat is consistent with all final plat requirements of the Subdivision Regulations.

Site Summary	
Gross Area:	14.35 Acres
Additional Right-of-Way: 3.86 Acres	W. 30 th Street W. 30 th Terrace
Tracts: 2	Tract A – 2,627 SF provides connection to Naismith Valley Park. Tract B – 4,809 SF internal open space for subdivision.
Number of Proposed Lots:	66
Minimum residential lot size:	5,004 SF – minimum lot size for district is 5,000 SF
Maximum residential lot size:	16, 167 SF
Average residential lot size:	6,929 SF

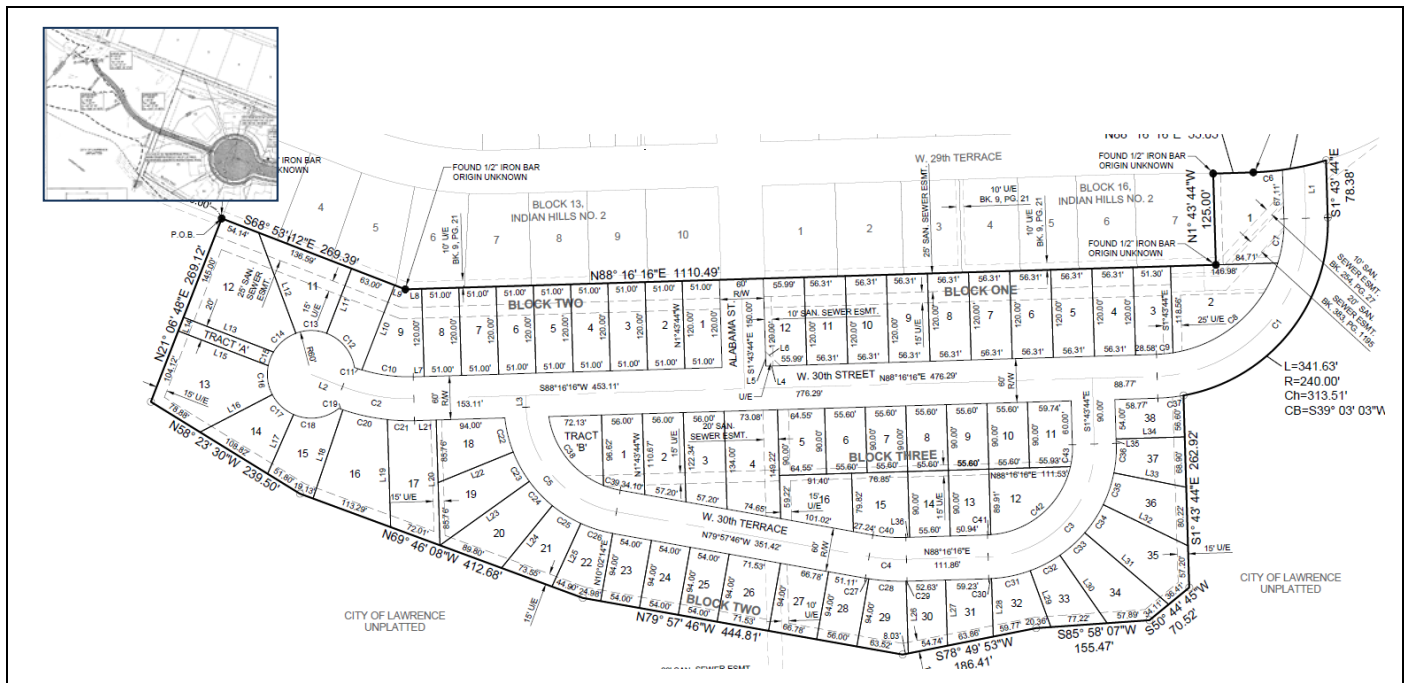


Figure 1. Proposed Final Plat.

- Inset shows sidewalk connection from subdivision (across Tract A) to recreation path as part of the public improvements for this project.

STAFF REVIEW

Compliance with preliminary plat

This Final Plat conforms to the Preliminary Plat, PP-16-0022 approved by the Planning Commission on July 25, 2016.

Street and Access

This Final Plat shows the same street network as the Preliminary Plat. The streets are extended in a modified grid pattern to serve the proposed subdivision. The streets will continue Alabama Street and Bell Haven Drive to the south.

Easements and Rights-of-way

Easements and rights-of-way are being dedicated as shown on the Final Plat to include new local streets, utility easements, and a pedestrian access to the park to the west noted as Tract A.

Utilities and Infrastructure

The utilities and infrastructure being provided with the Final Plat coincide with those proposed on the Preliminary Plat. The developer intends to develop the subdivision with phased improvements of infrastructure but will be required to provide a complete set of plans and guarantee for all public improvements prior to recording the Final Plat with the Register of Deeds Office.

The north side of the property is encumbered by existing utilities that are part of the City's planned infrastructure improvements in the area that will connect with the pump station being constructed to the east. The following graphic highlights the location of the existing easements. These will be retained with this final plat.

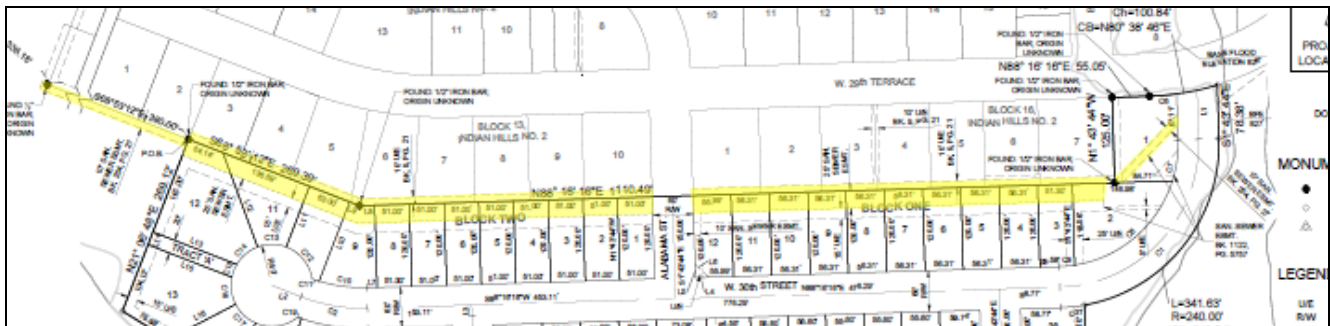


Figure 2: Existing Utility Easement

Public Improvements

Public Improvement Plans for these improvements have been submitted for review. The means of assurance of completion of improvements (letter of credit, funds in escrow, etc.) must be provided prior to the recording of the Final Plat with the Register of Deeds.

