Updated:
6/23/10 @ 6:15pm
Item 6 - Text Amendment; IBP District presentation

6/21/10 @ 12:15pm
Added communications for Item 5 - Text Amendment for Environmentally Sensitive Area
Added overall page map

6/20/10 @ 2:30pm
Added Draft May Planning Commission Minutes

6/18/10 @ 4:30pm
Added Misc Item 3 - Interpretation Duplex and Detached Dwelling Parking

6/16/10 @ 2:00pm
Draft May Planning Commission Minutes will be added when available.

LAWRENCE-DOUGLAS COUNTY METROPOLITAN PLANNING COMMISSION
CITY HALL, 6 EAST 6TH STREET, CITY COMMISSION MEETING ROOM
AGENDA FOR PUBLIC & NON-PUBLIC HEARING ITEMS
JUNE 21 & 23, 2010  6:30 - 10:30 PM

GENERAL BUSINESS:

PLANNING COMMISSION MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of May 24 and 26, 2010.

COMMITTEE REPORTS

Receive reports from any committees that met over the past month.

COMMUNICATIONS

a) Receive written communications from the public.
b) Receive written communications from staff, Planning Commissioners, or other commissioners.
c) Receive written action of any waiver requests/determinations made to the City Engineer.
d) Disclosure of ex parte communications.
e) Declaration of abstentions from specific agenda items by commissioners.

ELECTION OF OFFICERS FOR 2010-2011

Accept nominations for and elect Chair and Vice-Chair for the coming year.

AGENDA ITEMS MAY BE TAKEN OUT OF ORDER AT THE COMMISSION'S DISCRETION
REGULAR AGENDA (JUNE 21, 2010) MEETING
NON-PUBLIC HEARING ITEMS:

ITEM NO. 1 FINAL DEVELOPMENT PLAN; PARKWAY PLAZA PCD; 8.03 ACRES; 3504 CLINTON PKWY (SLD)

FDP-4-5-10: Consider a Final Development Plan for phase I of the Parkway Plaza PCD for a building addition to the Hy-Vee Grocery Store, approximately 8.03 acres, located at 3504 Clinton Parkway. Submitted by Landplan Engineering, P.A., for Hy-Vee Food Stores, Inc., property owner of record.

ITEM NO. 2A FINAL PLAT; BAUER FARM; 4.9 ACRES; 4700 W 6th ST (MKM)

PF-4-3-10: Consider a Final Plat for Bauer Farm, a one lot residential subdivision containing approximately 4.9 acres, located at 4700 W 6th St. Submitted by Landplan Engineering, for Free State Group, LLC, Free State Holdings, Inc, and Bauer Farms Residential, LLC, property owner of record.

ITEM NO. 2B FINAL DEVELOPMENT PLAN; BAUER FARM PHASE 4; 5.39 ACRES; 4700 W 6th ST (MKM)

FDP-4-6-10: Consider a Final Development Plan for Bauer Farm Phase 4, approximately 5.39 acres, located at 4700 W 6th St. The Development Plan proposes the construction of a 124 unit retirement residence, an assisted living use, and associated parking area. Submitted by Landplan Engineering, for Free State Group, LLC, Free State Holdings, Inc, and Bauer Farms Residential, LLC, property owner of record.

PUBLIC HEARING ITEMS:

ITEM NO. 3 PD TO PD; 2.61 ACRES; 2000 & 2040 W 31st ST (SLD)

Z-3-4-10: Consider a request to rezone approximately 2.61 acres from PD-[Home Improvement Center- PCD-2 with use restrictions] to PD-[Home Improvements Center- PCD-2 with use restrictions amended to include office uses], located at 2000 & 2040 W 31st St. Submitted by Landplan Engineering, for Broadway Plaza II Lawrence Inc., property owners of record.

ITEM NO. 4 PCD-1 TO CS; 11.99 ACRES; 1025-1035 NORTH 3rd ST (SLD)

Z-4-5-10: Consider a request to rezone approximately 11.99 acres from PCD-1 (Planned Commercial Development) to CS (Strip Commercial), located at 1025-1035 North 3rd Street. Submitted by KDL, Inc. for I-70 Business Center, LLC., property owner of record.

ITEM NO. 5 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE; ENVIRONMENTALLY SENSITIVE AREAS (MKM)

TA-12-27-07: Consider Text Amendments to various sections of the City of Lawrence Land Development Code, Chapter 20, to revise the Protection Standards for Environmentally Sensitive Areas, to provide more precise definitions, and to include incentives for protection of sensitive lands beyond that required by Code.
MISCELLANEOUS NEW OR OLD BUSINESS

MISC NO. 1  Letter received from David Holroyd regarding Oread Neighborhood Association, as well as staff response.

MISC NO. 2  Information received from Barbara Clark regarding soil classes.

MISC NO. 3  Interpretation regarding Duplex and Detached Dwelling Parking.

Consideration of any other business to come before the Commission.

Recess until 6:30 P.M. on June 23, 2010.
BEGIN PUBLIC HEARING (JUNE 23, 2010):

COMMUNICATIONS

a) Receive written communications from staff, Planning Commissioners, or other commissioners.
b) Disclosure of ex parte communications.
c) Declaration of abstentions from specific agenda items by commissioners.

PUBLIC HEARING ITEMS:

ITEM NO. 6 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE; IBP DISTRICT (MJ L)

TA-4-4-10: Consider Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Section 20-403 of the Code of the City of Lawrence, KS to permit the Hotel, Motel, Extended Stay use in the IBP (Industrial/Business Park) District. Initiated by Planning Commission on 4/26/10.

ITEM NO. 7 COMPREHENSIVE PLAN AMENDMENT TO UPDATE CHAPTER 14; SPECIFIC PLANS (MJ L)

CPA-4-2-10: Update Chapter 14 - Specific Plans to correct references made to the previous Chapter 13 - Implementation regarding the adoption process for plans. The reference needs to be updated to refer to Chapter 17 - Implementation. This was an oversight when the chapter was renumbered and was identified as a work item in the annual review of the Comprehensive Plan. Initiated by Planning Commission on 4/26/10.

ITEM NO. 8 COMPREHENSIVE PLAN AMENDMENT TO UPDATE CHAPTER 7; INDUSTRIAL & EMPLOYMENT RELATED LAND USE (MJ L)

CPA-4-3-10: Amend Chapter 7 - Industrial and Employment Related Land Uses to be consistent with the approved K-10 & Farmer's Turnpike Plan to include the expanded Santa Fe Industrial Area and I-70 and K-10 industrial area identified in the sector plan. This was an identified work item in the annual review of the Comprehensive Plan. Initiated by Planning Commission on 4/26/10.

ITEM NO. 9 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE; CHAPTER 20, ARTICLE 12; FLOODPLAIN OVERLAY DISTRICT (AMB)

TA-4-6-10: Consider Text Amendments to the City of Lawrence Land Development Code, Chapter 20, Article 12 to reference 2010 effective dates for new Floodplain Overlay District Maps and related regulation changes.