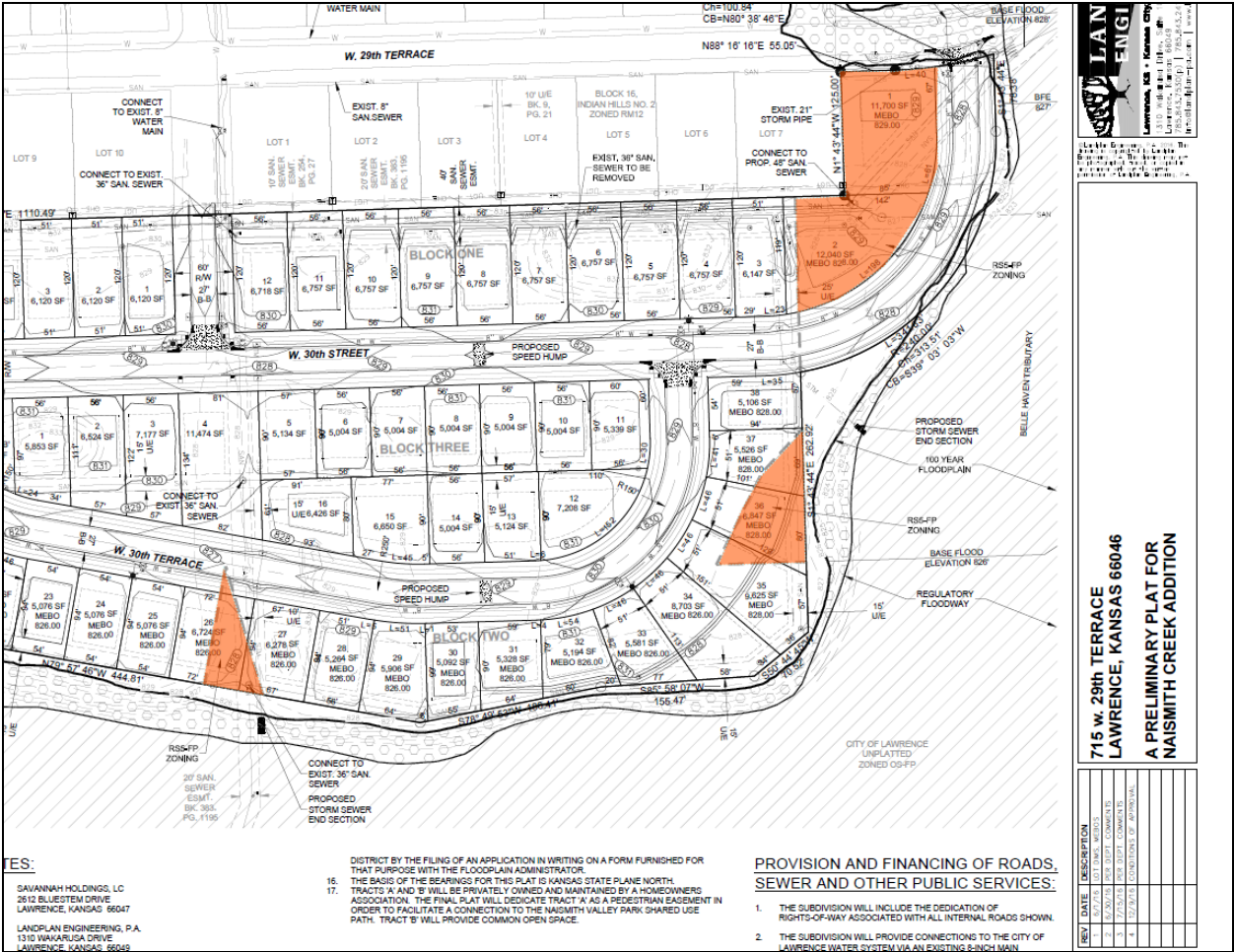
Master Street Tree Plan

The number of trees required for some lots is reduced because of the narrow size of the lot. The Master Street Tree Plan and graphic includes the required/appropriate number of trees along all existing and proposed streets.

Floodplain

A portion of the property is encumbered by the regulatory floodplain. The applicant has submitted a concurrent application for a local floodplain development permit for the addition of the necessary fill for

development of individual lots, FP-16-00555. The permit is for the grading work required within the regulatory floodway fringe and the Floodplain Overlay District for the construction of public improvements and preliminary grading of the residential lots. This permit notes that separate individual permits will be required for the construction of residential structures and improvements on Lots 1 and 2, Block 1 and Lots 26, 27, 35, 36, and 37, Block 2.



CONCLUSION

This final plat is consistent with the planned development of the property.



City of Lawrence
Douglas County
PLANNING & DEVELOPMENT SERVICES

6 East 6th St.
P.O. Box 708
Lawrence, KS 66044

www.lawrenceks.org/pds

Phone 785-832-3150
Tdd 785-832-3205
Fax 785-832-3160

February 3, 2017

Landplan Engineering
Brian Sturm
1310 Wakarusa Dr
Lawrence, KS 66049

RE: **PF-16-00558**; Final Plat application for Naismith Creek Addition

Dear Brian:

The above referenced item has been administratively approved. There are no conditions of approval. This Final Plat is scheduled to be considered by the City Commission at their meeting on February 21, 2017 for the acceptance of easements and rights-of-way.

Please feel free to contact me at 785-832-3161 or sday@lawrenceks.org with any questions or concerns.

Sincerely,

Sandra Day, AICP
Planner II





City of Lawrence
Douglas County
PLANNING & DEVELOPMENT SERVICES

6 East 6th St.
P.O. Box 708
Lawrence, KS 66044

www.lawrenceks.org/pds

Phone 785-832-3150
Tdd 785-832-3205
Fax 785-832-3160

February 22, 2017

Landplan Engineering
Brian Sturm
1310 Wakarusa Dr
Lawrence, KS 66049

RE: **PF-16-00558**; Final Plat application for Naismith Creek Addition

Dear Brian:

The City Commission accepted the dedication of easements and rights-of-way for the above referenced item at their meeting on February 21, 2017. There are no conditions of approval.

Staff will process the recording of the Final Plat and attachments as quickly as possible. A copy of the paid property tax receipts and a guarantee for the public improvements is required before the documents can be recorded with the Douglas County Register of Deeds Office.

Please feel free to contact me at 785-832-3161 or sday@lawrenceks.org with any questions or concerns.

Sincerely,

Sandra Day, AICP
Planner II

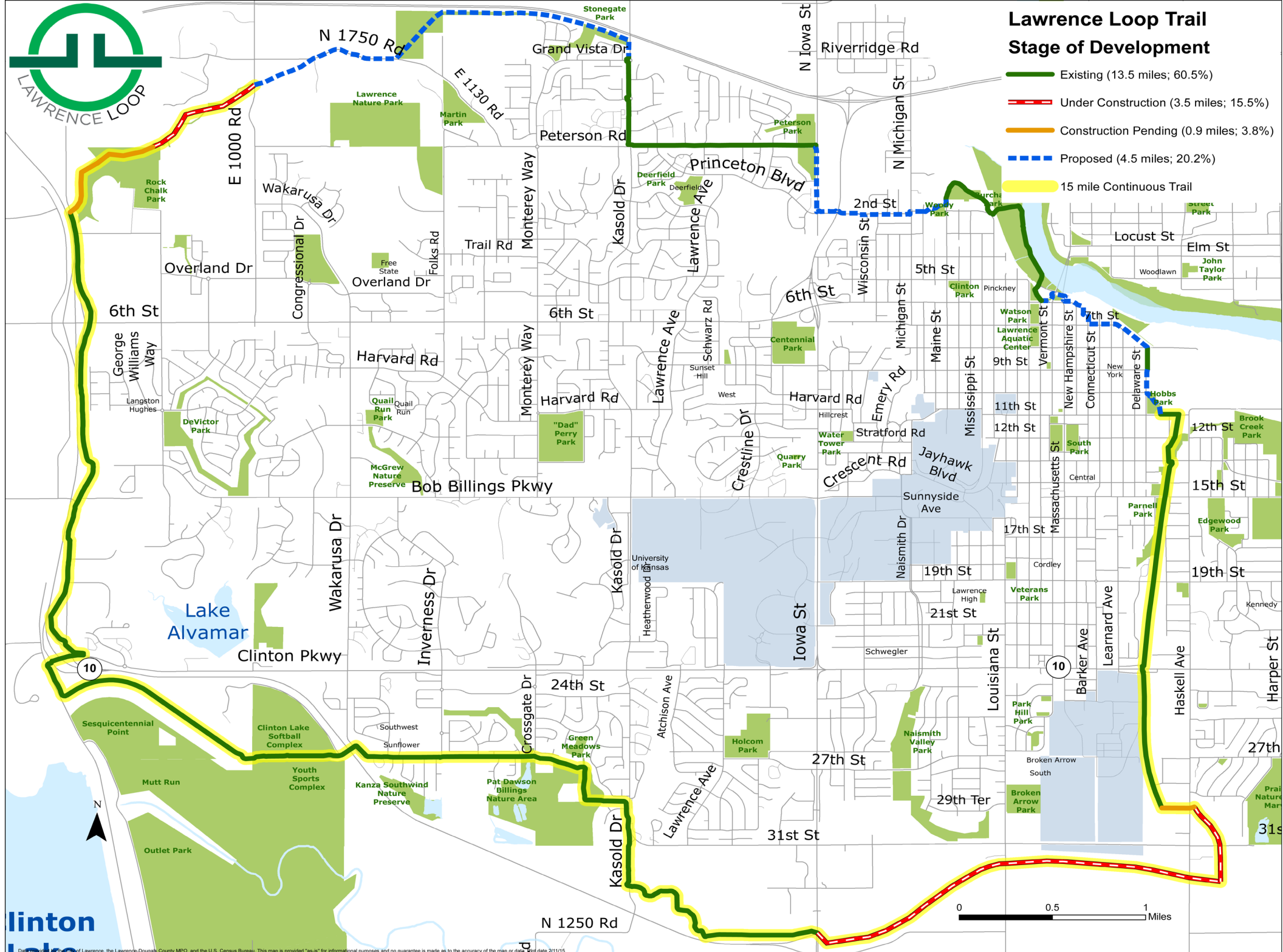


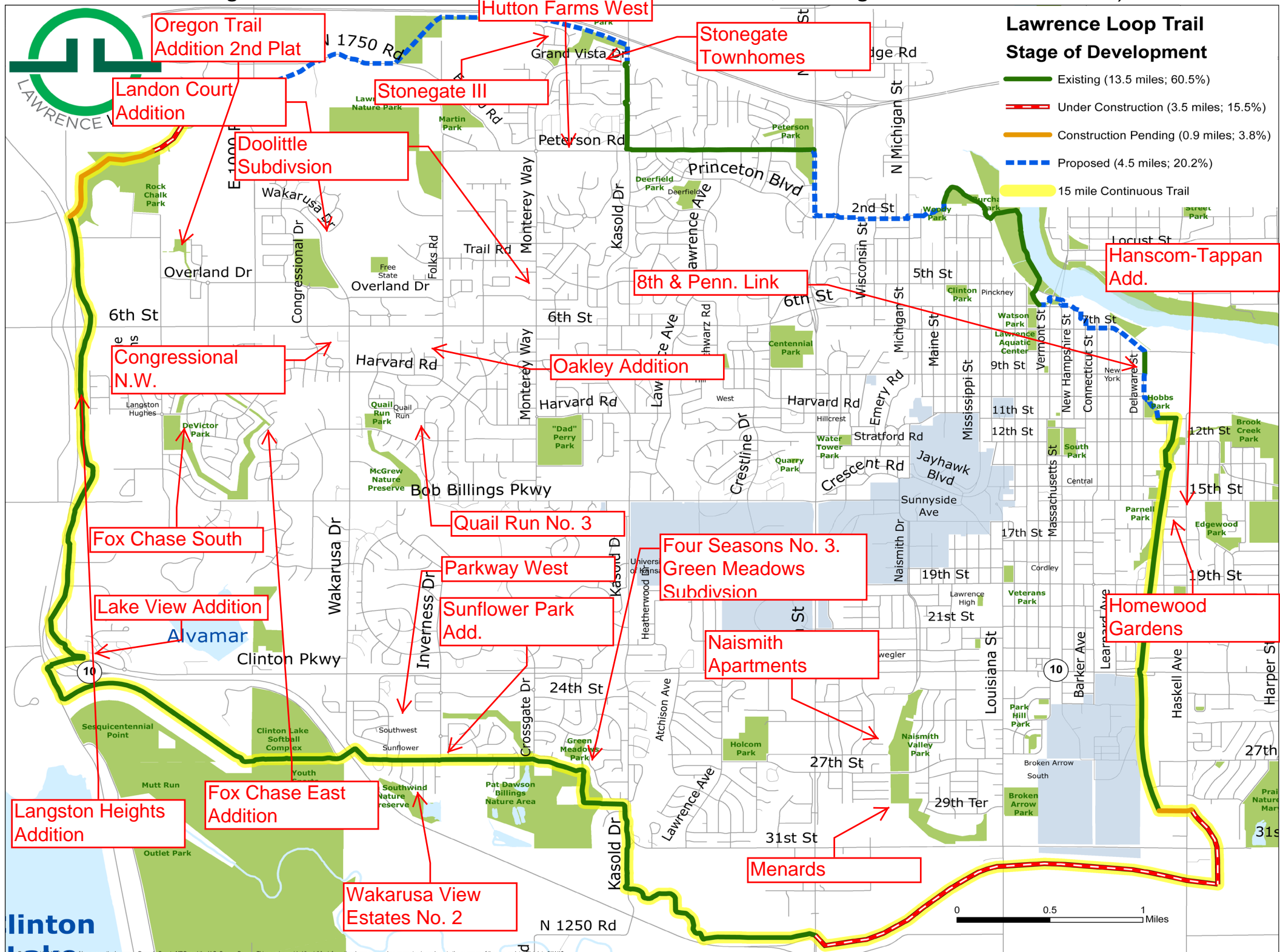


**Lawrence Loop Trail
Stage of Development**

- Existing (13.5 miles; 60.5%)
- Under Construction (3.5 miles; 15.5%)
- Construction Pending (0.9 miles; 3.8%)
- Proposed (4.5 miles; 20.2%)

15 mile Continuous Trail





**ITEM NO. 5 VARIANCES FROM FLOODPLAIN REGULATIONS FOR THE
RIVERFRONT MALL FROM FLOODWAY RESTRICTIONS AND
MECHANICAL EQUIPMENT ELEVATION AT 1 RIVERFRONT PLAZA
[AAM]**

B-17-00124: A request for variances as provided in Section 20-1309 of the Land Development Code of the City of Lawrence, Kansas, 2015 edition. The first request is a variance from the code allowing an existing development to remain in the floodway as defined