ITEM NO. 10 TEXT AMENDMENT TO DOUGLAS COUNTY ZONING REGULATIONS; CHAPTER 12, ARTICLE 28; FLOODPLAIN OVERLAY DISTRICT (AMB)

TA-4-7-10: Consider Text Amendments to the Zoning Regulations, Chapter 12, Article 28 of the Code of the County of Douglas, Kansas to reference 2010 effective dates for new Floodplain Overlay District Maps and related regulation changes.

**DEFERRED**

ITEM NO. 11 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE; CHAPTER 20, ARTICLE 8; MINOR & MAJOR SUBDIVISIONS (SMS)
**TA-3-3-10**: Consider Text Amendments to the City of Lawrence Land Development Code, Chapter 20, Article 8 to revise requirements and standards related to the processing of Minor and Major Subdivisions. Initiated by City Commission on 2/16/10.

**MISCELLANEOUS NEW OR OLD BUSINESS**

Consideration of any other business to come before the Commission.

**PUBLIC COMMENT SECTION**

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**CALENDAR**

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**PCCM Meeting:** (Generally 2nd Wednesday of each month, 7:30am-9:00am)

**TAC Meeting:** (Generally 1st Tuesday of each month, 1:30pm-2:30pm)

**CPC Meeting:** (Generally 1st & 3rd Wednesday of each month, 4:00pm)

**RZC meeting:** (Generally every 2 weeks on Thursdays, 3:30pm-5:00pm)

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**ADJOURN**

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PLANNING COMMISSION MEETING
May 24 & 26, 2010
Meeting Minutes DRAFT

May 24, 2010 – 6:30 p.m.
Commissioners present: Blaser, Carter, Chaney, Dominguez, Finkeldei, Harris, Moore, and Rasmussen
Staff present: McCullough, Stogsdill, Brown, J. Miller, Leininger, Warner, and Ewert

MINUTES
Receive and amend or approve the minutes from the Planning Commission meeting of April 26 and 28, 2010.

Motioned by Commissioner Harris, seconded by Commissioner Blaser, to approve the April 26 and 28, 2010 Planning Commission minutes.

Motion carried 5-0-1, with Commissioner Carter abstaining. Commissioners Dominguez and Rasmussen were not present at the meeting yet.

COMMITTEE REPORTS
Receive reports from any committees that met over the past month.

Commissioner Finkeldei said he was appointed to be on the Neighborhood School Taskforce and will report back to Planning Commission any findings and updates.

Commissioner Harris said the Comprehensive Plans Committee met to review the draft chapter after receiving public comment. It was sent back to staff to include the committee’s comments and will come back to the committee on June 9th at 3:30pm.

COMMUNICATIONS
Mr. Scott McCullough reviewed new attachments/communications that were posted to the online Planning Commission agenda after the initial posting date.

No written action of any waiver requests/determinations made to the City Engineer.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- No ex parte.
- No abstentions.
PC Minutes 5/24/10  DRAFT
ITEM NO. 1    SPECIAL USE PERMIT FOR NORTH BOWERSOCK MILLS &
POWERHOUSE; 1000 POWERHOUSE NORTH RD (AMB)

SUP-3-4-10: Consider a Special Use Permit for the construction of the North Bowersock Mills &
Powerhouse, Utility and Service, Major, located at 1000 Powerhouse North Road. Submitted by
Bowersock Mills & Power Company and the City of Lawrence, property owners of record.

STAFF PRESENTATION
Ms. Amy Brown presented the item.

Commissioner Harris inquired about the No Rise Certificate.

Ms. Brown said there are specific standards that FEMA gives out for development in the regulatory
floodway. One of those is the provision of a No Rise Certificate which basically means there will be
no rise as a result of the development.

Commissioner Harris asked if the ground is raised up.

Ms. Brown said no, the water (flood) level.

APPLICANT PRESENTATION
Ms. Sarah Hill-Nelson, Bowersock Mills and Power Company, said they would like some evening
interior light. She also stated that the ownership may change to a Limited Liability Company, but
would be operated by Bowersock Mills.

PUBLIC HEARING
Mr. Ted Boyle, President of North Lawrence Improvement Association, felt it was a good project for
North Lawrence and would contribute to the economic welfare of North Lawrence. He encouraged
Planning Commission to approve the Special Use Permit.

ACTION TAKEN
Motioned by Blaser, seconded by Commissioner Harris, to close the public comment.

Motion carried 7-0.

Commissioner Carter asked if there should be a change to the condition for lighting.

Ms. Brown said the applicant submitted information to staff ahead of time and part of that is
addressed in the staff report. She said it could be addressed in the photometric plan, which is a
condition of approval, so no change is needed to the conditions.

Commissioner Harris inquired about flooding. She asked if the area floods and the building is
damaged would there be a cost to the community to repair.

Ms. Brown said by nature the building is meant to be flooded because it is located in the river. She
said she was not sure that they could get flood insurance with the nature of the building.

Motioned by Commissioner Carter, seconded by Commissioner Chaney, to approve Special Use
Permit (SUP-3-4-10) for the construction of the North Bowersock Mills & Powerhouse, Utility and
Service, Major, based upon the findings presented in the body of the staff report and subject to the following conditions:

1. Publication of an ordinance per Section 20-1306(j).
2. Approval of a Floodplain Development Permit, including submission of a no-rise certificate and HEC-RAS or equivalent hydraulic model as requested by the Stormwater Engineer, prior to release of Special Use Permit for building permits.
3. Approval of a lease agreement with the City of Lawrence for the use of city-owned property.
4. Submission of a photometric plan showing the location, size and wattage of fixtures.
5. Applicant shall provide a revised site plan with the following changes:
   a. Correctly show the location of the access road on the southernmost edge of the levee under the Kansas River bridge.
   b. Move the stand pipe on the south wall as close as possible to the stair door.
   c. Show location of fire hydrant that meets 2006 IFC C105.1.
   d. Show location of Fire Department Connection (FDC) on west wall of building next to main door.
   e. Revision of the surface summary to add square footage amounts for building and pavement.
   f. Add material notation for canoe portages and fishing deck.
   g. Add the following notes:
      Proposed Use: “Utility and Service, Major”
   h. Add City of Lawrence as property owner:
      City of Lawrence, KS
      PO Box 708
      Lawrence, Kansas 66044
      785.832.3000

Motion carried 7-0. Commissioner Dominguez was not present at the meeting yet.
ITEM NO. 2  
PCD-2 TO PCD-2; 2.61 ACRES; 2000 & 2040 W 31ST ST (SLD)

Z-3-4-10: Consider a request to rezone approximately 2.61 acres from PD-[Home Improvement Center- PCD-2 with use restrictions] to PD-[Home Improvements Center- PCD-2 with use restrictions amended to include office uses], located at 2000 & 2040 W 31st St. Submitted by Landplan Engineering, for Broadway Plaza II Lawrence Inc., property owners of record.

Item 2 was deferred prior to the meeting.
PC Minutes 5/24/10  DRAFT

ITEM NO. 3  PRELIMINARY DEVELOPMENT PLAN FOR CROSSGATE DRIVE CASITAS; 4.6 ACRES; 2451 CROSSGATE DR (SLD)

PDP-3-2-10: Consider a Preliminary Development Plan for Crossgate Drive Casitas, 46 one bedroom units on approximately 4.6 acres, located at 2451 Crossgate Drive. Submitted by BG Consultants, Inc., for Inverness Park LP, property owner of record. Waivers for reduced parking, building setback and peripheral setback are included in this request.