in Section 20-1204(b) of the City Code. The second variance is to allow certain existing mechanical equipment to remain in their current locations without being elevated 1 foot above base flood elevation as required by Section 20-1204 (e)(3)(i)(a)(1) of the City Code. The property is located at 1 Riverfront Plaza. Submitted by the City of Lawrence, the land owner of record, and Riverfront L.L.C. and Spring Hill Suites by Marriott, the structure owners of record. **The legal description for each application is found in the respective project case file which is available in the Planning Office for review during regular office hours, 8-5 Monday - Friday.**

A. REASON FOR REQUEST & PROJECT SUMMARY

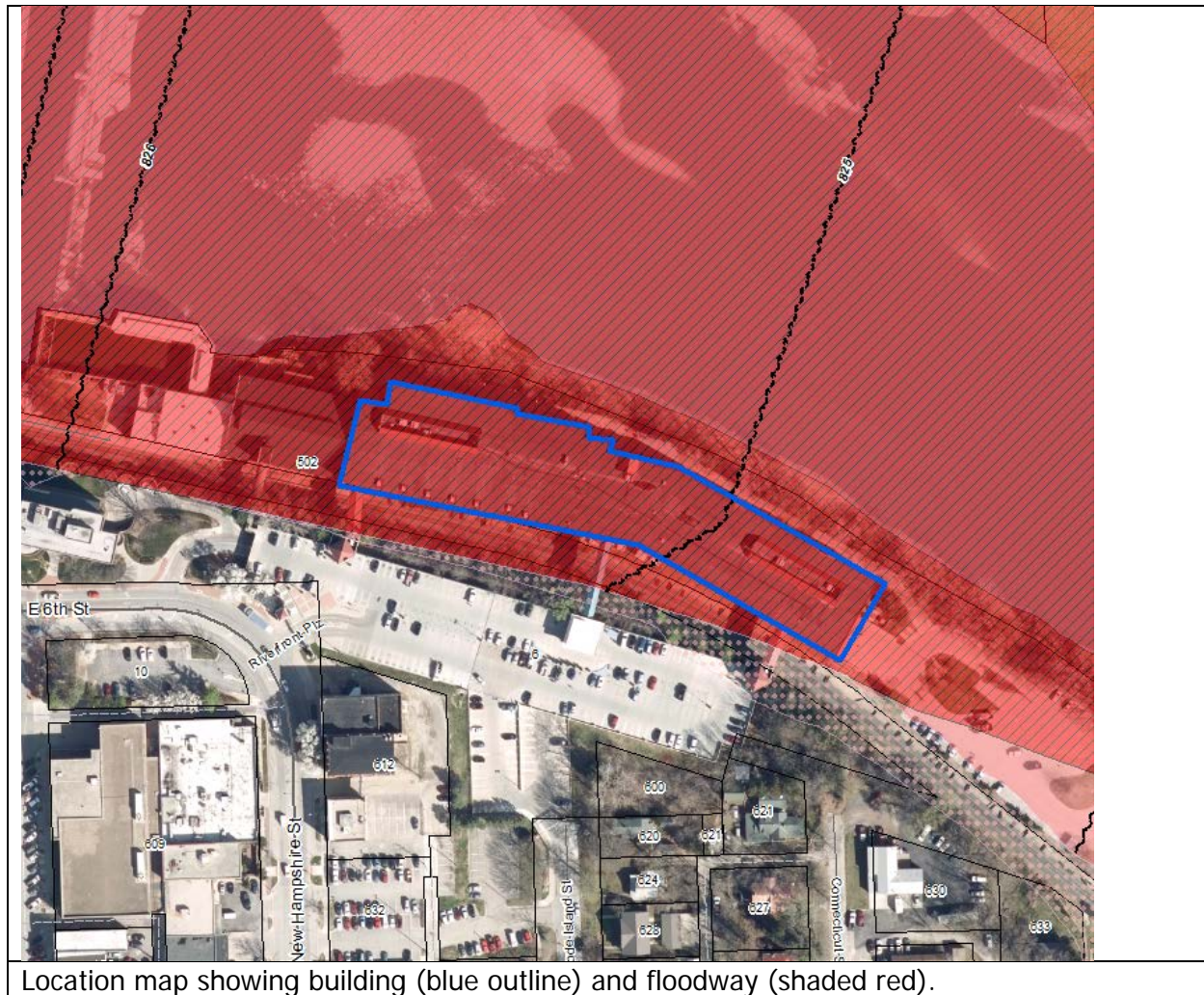
The subject property is an existing structure, constructed in 1989, located at 1 Riverfront Plaza at the corner of 6th and New Hampshire Streets. No new development is proposed with this application. The applicants are seeking to bring the current structure into compliance with the floodplain regulations to facilitate the potential to obtain future building permits for renovation and remodel work.