*Item 3 was withdrawn prior to the meeting.*
ITEM NO. 4  COMPREHENSIVE PLAN AMENDMENT TO H2020; CHAPTER 14 - NORTHEAST SECTOR PLAN (DDW)

CPA-6-5-09: Consider Comprehensive Plan Amendment to Horizon 2020 – Chapter 14 to include the Northeast Sector Plan.

STAFF PRESENTATION
Mr. Dan Warner presented the item.

Commissioner Finkeldei asked about the definition of Soil Conserving Agri-Industry.

Mr. McCullough said Soil Conserving Agri-Industry category has its roots in Chapter 7 that was adopted last year. He said as the sector plan has worked its way through the public process there have been calls on all fronts to better explain, define, and characterize what that may mean for someone looking at this plan and have expectations for that. He stated the underlined blue language is the second round of the draft. It is a term with its basis found in Horizon 2020, Chapter 7. The distinction between soil conserving and straight industrial employment classifications means to staff that there is a component of protecting and/or using the existing ag-land either through ag use or preservation. Staff discussed what examples might help implement that term and reviewed comments that tend to leave out a word or two each way. Staff felt the key components of either using or protecting those soils can come in various forms, whether it’s using the soil for crop production with limited buildings, or traditional industrial with protection of a majority of the land through conservation easements.

Commissioner Harris asked about the last part of Mr. McCullough’s description where he talked about conventional industrial saving land. She asked if he is still envisioning that to be agricultural industrial.

Mr. McCullough said the question is how defined do they want the term to be. It’s a brand new term to Horizon 2020. Staff does not want to box themselves in and it may be traditional industrial with a strong protection component.

Commissioner Finkeldei inquired about the language ‘conserve and use class 1 and 2 soils in the area.’ He wondered about a grocery store that only sells local food in the area.

Mr. McCullough gave the example of a development application for a 40 acre plot with a small grocery store and parking lot associated with it and a conservation easement. He said it would be a packaged development linked to protection.

Commissioner Finkeldei asked if staff has considered Transfer of Development Rights (TDR’s)

Mr. McCullough said not necessarily because of this localized class one and two soil discussion.

Commissioner Rasmussen asked why they were focusing on class one and two soils and not prime farmland.

Mr. McCullough said that is how prime agriculture is defined in Chapter 7.

Commissioner Rasmussen asked if the definition for prime farmland was different than USDA.
Mr. McCullough said through public discussions staff came to that conclusion, yes.

Commissioner Rasmussen asked how much prime farmland, under the Chapter 7 definition, there is in state of Kansas and what percentage is contained in Douglas County.

Mr. McCullough said staff did not have data for the state. He said the majority of Douglas County lies in this township with smaller amounts along the Wakarusa River and other tributaries.

7:06pm - Commissioner Dominguez arrived at the meeting.

Commissioner Rasmussen asked what percentage of that is the amount class one and two in Douglas County.

Mr. McCullough said he did not have that information at his finger tips.

Commissioner Finkeldei inquired about the green open space.

Mr. McCullough said that is the floodway.

Commissioner Rasmussen inquired about the mapped soil conserving agri-industry. He asked if it is bounded on the North by Hwy 24/40 and bounded on the West by Hwy 40/59.

Mr. Warner said he was correct on the North boundary but the West boundary does not go all the way over to the highway. It is bounded on the South by Interstate 70.

Commissioner Rasmussen inquired about the snowflake at Midland Junction.

Mr. Warner said it is designated as future industrial/employment that comes from Chapter 7. It is designated as a far out (30 years) employment center.

Commissioner Rasmussen asked why on the proposed land use map there is only one small soil conserving agri-industry area.

Mr. McCullough said it is rooted in Chapter 7 as an industrial employment center type land use with the soil conserving agri-industry definition behind it.

Commissioner Rasmussen inquired about map 2-13 – Class 1 and 2 Soils. He said the area shown as class 1 looks a little bigger than the class 1 area where that snowflake is on top of the map. He was curious why the class 1 soils in the area south of the airport deserved special designation.

Mr. McCullough said the plan proposes the snowflake at Midland Junction as a future nodal plan so this plan hasn’t planned to the parcel level yet. It may very well have soil conserving agri industry classification when the nodal plan is done because Chapter 7 supports that classification in that area but it hasn’t been designated to that level yet for the Midland Junction snowflake.

Commissioner Harris said the plan says soil conserving agri industry should be included in Midland Junction when a nodal plan is developed for that area.

Commissioner Rasmussen said that is not reflected on the map.
Mr. Mr. McCullough said that node has not been classified yet for land use but that it is something that the plan calls for in a future planning effort.

Commissioner Rasmussen asked why Mr. Warner said during his presentation that the area would be particularly suited for urbanization and industrial development.

Mr. Warner said the sheer size of that area versus the entire planning area, and the fact that the airport and highways are right there. That was the original planning area and it got larger through the process. That is the most focused area for infrastructure and different transportation networks.

Mr. McCullough said there will be a Utilities Master Plan presented later on this evening.

**PUBLIC HEARING**

Mr. Roger Pine said virtually every acre he farms has been changed and he was concerned about what he could still do. He also expressed concern about new rules or regulations for farming class 1 and 2 land. He felt the soil conserving agri industry definition was not clear. He was surprised about industry being there and wasn’t sure if it would fit in. He inquired about the rules specific to normal agri production and wondered if an ethanol plant or wind turbines could be put there. He displayed a map that showed people who were opposed to the plan.

Commissioner Dominguez asked how many property owners were on the map Mr. Pine displayed.

Mr. Pine said he hasn’t counted the number but that some land owners own multiple pieces of land. He said his best guess would be about 25-50 property owners.

Mr. McCullough said the plan does not annex or rezone property, or create new regulations for the property as it sits today. The uses that exist today will exist and be lawful if the plan is adopted. He said agricultural as a use will not be affected by this planning effort, it is exempt from state statute from zoning laws in the county.

Commissioner Harris had a question about the map that Mr. Pine displayed. She asked if there is a petition of land owners opposed to the plan.

Mr. Pine said there was no petition but that he could gather a list.

Ms. Barbara Clark, owns a farm in Grant Township, said Douglas County has 304,000 acres and of that there are 2.8% capability class 1 soils and 8.2% capability class 2 soils (both percentages including urbanized soils). She said capability class 1 and 2 soils are USDA definitions and that prime soils is a far more encompassing definition used by the USDA. She said former Planning Commissioner Lawson suggested narrowing prime farmland.

Commissioner Carter requested that Ms. Clark resend an email to the Planning Commission that she had previously sent regarding soil information.

Ms. Clark said she would do that.

Commissioner Rasmussen asked if the USDA uses the definition prime farmland or prime soils.

Ms. Clark said prime farmland.