The Federal Emergency Management Association (FEMA) issues floodplain maps (Flood Insurance Rate Maps or FIRMs) for our jurisdiction. Those maps delineate the regulatory or 1% Annual Chance (100-year) floodplain on the property. Current maps in effect, dated September 2, 2015, show that the entire structure is located in the regulatory floodway. Section 20-1204 (b) of the City Code does not allow any development in the regulatory floodway, except for certain public improvements, roads, and utilities as defined in that section. Therefore, this structure is not permitted in the regulatory floodway without the granting of a variance. Legal non-conformity or grandfathering is not a concept afforded to structures in the floodplain through the floodplain regulations.

They city received its first floodplain maps from FEMA on March 2, 1981. At that time, this property was located in the regulatory floodway. On January 3, 1989, the city adopted Ordinance 5968 which revised the FEMA flood boundary and floodway map so that the official file copy of FEMA Map #2000090, Panel 0015A, dated March 2, 1981 was revised to indicate a floodway line along the north side of the proposed Kansas River Plaza Development, thereby removing the subject property from the regulatory floodway. The structure was built in 1989 - 1990. On November 7, 2001, the city received revised maps from FEMA placing the entire structure back in the regulatory floodway, negating Ordinance 5968, and creating the need for the requested variances.

Staff also recognizes that the structure was built with a finished floor elevation between 825.6 and 826.1 Mean Sea Level (MSL), which would have complied with the floodplain regulations

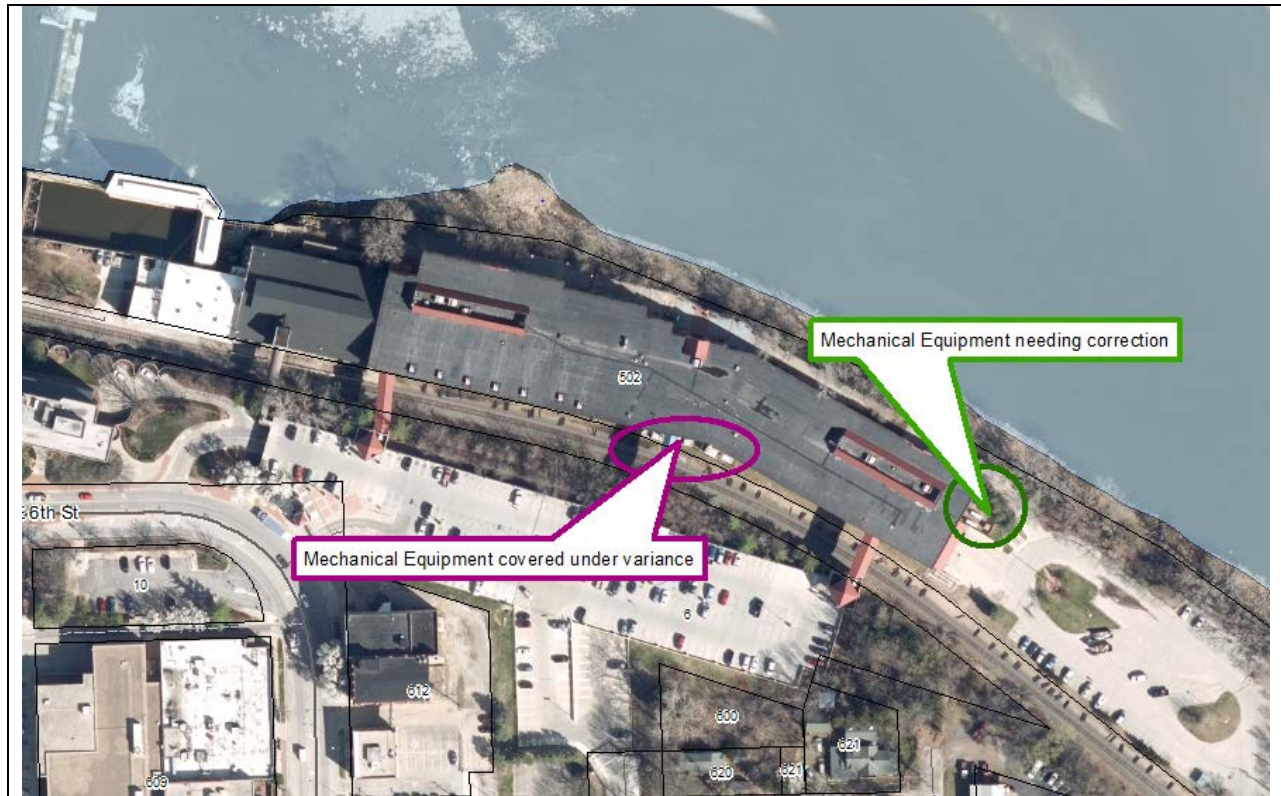
regarding elevation at the time of construction, but would not today. The Base Flood Elevation (BFE) ranges from 824-826 MSL. Current code standards require non-residential structures to be elevated at least 1' above BFE. The variance to Section 20-1204 (b) would permit the structure to remain in the floodway in compliance with the elevation standards stated above and make future improvements subject to the remaining floodplain regulations.