Commissioner Finkeldei asked how much prime farmland is in this area.
Ms. Clark said she did not know but that it was the vast majority. She thanked planning staff for the inclusive nature of this draft document. She said it was done in good faith and community participation was at a high level. She referred to American Planning Association white paper policy guide on agricultural land preservation and one policy guide is “two primary planning goals are to provide locations for necessary urban development and to protect natural resources such as good agricultural soils. If growth is properly directed the two rarely come into conflict, if it is not, neither goal can be achieved, therefore agricultural land preservation programs should not be independent of more general growth management programs.” She felt they needed to recognize the importance for both production agriculture and sustainable organic smaller scale agriculture to the future of Douglas County. She said they need to also pursue incentives to assist owners that wish to stop farming. She requested they look into a zoning district definition and identification for soil conserving agri industry. She felt the language in the second draft can be built upon but actually having the zoning regulation is an important aspect of it.

Commissioner Rasmussen said one way to keep agricultural land in use would be to put a prohibition on any uses except agriculture through zoning. He asked if Ms. Clark had any other suggestions.

Ms. Clark said community building is far more than infrastructure and brick and mortar. She felt this is a community building endeavor. She suggested things like Transfer of Development Rights, Purchase of Development Rights, federal funding through the Farmland and Ranch Protection Program, Kansas Land Trust, and conservation easements. She said she would prefer multiple options.

Commissioner Harris asked Ms. Clark why she was asking to have zoning for agri industry.

Ms. Clark said there is insecurity about the definition. She said if it could be defined, clarified, and debated it would be a much healthier way to move forward.

Mr. Jim Congrove, landowner in Grant Township, said prior to the 1951 flood there were 6,000 acres of potato production. He said the document seems to indicate class 1 and 2 soils are the only prime soils in the area. He said class 3 soils that exist in the area are also good and that at least half of his 300 acres of potatoes were in the class 3 soil. He said the sand in the class 3 soil was helpful during wet years. He said they need to talk more about regional food policy, not just local.

Ms. Mary Ross asked for map 3.1 future land use to be on overhead. She said she has a sustainable farm in Grant Township and felt any definition of sustainability should include financial security along with family and environmental wellbeing. She said her feedlot and office are on existing industrially zoned property along the railroad track and that some of the land has been taken for improvements such as the turnpike, airport, and KP&L substation. She said the perception of this map is that her property is being downzoned to agricultural and that reduces the land value. She said the green space shown on the map shows it as public recreation when it is really her private land. She said she does not want the lake taken because it is her private property. She said there is a proposed bike path that would go through her property and under the turnpike and she does not want to have to farm around a bike path due to safety and liability issues.

Mr. Ken Reiling said he is the owner of a 64 acre farm on the far eastern edge of Grant Township. He said he is a former geography teacher. He said the plan overemphasis prime soils and land suitability. He referenced some information from one of the geography classes he taught that said in the 50 states there is enough land suitability class 1 and 2 to cover Kansas over four times. He said the emphasis on the plan is more restriction and he was not sure that was in the best interest of
Lawrence. He wanted to know if the unconventional land use category of soil conserving agri industry has been standardized in any way. He said if not then it is more localized and he was not sure they should depend on a localized definition. He said it was confusing to land owners, not well defined, and he was opposed to making a new category. He felt it should be more of a regional plan.

Commissioner Moore recommended Mr. Reiling submit to Mr. Warner his information resources.

Commissioner Rasmussen asked Mr. Reiling what type of class he used to teach.

Mr. Reiling said geography.

Commissioner Rasmussen asked if the total number of class 1 and 2 soils in the US equals four times the state of KS.

Mr. Reiling said that was correct.

Mr. Pat Ross said he lives in Grant Township and has had a diverse family farm since the early 1900's. He said he attended all the meetings regarding the Northeast Sector Plan. He said livestock production was only mentioned under floodplain and traditional agriculture has little mention in the plan. He said information from the Kansas Farm Management Association shows the value of traditional crops in Grant Township for 2009 was just under 4 million dollars and livestock production was 2 million. He said class 3 and 4 soils are just as important as class 1 and 2 soils. He also said the railroad is hardly mentioned in the plan. He was concerned about soil conserving agri industry not being accurately defined. He also had questions about the proposed bike path. He requested they delay the implementation of the plan.

Mr. Ron Schneider said he is the landowner of a 40 acre small farm. He said his main concern is that traditional farming is not accurately defined in the draft plan. He said they needed to focus on the goal of conserving valuable farmland. He suggested that they have not gone far enough in doing that with this plan. He said perhaps class 3 and 4 should also be protected. He said the conservation process is important, not necessarily what is being grown. He felt there should be a number of categories in the soil conservation ag industry that should be developed and defined precisely and should be adopted regardless of this sector plan. He felt the map shown by Mr. Pine of property owners who were opposed to the plan was suspect because the map was made by phone calls. He said if he was polled by phone about the proposal the only answer he would have is ‘I don’t know’ because he had not read it yet and he questioned if any or many of the people have even read the plan or what they were told.

Commissioner Harris asked Mr. Schneider to expand further about addressing soil protection outside of this plan.

Mr. Schneider said just to focus on Grant Township is crazy because there is a lot of land in the county. He said they need to be smart about planning and address it county and state wide. He said the state of Iowa in the mid 1980’s created a state wide zoning classification dealing with certain categories of soil that basically said something couldn’t be built if it would take away the production capacity of the land.

Mr. Gary Price said he has attended many of the Northeast Sector Plan meetings. He has a cattle farm in western Douglas County. He said the definition of preserving from the dictionary means to ‘preserve from loss, decay, wreck, or injury.’ He said he was in favor of conserving all soil and felt
the definition for this tract of land is arbitrary. He said when reading Chapter 7 today he thought of a plan, he suggested setting aside a certain amount of land for small farm usage.

**Mr. Clint Hornberger**, Douglas County Farm Bureau Board of Directors, was opposed to the term soil conserving agri industry as well as the land that has been deemed as such in the plan. He said the term is loosely defined and has the potential to place limits on the land and land owner options. He said a previous commission thought prime farmland should be defined down to class 1 and 2. He said the USDA definition of prime farmland is basically any agricultural land that a net profit is made off of.

Commissioner Harris asked if the Farm Bureau was aware that soil conserving agri industry was added to Chapter 7.

Mr. Hornberger said no. He said he was not pleased about the definition because it is too loosely defined and can be interpreted in many ways.

Commissioner Dominguez asked if he wanted more industrial zoning in the county to lower taxes.

Mr. Hornberger said yes. He said he didn’t have that much opposition to the term of agri industry, but has issues with the soil conserving part.

**Ms. Trudy Rice** said she works at Kansas State working in Community Development. She said in the land grant system they informally define sustainable agriculture as something that sustains the family, business, and environment. When looking at sustainable community development built environment, human environment, financial environment, and environmental capital are important. She said there is room in the Northeast sector plan to ensure a healthy balance for a healthy community. Soil is one consideration but just as important is infrastructure. She said consumers have choices and so should producers. She felt the plan compromises the ability for generations to meet their needs. She thought the plan is a moving target and difficult to plan around a moving target.

**Ms. Carolyn Phillips**, Husted Management, said her property has been in the family for over 100 years. She said the Northeast Sector Plan attempts to tell property owners how to use land. She wanted to make sure freedom of choice is not taken away from landowners.

**Mr. Ted Boyle**, President of North Lawrence Improvement Association, worked close with staff in designing the Northeast Sector Plan. He said 2,500 people live in North Lawrence. He was concerned about stormwater and flood control for the residents of North Lawrence. He said the residents are concerned about any high density development that happens north of North Lawrence. He stated there are over 150 new homes in North Lawrence.

**Mr. Charles NovoGradac**, has a farm in North Lawrence, stated that he is a Farm Bureau member but does not agree with their thoughts. He showed a map on the overhead. He said the north line of his property is ½ mile from Hwy 24-40. He expressed drainage concerns. He said the levee creates a bowl and creates surface problems. He felt it was good to preserve high quality soil. He recommended getting precise topographic and felt it was important to know where the airport drains. He suggested no development north of Highway 40 that would drain into the already overburden Maple Creek.

**Mr. Lew Phillips**, owns 250 acres located within a mile of Midland Junction. He said the Northeast Sector is considered to be prime farmland but also includes prime land for industrial and economic development. He said factors that favor development of commercial land are excellent
transportation, railway, airport, and there is no other place in Douglas County with these three attributes. Other factors favoring the development include flat land, reduced building cost, nearness to Lawrence and potential for utilities, providing jobs within a few miles, commercial businesses support many philanthropic activities in Lawrence, and the tax rate on business is more than twice the rate of residential property. In Horizon 2020 selectively referenced with bias against development. It clearly identifies Midland Junction and the airport as future hubs for future industrial and commercial development. He said if the residential community is not going in that direction then this is a plus for industrial development. He suggested installing a traffic light at Midland Junction to address safety issue. He felt the elimination of the ability of a farmer to sell his land for the highest and best use is discriminatory. He said most of the opposition to potential development is from people not living on a farm or no direct financial interest.

Mr. McCullough said there has been a request from an audience member to defer item 6 Text Amendment for the IBP district.

Commissioner Moore asked if anyone in the audience would mind item 6 being deferred to next month.

The audience member who requested it asked that the item be heard at the beginning of the agenda when it is scheduled again.

Motioned by Commissioner Harris, seconded by Commissioner Dominguez, to defer Text Amendment (TA-4-4-10) to the City of Lawrence Land Development Code, Chapter 20, Section 20-403 of the Code of the City of Lawrence, KS to permit the Hotel, Motel, Extended Stay use in the IBP (Industrial/Business Park) District.

Motion carried 8-0.

Commissioner Rasmussen said since he came in to the meeting late he wanted to disclose he had no ex parte communications.

Commissioner Dominguez said since he also came in late to the meeting that he did not have any ex parte communications to disclose either.

Mr. Don Westheffer, owns farmland in Grant Township, said if this plan has any flaws it would be that the land owners and producers in Grant Township were not part of it. He said this is the first chance they have had to publically say anything. He said as far as keeping it farmland there are conservation easements for anyone that wants to keep their land from being developed. He said there is plenty of land in the township to meet everyone’s needs. He said it is prime farmland and prime development land. He said they need tax dollars in Douglas County. He asked that they delay action until the FAA completes evaluation of the airport.

Commissioner Blaser said there have been three public meetings and asked Mr. Westheffer if he received notice.

Mr. Westheffer said yes, but that they did not get a chance to say very much during the meeting since they were outnumbered. He said at one meeting he asked for a show of hands of owners in Grant Township and it was less than 10%.
Mr. Ron Rice, Douglas County Farm Bureau, wanted to clarify that the Bureau speaks for a majority of the members but not every individual. He felt the plan was too restrictive on what a farmer could do with their land.

Commissioner Harris asked if he would be okay if every land owner in the township sold all the agricultural land and it went away.

Mr. Rice said there are many farmers that would not sell their land but that they should have that option.

Ms. Natalya Lowther, Pinwheel Farm, said proximity to infrastructure has not been that important to growth. She said there has been an increase in awareness of the value of class 1 and 2 soils. She wondered whether the soil preserving ag industrial would be subject to a public hearing during a rezoning.

Mr. McCullough said some of this development can occur without being annexed. He said Sector Plans may not always be urbanization and that it is feasible that in some areas it is a County Commission site plan with the current zoning. He said there are other things that the Sector Plan mentions, such as the cost of infrastructure, the cost of storm drainage, and levee issues. He said if there is rezoning there will be a public hearing with notice.

Ms. Lowther said she supports the North Lawrence Improvement Association’s interest in not having any development north of North Lawrence. She said the Farm Bureau does not represent her views. She said the combination of the class 1 and 2 soils with the very shallow ground water that underlies them is important. She said farmers should be able to live off of farming. She said the existing regulations already affect the right to choose.

Commissioner Rasmussen asked if Ms. Lowther if she is a member of Farm Bureau.

Ms. Lowther said yes.

Mr. Kent Nunemaker said he makes his living in Grant Township. He was concerned about public access, such as a bike path or open space, on his property. He felt that the soil classification should not be a determination of the ground use.

Commissioner Harris inquired about public access on private property. She said her understanding is that the plan would not take private land for public access.

Mr. McCullough said that was correct and that staff may need to work on the language to clarify. He said open space corridors are sometimes where utilities lines run and there are opportunities to do some amenities such as park trails but that it is an option and not intended to take land.

Ms. Debbie Milks, Chestnut Tree Orchard, said farmers have been the most stable businesses in the area. She said that by increasing development in the area it would put pressure on other places to develop in a domino effect and create problems for people who do want to stay and farm. She said she ran across an article of performance measures in Ann Arbor, Michigan about how they preserve farmland around the community by working toward tax policy and development rights policy that allows for some equity for farmers keeping farmland preserved.

Ms. Dorothy Congrove, owns three tracts of land in Grant Township, said she attended and participated in all the Northeast Sector Plan meetings. She said her comments were not included in
the draft plan. She wondered what soil conserving agri industry means was and how exactly the soil would be conserved, does it limit her choices, how would a company coming to Douglas County view those terms, and how do the terms of the policy change the value of her land. She said a farmers net worth is tied up in the land, not a 401k, and she believes property owners have the right to do what they want with their land.

Mr. Frank Male, part owner of Lawrence Landscape, said the North Lawrence Drainage Study was completed a few years ago and identified 40 million dollars in drainage improvements that were recommended. He said the only way to fund the improvements is with high quality industrial development. He felt they should take advantage of the current infrastructure of highways, airport, and railway. He said there are very few neighbors in that area.

Ms. Beth Johnson, Lawrence Chamber of Commerce, said industry and agriculture are not mutually exclusive and there is enough acreage to accommodate both. She felt it would be pertinent to not proceed until the airport master plan is completed.

Commissioner Harris asked Ms. Johnson how she would propose doing both industry and agriculture in the community.

Ms. Johnson said when she looks at the map she sees the color purple (representing industrial) in the same areas where purple is currently. She also said there is a snowflake at Midland Junction and there used to be a snowflake around the airport as well but when an industrial user came forward that project was denied. She said she does not like it when a project comes forward that then gets turned down even though the future land use maps indicate that’s what the area is classified as. She said she wants to make sure that options are truly options.