Location map showing building (blue outline) and floodway (shaded red).

In reviewing the remainder of the floodplain regulations staff has identified the need for a second variance to permit existing mechanical equipment to remain at an elevation below 1' above the Base Flood Elevation (BFE). Section 20-1204 (e)(3)(i)(a)(1) of the City Code states that mechanical equipment for non-residential structures must be elevated at least 1' above BFE. Staff has reviewed all ground mounted exterior mechanical equipment and determined that there are two locations where the mechanical equipment is not elevated at least 1' above BFE. One location is on the northeast corner of the structure and the other is located near the center of the structure on the south side. The risk of damage from flooding is greater on the northeast corner of the building and staff believes, at this time, that the mechanical equipment located there would be safer if elevated, so the granting of these variances is conditioned upon the elevation of those mechanicals. They will instead be required to come into compliance with the code standard as a condition of the granting of these variances. The mechanical equipment

located near the center of the structure on the south side is the subject of the variance request. A survey indicated that the mechanical equipment located in that area was elevated to 825.4 MSL and the BFE at that location was approximately 825 MSL.



Map showing location of mechanical equipment that is the subject of the variance request and mechanical equipment that will need correction per the condition associated with the variance.

The requested variances allow the existing structure to remain in its current location, at its current elevation, and place it in compliance with the current floodplain regulations, subject to the provision that the mechanical equipment on the northeast corner is elevated in accordance with the current code standard.

B. ZONING AND LAND USE

Current Zoning and Land Use	CD (Downtown Commercial) District with Floodplain Management Regulations Overlay District; developed as mixed-use structure.
Surrounding Zoning and Land Use	<p>To the west: CD (Downtown Commercial) District and CS (Commercial Strip) District with Floodplain Management Regulations Overlay District; existing structures.</p> <p>To the south: GPI (General Public and Institutional Use) District; existing parking structure.</p> <p>To the north and east: CD (Downtown Commercial) District</p>

	and OS (Open Space) District with Floodplain Management Regulations Overlay District; Kansas River.
--	---

C. ZONING ORDINANCE REQUIREMENTS

Section 20-1309(a) Authority and Applicability:

The zoning variance procedures of this section authorize the Board of Zoning Appeals to approve, in specific cases, variances from specific zoning standards of this development code that will not be contrary to public interest and where, owing to special conditions, a literal enforcement of zoning standards would result in unnecessary hardship.

(Code sections applicable to the variances being requested are highlighted in yellow)

Section 20-1204 (b):

20-1204 PROVISIONS FOR FLOOD HAZARD REDUCTION

(a) Development of Property in the Floodplain Overlay District

- (1) Development of land or subdivision of property (including Lot splits) into a Buildable Lot(s) within the Floodplain Overlay District shall be permitted only where an approved Hydrologic and Hydraulic Study demonstrates that there will be no rise in the Base Flood Elevation and no increase in Flood velocities at any point resulting from the proposed Development.
- (2) Property platted prior to December 31, 2003, may Develop and/or replat or subdivide (including Lot splits) for non-residential uses without conducting a Hydrologic and Hydraulic Study. Such Development is still subject to the remaining sections of this Article [Article 12].
- (3) Development of undeveloped residential property that was platted prior to December 31, 2003, may occur without conducting a Hydrologic and Hydraulic Study until December 31, 2008. Such Development is still subject to the remaining sections of this Article [Article 12]. After December 31, 2008, Development of the property is subject to all sections contained within this Article [Article 12].

(b) Floodway Restrictions

Any encroachment, including fill, New Construction, substantial improvements, or cumulative improvements or other Development is prohibited within the Regulatory Floodway, except for the following Structures:

- (1) Flood control and stormwater management Structures;
- (2) Road improvements and repair;
- (3) Utility Easements/Rights-of-Way; and

(4) Public improvements or public Structures for bridging the Floodway

Section 20-1204 (e)(3)(i)(a)(1):

(e) General Development Standards

The following standards apply to any and all Development that is proposed within the Floodplain Overlay District.

- (1) All Development shall comply with the following standards:
 - (i) Fill shall not be placed in the Setback areas except at approved Access points unless a grading plan has been approved by the Stormwater Engineer;
 - (ii) Structures must be designed and constructed with adequate anchorage to prevent flotation, collapse, or lateral movement of the Structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - (iii) Structures must be designed and constructed with materials resistant to Flood damage using methods and practices that minimize Flood damages;
 - (iv) All electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities must be designed and/or located to prevent water from entering or accumulating within the mechanical components during conditions of Flooding;
 - (v) New or replacement water supply systems and/or sanitary sewage systems must be designed to eliminate infiltration of Flood waters into the systems and discharges from the systems into Flood waters, and on-site waste disposal systems must be located so as to avoid impairment or contamination;
 - (vi) All public utilities and facilities, such as sewer, gas, electrical, and water systems must be located and constructed to eliminate Flood damage;
 - (vii) Fully enclosed areas below the Lowest Floor that are used solely for Parking of vehicles, Building Access, or storage in an area other than a Basement and that are subject to Flooding must be designed to automatically equalize hydrostatic Flood forces on exterior walls by allowing for the entry and exit of Flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect to meet or exceed the following minimum criteria:

- a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to **Flooding** shall be provided; and,
- b. The bottom of all openings shall be no higher than one foot above Grade. Openings may be equipped with Screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(viii) Storage of Material and Equipment;

- a. The storage or processing of materials within the **Floodplain Overlay District** area that are in time of **Flooding** buoyant, flammable, explosive, or potentially injurious to human, animal, or plant life is prohibited; and
- b. Storage of other material or equipment may be allowed if not subject to major damage by Floods, if firmly anchored to prevent flotation, or if readily removable from the area within the time available after a **Flood** warning.