Commissioner Harris asked what is in the Airport Master Plan.

Mr. McCullough said it looks at the area of the airport to look at how it may be developed in future years.

COMMISSION DISCUSSION

Commissioner Carter said the plan maps and verbiage in the plan should include more regarding the railroad and the opportunities it may present. He asked if flood control would be looked at prior to something being built.

Mr. McCullough said that was correct, local regulations would look at local floodplain impacts. The bigger policy issue is when the drainage study improvements get triggered with development in the area.

Commissioner Carter agreed that the Airport Master Plan should be completed before the Northeast Sector Plan. He also agreed that soil should be a consideration but should not trump everything else. He said he valued the class 1 and 2 soils but felt they needed to look bigger. He felt that incentives were the way to encourage ag uses versus prohibiting.

Commissioner Finkeldei said based on the comments this evening, at the very least there needed to be another public educational session. He asked if staff sees soil conserving agri industry is being a zoning category or as a suggested sub category.
Mr. McCullough said as it moves through the Commission it could turn into an implementation strategy to create a zoning district. He said on the top page 3-11 of the draft plan talks about county zoning districts and Lawrence zoning districts that would be appropriate here.

Commissioner Finkeldei felt they could not push forward with the plan without knowing if there would be another zoning category or possibly an overlay district. He said if it is going to be zoning category then it needs to be better defined. He said Chapter 7 states soil conserving ag industry business that will protect the quality of existing high quality land either through agricultural use or preservation for future ag use should be encouraged to locate in the airport start. He said he supported that it should be encouraged, but that was different then a plan that says it is mandatory. He said the draft should have the right balance of agricultural significance of the site against the need for industrial and employment related development. He said the most common solution that other communities have used is transfer of development rights. He also suggested incentivizing conservation easements. He said he has a hard time seeing how open space mimics floodplain and floodway and what the open space means. He said the section on ag economics in the plan does not flow as much as it should. He asked when the Airport Master Plan would be complete.

Mr. McCullough said he has heard that the Airport Master Plan would be done by the end of the year. He said there is also a Utility Master Plan that is ramping up and that these are evolving documents as the community is planned.

Commissioner Rasmussen had specific comments about the plan. On map 2-1 the title should be Existing Land Use, not Existing Water Infrastructure. He said there are two different colors for farm and farm residence and he was curious why that was separated out and it gives the impression that it’s two different land uses.

Mr. Warner said the county appraiser tags that land use.

Commissioner Rasmussen said on map 2-3 it looks like there is a water line in the airport but it is not colored the same as the other lines.

Mr. Warner said the pink overlay is defined as Rural Water District #13. He said yes, that is a water line in the airport.

Commissioner Rasmussen said on page 3-2 of the plan, section 3.1.1.1.c(1), recommended eliminating the second sentence. He also recommended deleting the second sentence of section 3.1.1.1.c(3). He did not feel that was inconsistent with section 3.1.2.1(a) on page 3-4 of the plan. He pointed out language that he felt was not consistent:

- Page 3-2, section 3.1.1.1.b(1,2), the word ‘encourage’ is used.
- Page 3-2, section 3.1.1.1.c(1, 2,4) the word ‘support’ is used.
- Page 3-2, section 3.1.1.1.d(2) the word ‘allow’ is used.
- Page 3-3, section 3.1.1.1.e(1,2) the word ‘encourage’ is used.
- Page 3-3, section 3.1.1.1.f(1) that word ‘protect’ is used.
- Page 3-3, section 3.1.1.1.f(2) that word ‘encourage’ is used.

He felt there should be consistency in the language.

Commissioner Harris would like to see the plan address public use of land around the Ross property and clarify that. She would like to revisit the soil conserving agri business definition so that it is clear to anyone reading it what it means. She would like to discuss and incorporate Ms. Linda Finger’s written comments from the county. She would like to see both agriculture and other uses in the plan. She would like to see a mechanism for getting what they envision there. She liked the idea
using incentives to achieve the vision but she needs more confidence that incentives will work. She said there were lots of concerns about drainage in the plan and she felt they needed to articulate more how drainage off of new developments will be addressed so that it doesn't impact other land. She was concerned about development effecting agriculture around it from runoff, vehicles, and drainage. She was interested in the comment about perhaps expand the types of soils to protect. She said she would probably support that. She would like traditional agriculture mentioned in plan. She agreed to some extend with delaying the plan until the Airport Master Plan is completed but felt they should continue with their overall policy discussions and research. She would like to see real vision for the area and the tools to make it happen.

Commissioner Moore agreed with a lot of the comments. He said TDR’s is one way to solve the issue.

Mr. McCullough said there is a reason this area hasn't developed substantially over the decades. Those reasons have to do with the cost of development, public infrastructure, and storm drainage. He said they need to continue to think about where to put limited resources in relation to development cost.

NO ACTION TAKEN
ITEM NO. 5 TEXT AMENDMENT; LAND DEVELOPMENT CODE; MU DISTRICT (MJL)

TA-1-1-10: Consider Amendments to the City of Lawrence Land Development Code, various sections of Chapter 20, to permit Bars or Lounges and to consider changes to development standards for various Eating & Drinking Establishments in the MU (Mixed Use) District and to consider a new Mixed Use Entertainment District. Initiated by City Commission on 2/2/10.

STAFF PRESENTATION
Ms. Michelle Leininger presented the item.

Commissioner Harris asked what happens when the asterisk about Quality Restaurant and Fast Food is removed.

Mr. Leininger said if the asterisk is removed the Jayhawk Bookstore could have a larger Fast Order Food Use. The asterisk for the Quality Restaurant use does not apply because there are no regulations where it refers you to the district.

APPLICANT PRESENTATION
Mr. Paul Werner, Paul Werner Architects, said this all started with the desire to put in safeguards for the Hawk and the Wheel. He suggested adding the following language to recommendation 2a of the staff report:

2. Section 20-403
   a. Adding a “S” for the Bar or Lounge use in the MU District to permit the use by Special Use Permit, for properties zoned MU after June 1, 2010

He also said a possible fifth recommendation may be to exclude the bars and/or lounge from the tertiary zone.

PUBLIC HEARING
Mr. Bill Muggy, owner of the Jayhawk Bookstore, said he spent 30 years trying to secure his property. He said it was not his intention to rezone and expressed concern over personal comments that have been made about him and the Jayhawk Bookstore.

Commissioner Harris said she hoped that the public comments this evening would not be personal. She said Planning Commission needs to consider the property and possible future uses. She said it is about the use, not the owner.

Mr. Bill Mitchell said the staff suggestion to allow bars with a Special Use Permit only after this date may serve to forestall a bar at 1420 Crescent but he liked the idea of a bar-less MU district for use elsewhere in town. He said he can imagine other neighbors excepting plain MU zoning if they had assurance that bars would not be one of the uses. He stated whatever mechanism Planning Commission comes up with he was confident it was their intention that a bar not be permitted at 1420 Crescent. He expressed disappointment that his chief concern, the lack of notification of zoning changes made by innocent appearing Text Amendment administrative decisions, was not addressed in the staff recommendations in spite of Mr. McCullough having said at the March 24 Planning Commission meeting that it could be looked at. He said this whole matter arose because the administrator was focused on MU at 14th and Ohio and failed to see the implications of the Text Amendment at 1420 Crescent. He said a similar thing can happen again under different circumstances, different zoning districts or uses, slipped in by Text Amendments. He rejected the contention that notification at the site plan stage is sufficient because at that point the deal is done.
and is a new use by right. He felt neighbors deserve timely notice of zoning changes no matter the means used to initiate the change.

Ms. Mary Lake, Sigma Corporation Board of Gamma Phi Beta, said the sorority at 1339 W Campus Road is just around the corner from the proposed property. She said to her knowledge all five sororities and fraternities along W Campus Road oppose a drinking establishment of any kind at the applicant property. She said alcohol abuse in Lawrence is an issue and felt that part of the City’s responsibility was to address those issues by refusing to allow a drinking establishment so close to the University and so close to housing establishment where the majority of those students are underage. She also expressed concern about parking. She said among the alumni of the University in Johnson County the perception is that the City of Lawrence does very little about the drinking problem at KU and in fact encourages underage drinking because of the economic impact of the bars on the city.

Commissioner Rasmussen asked Ms. Lake to clarify when she referred to applicant property.

Ms. Lake said 1420 Crescent Road.

Commissioner Rasmussen said the property has been zoned MU for quite some time and that the real applicant who initiated this whole issue is where the Hawk and the Wheel are located. The applicant applied to be incorporated into the MU District but because the current zoning ordinances do not allow bars or lounges in the MU District they asked that it be changed. He wanted to clarify that all Ms. Lake’s comments were focused on the Jayhawk Bookstore, who is not the applicant, not the Hawk and Wheel.

Ms. Lake said it was her understanding that in the future there would be an application to make drinking available at the Jayhawk Bookstore.

Commissioner Rasmussen said nobody has asked to make that available at this point. He said this change would not apply to anything that was zoned MU prior to this taking effect so it would not apply to 1420 Crescent.

Commissioner Harris said Ms. Lake’s comments were not inappropriate because if Planning Commission does not approve that provision to have the bar use happen after the first MU approval then it would apply to that property.

Mr. Jim Sherman said many neighbors would prefer two different districts, one that permits bars and one that does not. He thanked Planning Commission, staff, and Mr. Muggy in trying to resolve the issue. He said option number one suggested by staff was perfectly satisfactory. He also requested consideration of broader notification.

Ms. Gwen Klingenberg, President of Lawrence Association of Neighborhoods, she asked that Planning Commission protect the adjacent neighborhood. She said if the neighborhood had not found out about this and come forward Planning Commission wouldn’t even be discussing this one district possibly having a change. She said it takes the neighborhood to help the Planning Commission understand the consequences of their decisions. She requested better notification of the public.

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to close the public comment.
COMMISSION DISCUSSION
Commissioner Finkeldei asked for clarification on the recommendation for non-conforming.

Mr. McCullough said the Legal Department recommended tweaking the language a bit for Section 20-1108 (d)(4):

*Any use existing at the time of rezoning to the MU District that is regulated as a Special Use upon rezoning to the MU District shall be considered an approved Special Use and will be allowed to continue without an additional public hearing. Any alterations or expansions of the use are subject to the Special Use amendment procedures of Section 20-1306.*

Commissioner Harris asked if that would allow someone with a non-conforming use to change or expand that use beyond what it is.

Mr. McCullough said no, the last sentence of the same section talks about any alterations or expansion of the use are subject to the Special Use amendment procedures of Section 20-1306.

Commissioner Harris asked if someone has a non-conforming use that requires a Special Use Permit they wouldn’t have to apply for a Special Use Permit they would just be granted one for that non-conforming use.

Mr. McCullough said it would be granted one but it is not a blanket exception to never being regulated by the Special Use Permit criteria. If there are issues that the governing body believes should be addressed through conditions then they can start a proceeding to seek conditions to address a community need.

Commissioner Harris asked why staff was not pursuing two different MU districts.

Mr. McCullough said the MU district is relatively young and there is currently only one district, so staff would like time to get a feel for how the district will work in the community. Staff feels that the Special Use Permit is the mechanism that protects neighborhoods when there is a specific use that isn’t necessarily compatible as a permitted use in a district.

Commissioner Harris inquired about the bar use with a Special Use Permit and asked under what conditions would staff envision that not going through in a Mixed Use area.

Mr. McCullough said it would be compatibility issues. It may be those issues of tertiary versus primary versus secondary. Staff has discussed different areas of the community where there aren’t a lot of adjacent residential uses that may be more compatible with a bar use than an area that has a lot of residential around it.

Commissioner Harris asked if putting a bar next to a residential area would be a City Commission decision.

Mr. McCullough said yes.

Commissioner Dominguez said it seemed like they were tweaking this to have the Hawk and Wheel remain in MU district. He wondered about legal challenges.
Mr. John Miller said there wasn’t any way to prevent someone from saying that it is unfair and bring
a challenge against the City. He said if it is the issue of saying the MU District in this circumstance is
going to allow existing legal non-conforming uses to continue but wouldn’t be allowed in another
district, the governing body has the authority to establish the zoning regulations in the fashion that
permits that to occur.

Mr. Werner said the difference is that the Hawk and the Wheel are already there.

Commissioner Dominguez asked if grandfathered clauses legally work.

Mr. Miller said yes. He also stated that having a separate MU District would not make a stronger
argument.

Commissioner Carter said his concern with not doing separate districts was that neighborhood
reaction will be more common with infill projects and Special Use Permits will mean Planning
Commission will have to go through the same process for each request.

Mr. McCullough said other uses such as homeless shelters also require Special Use Permits. The MU
District requires mixed uses, not just a stand alone bar. There are some inherent compatibility issues
for developers that want to do Mixed Use in that sense to really control the bar impacts of their
development.

Commissioner Moore felt there was a lot of merit in trusting the Special Use Permit process.

Commissioner Rasmussen said when the original applicant came before us to rezone the Jayhawk
Bookstore from a non-conforming zoning classification MU the entire Planning Commission expressed
concern about what type of uses could go there. Planning Commission specifically excluded the
sexual oriented media store and light manufacturing. At that time bar and lounge was not a use. All
property will require MU zoning regulations. He felt they should proceed with the staff
recommendation.

Commissioner Harris said she liked the idea of excluding the original MU zoned property from
consideration from having a bar. She liked Mr. Werner’s idea of excluding the tertiary district from
consideration for a bar. She also preferred having two MU districts, one allowing for a bar with a
Special Use Permit and one without. She felt it would be clearer and give neighbors more comfort on
what would be allowed.

Commissioner Moore agreed with the staff recommendation.

Commissioner Blaser also agreed with the staff recommendation.

Commissioner Dominguez agreed with Commission Harris and felt that having two separate districts
would provide more clarification for the public, especially if no notification is provided for Text
Amendments.

Commissioner Carter felt they should pay attention to how much resistance they get to infill projects
because they aren’t separating out the district. He said he trusts the process and felt that Special
Use Permits would not be approved in areas that were not appropriate.