(2) Additional Standards for Residential Construction

- (i) Proposed **New Construction**, **Substantial-Improvement** or **Cumulative Improvement** of any residential **Structures**, including **Mobile Homes** or Manufactured Homes, shall comply with the following:
 - a. The **Lowest Floor**, including all HVAC and mechanical equipment, shall be elevated a minimum of two (2) feet above the **Base Flood Elevation**. A licensed land surveyor or licensed professional engineer shall provide written certification of the **Lowest Floor** elevation to the **Floodplain** Administrator as set out in Section 20-1203(c)(7).
 - b. For the portion of a property within the **Floodplain Overlay District**, the maximum impervious surface coverage shall not exceed 30%.
- (ii) Fill on individual Lots shall meet the following requirements, unless a grading plan has been approved by the Stormwater Engineer:
 - a. No fill dirt shall be placed closer than five (5) feet to perimeter Lot Line(s) of the property;
 - b. No fill dirt shall be placed greater than 20 feet from the **Structure**;
 - c. Fill dirt shall be placed on a Lot so that it does not exceed a 3:1 slope; and
 - d. Where additional elevation over the Height that can be achieved from a 3:1 slope is needed to meet the requirements of this Article, the additional elevation shall be met through the

use of vertical walls and the construction of non-residential areas, such as garages, crawl spaces with gravel floors, or similar structurally sound designs, as part of the residential [Structure](#).

(3) Additional Standards for Non-Residential Construction

- (i) Any proposed [New Construction](#), [Substantial-Improvement](#) or [Cumulative Improvement](#) of any non-residential [Structures](#) shall meet the following standards:

- a. Either of the following:

1. The [Lowest Floor](#), including [Basement](#), [HVAC](#), and [mechanical equipment](#), shall be elevated a minimum of one (1) foot above the [Base Flood Elevation](#). A licensed land surveyor or licensed professional engineer shall certify the elevation of the [Lowest Floor](#). Such certifications shall be provided to the [Floodplain Administrator](#) as set forth in Section 20-1203(c)(7); or

2. Together with attendant utility and sanitary facilities, the [Structure](#) shall be [Floodproofed](#) to at least one foot above the [Base Flood Elevation](#). The portion of the [Structure](#) below this level is to be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied.

- b. For the portion of a property within the [Floodplain Overlay District](#), the maximum impervious surface coverage shall not exceed 60%.

D. SPECIFIC ANALYSIS

Section 20-1309(g)(2) lists the criteria required to be met for the granting of a variance from the Flood Protection Regulations:

(i). The Board of Zoning Appeals may approve a variance from the flood protection regulations of Article 12 only after finding that the requested variance meets all of the following criteria:

(i)a. A determination by the Board of Zoning Appeals that the variance is the minimum necessary, considering the flood hazard to afford relief;

The structure was constructed legally and exists today. The mechanical equipment located on the south side (non-river side) of the building are all ground mounted small HVAC mechanical

systems. Their location provides them protection in the event of a flood. The granting of these variances allows the structure to remain in the floodway while still being subject to the floodplain regulations which are designed to ensure that the structure is reasonably safe from flooding. The granting of this variance is the minimum necessary, considering the flood hazard, to afford relief.

(i)b. A showing of good and sufficient cause;

According to historical flood data, 1993 is the most recent flood where river levels reached 826 MSL, which is in some places higher than the BFE at the site. Historical knowledge is that flood water has not impacted the structure, other than closing the river walk on the north side as a precaution. The structure was constructed legally and has existed in this state for over 27 years. The granting of these variances allows the building to remain in the floodway, but any development activity will be subject to the floodplain regulations normally applied to structures in the regulatory floodplain, but outside of the regulatory floodway. These reasons show good and sufficient cause for the granting of these variances.

(i)c. A determination by the Board of Zoning Appeals that failure to grant the variance would result in an Unnecessary Hardship to the applicant, as that term is defined in Section 20-1309(g)(1); and

A hardship would exist if not granted as the structure would be in violation of the floodplain management regulations and would not be allowed to receive any future building permits by which to renovate or repair the building.

(i)d. A determination by the Board of Zoning Appeals that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or in victimization of the public, or conflict with existing local laws or ordinances.

The structure remains today and the current flood maps take this in to consideration when determining flood boundaries, therefore this variance will not result in increased flood heights, create nuisances, cause fraud on or in victimization of the public, extraordinary public expense and will not create additional threats to public safety. The granting of these variances does not conflict with existing laws or ordinances.

(ii). The Board of Zoning Appeals may approve a zoning variance from the flood protection regulations of Article 12 only after considering all technical evaluations, relevant factors, and standards specified in Article 12 and meeting the terms of K.S.A. 12-734. In addition, the following factors shall be considered:

(ii)a. The danger of injury from materials swept onto other lands;

There will be no danger from materials swept onto other lands as a result of the granting of these variances.

(ii)b. The danger of life and property due to flooding or erosion damage;

These variances allow an existing building to remain and will not cause danger to life or property due to flooding or erosion damage.

(ii)c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner or occupant;

The development exists today and the granting of the variances does not increase the susceptibility of the facility to flood damage. Staff recommends that all owners obtain flood insurance.

(ii)d. The importance of the services provided by the proposed facility to the community:

While the services provided by this building are not vital to the community, this is a sizable structure in the community that has existed for over 25 years.

(ii)e. The necessity to the facility of a waterfront location, where applicable:

While the facility is not required to be located near the waterfront, it was built in this location over 25 years ago. The river walk on the north side of the structure does take advantage of the scenic river views.

(ii)f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use:

The structure in question is already constructed, therefore alternative locations are not applicable.

(ii)g. The compatibility of the proposed use with existing and anticipated development:

The proposed development is existing and is in compliance with zoning regulations. It is a compatible use.

(ii)h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area:

The comprehensive plan advocates for reusing existing structures and promotes responsible floodplain management. Therefore the granting of the variances is consistent with the goals and policies of the comprehensive plan and the floodplain management program for the area, as detailed above.

(ii)i. The safety of access to the property in times of flood for ordinary and emergency vehicles:

The granting of these variances does not impact access to the property in time of flooding. Multiple access points exist currently including some access points that are not located in the regulatory floodway.

(ii)j. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

The floodway is part of the Kansas River and does experience velocity in times of flood. A river gauge exists immediately upstream at the Kansas River bridge that provides real time data on river levels and in the past ample warning has been able to be given in the event of a flood.

(ii)k. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Infrastructure is existing and there should be minimal additional cost of providing governmental services during or after flood conditions.

(iii) Generally, variances from flood protection standards may be issued for a Significant Development Project to be erected on a Lot of one-half acre or less in size contiguous to and surrounded by Lots with existing Structures constructed below the Regulatory Flood level, providing items Section 20-1309(g)(2)(ii)a through Section 20-1309(g)(2)(ii)j have fully been considered. As the lot size increased beyond one-half acre, the technical justification required for issuing the variance increases.

While the project area is over one-half acre, this variance is related an existing structure that was built legally in compliance with the floodplain regulations at the time of construction, but no longer complies with the current floodplain regulations. Technical justification for the granting of these variances is provided in the above narrative and answers to the questions.

(iv) Any applicant to whom a variance is granted shall be given written notice that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

If a floodplain variance is granted, the applicant will receive written notice as part of the action letter that there may be additional cost for flood insurance at this location. The granting of these variances does not affect the structure for insurance rating purposes. The structure will still be rated based on the floodway designation.

(v) The Planning Director shall maintain the records of all variances and report any variances to the Federal Insurance Administration upon request.

Permanent records of the BZA request, hearings, and action are kept in the Planning Office and are available upon request.

As part of our community's participation in the National Flood Insurance Program (NFIP), staff is required to report any variances granted through bi-annual reporting and cyclical on-site audits. The NFIP allows land owners in the community to purchase flood insurance and the City's participation in the CRS (Community Rating System) program allows people to obtain a discount on that flood insurance.

E. RECOMMENDATION:

Based upon the findings as identified, Staff's recommendation is for approval of the variance from the code allowing an existing development to remain in the floodway as defined in Section 20-1204(b) of the City Code and approval of the variance to allow existing mechanical equipment in the center of the structure on the south side to remain in their current locations without being elevated 1 foot above base flood elevation as required by Section 20-1204(e)(3)(i)(a)(1) of the City Code, subject to the following condition:

1. A floodplain development permit and building permit must be obtained and the necessary work must be performed to elevate the mechanical equipment on the northeast corner of the structure to at least 1' above BFE.



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A variance is being requested to allow an existing structure to be permitted to exist in the regulatory floodway. Specifically, the following variances are being requested:

1. A variance to Section 20-1204 (b) to allow an existing development to remain in the floodway, subject to compliance with other sections of the Floodplain Management Regulations as set for in Chapter 20, Section 12 of the Land Development Code;
2. A variance to Section 20-1204 (e) (3) (i) (a) (1) to allow some existing mechanical equipment to remain without being elevated 1 foot above the Base Flood Elevation.

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City of Lawrence Douglas County

PLANNING & DEVELOPMENT SERVICES

Lawrence Douglas County Metropolitan Planning Office

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existing structures constructed below the regulatory flood level, providing items 2(a) through 2(j) have been fully considered. as the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

SIGNATURE

I/We, the undersigned am/are the **(owner(s))**, **(duly authorized agent)**, **(Circle One)** of the aforementioned property. By execution of my/our signature, I/we do hereby officially apply for variances as indicated above.

Signature(s): Scott M. Kelly Date 3/8/17
PDS Director

_____ Date _____

_____ Date _____

STAFF USE ONLY

Application No. _____

Date Received _____

BZA Date _____

Fee \$ _____

Date Fee Paid _____



City of Lawrence
Douglas County
PLANNING & DEVELOPMENT SERVICES

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Exhibit A: Legal Description for Parcel

023-079-30-0-30-22-001.01-0

THAT PART OF FOLLOWING DESC TRN OF THE AT&SF RR:LEVEE SHOWN ON ORIGINAL PLAT OF THE CITY OF LAWRENCE AS AREA BOUNDED ON N BY KS RIV,ON S BY PINCKNEY(6TH) ST,ON W BY RE #7 & ON E BYRE #8,LESS PART KNOWN AS ROBINSON PARK



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OWNER AUTHORIZATION

I/WE BRANDON J RANEY, hereby referred to as the "Undersigned", being of lawful age, do hereby on this 29th day of March, 20 17 make the following statements to wit:

1. I/We the Undersigned, on the date first above written, am/are the lawful owner(s) in fee simple absolute of the following described real property:

See "Exhibit A, Legal Description" attached hereto and incorporated herein by reference.

2. I/We the undersigned, have previously authorized and hereby authorize _____ (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the Planning Office of Lawrence/Douglas County, Kansas, regarding B-17-00124: 1 Riverfront Plaza (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process.

3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.

Brandon Raney

Owner

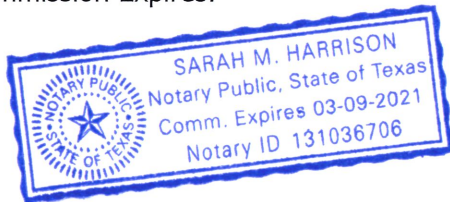
Owner

STATE OF ~~KANSAS~~ TEXAS
COUNTY OF ~~DOUGLAS~~ DEKALB

The foregoing instrument was acknowledged before me on this 29 day of March, 20 17,
by _____.

My Commission Expires:

Sarah Harrison
Notary Public





OWNER AUTHORIZATION

I/WE Riverfront LLC, hereby referred to as the "Undersigned", being of lawful age, do hereby on this 29 day of March, 20 17, make the following statements to wit:

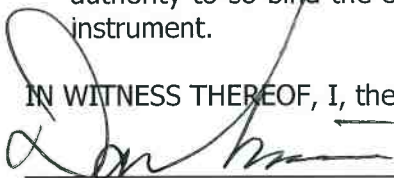
1. I/We the Undersigned, on the date first above written, am/are the lawful owner(s) in fee simple absolute of the following described real property:

See "Exhibit A, Legal Description" attached hereto and incorporated herein by reference.

2. I/We the undersigned, have previously authorized and hereby authorize the City of Lawrence (Herein referred to as "Applicant"), to act on my/our behalf for the purpose of making application with the Planning Office of Lawrence/Douglas County, Kansas, regarding B-17-00124: 1 Riverfront Plaza (common address), the subject property, or portion thereof. Such authorization includes, but is not limited to, all acts or things whatsoever necessarily required of Applicant in the application process.

3. It is understood that in the event the Undersigned is a corporation or partnership then the individual whose signature appears below for and on behalf of the corporation or partnership has in fact the authority to so bind the corporation or partnership to the terms and statements contained within this instrument.

IN WITNESS THEREOF, I, the Undersigned, have set my hand and seal below.



Owner

Owner

STATE OF KANSAS
COUNTY OF DOUGLAS

The foregoing instrument was acknowledged before me on this 29 day of March, 20 17

by Dan Simons

My Commission Expires:


Notary Public