Commissioner Rasmussen asked if they could also consider changing the sexually oriented media
store zoning table to S instead of P in the MU District.
Mr. McCullough said yes.

Commissioner Rasmussen said he did not understand why it would be a permitted use instead of a special use to begin with.

Mr. McCullough said the legal advertisement for the Text Amendment did not include that as one of the things being looked at so if the Planning Commission would like to look at that issue it will need to be advertised.

Commissioner Finkeldei asked staff to look into the issue.

Ms. Leininger said in the standards there is a section that talks about no sexually oriented business may be located in the same block as property in an R zoning district or a religious assembly, school, daycare, community recreation or cultural exhibit, or library uses.

Commissioner Finkeldei addressed the audience members who discussed public notification and encouraged them to stay for the next item on the agenda which is an update on public notification.

**ACTION TAKEN**

Motioned by Commissioner Finkeldei, seconded by Commissioner Rasmussen, to approve the proposed amendments of TA-1-1-10 to Development Code and forward to the City Commission with the following conditions:

1. Revisions to Section 20-223 as noted in the staff report;
2. Section 20-403
   1. Adding a “S” for the Bar or Lounge use in the MU District to permit the use by Special Use Permit
   2. Add an asterisk for the Bar or Lounge use to refer to Section 20-509
   3. Removing the asterisk from the Quality Restaurant use in the MU District
   4. Removing the asterisk from the Fast Order Food use in the MU District
3. Section 20-509
   1. Removing references to the MU District in Section 20-509(3)
   2. Add number 6 and add text to the Bar or Lounge use is only permitted by SUP for properties zoned MU District after the effective date of the amendment
4. Revisions to Section 20-1108 as noted in the staff report and with a change to proposed Section 20-1108(d)(4) to read “Any use existing by-right at the time of rezoning to the MU District that is regulated as a Special Use upon rezoning to the MU District shall be allowed to be continued with out a public hearing. Any alterations or expansions of the use are subject to the Special Use amendment procedures of Section 20-1306”.

Commissioner Rasmussen asked if Planning Commission could recommend to City Commission that they change the note on Sexually Oriented Media Stores from permitted to special.

Mr. McCullough said City Commission could initiate a Text Amendment and then it would come before Planning Commission.

Motion carried 6-2, with Commissioners Dominguez and Harris voting in opposition. Commissioners Blaser, Carter, Chaney, Finkeldei, Moore, and Rasmussen voted in favor.
ITEM NO. 6 TEXT AMENDMENT; LAND DEVELOPMENT CODE; IBP DISTRICT (MJL)

TA-4-4-10: Consider Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Section 20-403 of the Code of the City of Lawrence, KS to permit the Hotel, Motel, Extended Stay use in the IBP (Industrial/Business Park) District. Initiated by Planning Commission on 4/26/10.

ACTION TAKEN
Motioned by Commissioner Harris, seconded by Commissioner Dominguez, to defer to the June Planning Commission meeting.

Motion carried 8-0.
ITEM NO. 7 CITY & COUNTY PUBLIC NOTIFICATION

Receive staff memo regarding City and County public notification of Planning items.

STAFF PRESENTATION
Ms. Michelle Leininger presented the item.

Commissioner Dominguez asked why the notification is 200’.

Ms. Leininger said that is what state statute requires. She said the items in bold is what is done above and beyond state statute.

Mr. McCullough said site plans used to be notification of adjacent properties and staff expanded that to 200’ to better align with rezoning requirements.

Commissioner Dominguez asked why the notification was not 500’.

Mr. McCullough said there would be additional cost associated with that.

Commissioner Harris said she personally thought the state statute requirements are antiquated. She said there is opportunity with email to do a lot more than what is done now. Citizens in the community that wanted to be notified of changes could be through email.

Mr. McCullough said that is currently done through the website list serve that the community can sign up for to receive on a variety of topics via email.

Commissioner Harris felt it could be more narrowly defined.

Mr. McCullough said the general public doesn’t often pay attention about legislative type functions and that staff experience is that they don’t plug in to the policy issues. He said there are a lot of good comments received on the website, list serve, and all those outreach things that the city does over and beyond state statute.

Commissioner Rasmussen asked if a Text Amendments would fix typos in the Code as well.

Mr. McCullough said that was correct.

Commissioner Rasmussen said if notification is sent for Text Amendments, other than the newspaper, then hundreds or thousands of residents could potentially be notified.

PUBLIC HEARING
Ms. Gwen Klingenberg, President of Lawrence Association of Neighborhoods, inquired about which items are neighborhood notification.

Ms. Leininger said anything that would receive a mailed notice the neighborhood association would be contacted as well.

Ms. Klingenberg said not all neighborhoods are active at all times. She felt that a Text Amendment that adds a use to a zoning is considered a zoning issue. She said Final Plats and Final Development Plans need neighborhood input because there have been instances where the developer made
changes to the plan after the neighborhood had input on the preliminary plans. She said the City Manager told her she needs to do a better job with her position. She said she is trying and does what she can. She felt it was the Planning Commissions position to see to it.

Commissioner Harris asked what Lawrence Association of Neighborhoods does and what her position is.

Ms. Klingenberg said the Lawrence Association of Neighborhoods is an umbrella organization to help neighborhoods work together.

Commissioner Harris asked if the Lawrence Association of Neighborhoods receives funding from the city.

Ms. Klingenberg said no.

Commissioner Rasmussen asked if she was suggesting that if there is a Text Amendment change to the language of the RS district that everyone within 200' should be notified.

Ms. Klingenberg said a change to the wording to clean up and clarify is one thing but if a zoning use is within the Text Amendment then notification is. She said it depended on what the Text Amendment change was for.

Commissioner Finkeldei said if the Text Amendment has an applicant then maybe notification could be within 200' of the applicant. He agreed with Commission Rasmussen’s example that notice cannot be sent to everyone living within 200’ of an RS district for a text change because then it might end up being 80,000 letters. If there is a reasonably identifiable Text Amendment that would need notification then notification would be useful to send out. He suggested the neighborhood associations be notified of all Text Amendments so that then only 12-15 or so extra notifications are sent out.

Mr. McCullough said those are worth looking at but that staff has encouraged the neighborhood associations to plug into the list serve. He said it is difficult to figure out what people will be interested in. It needs to be a consistent process which is why staff push the list serve. The neighborhood associations have standing in some of the development processes, not because the state statute requires it but because staff have chosen to go above and beyond to give them that standing. He said asking staff to guess what is important to people is unreasonable.

Commissioner Finkeldei agreed that they did not need to guess on what is important. He agreed with Commissioner Harris that it may be hard for people to separate out email notification of what is important and what is not. He suggested the applicant send the notification.

Commissioner Dominguez asked how many letters are typically mailed for 200’.

Mr. McCullough said it depends on the item.

Ms. Leininger said the MU District of 200’ was approximately 16 letters. She said 200’ around all the IBP Districts would be around 350 letters.

Commissioner Dominguez said there shouldn’t be a cost factor with 16 letters.
Mr. McCullough said there would be 350 letters for the IBP district and that is just one of the many Text Amendments done each year.

Mr. McCullough said it is a matter of if the process is broken. He said there never seems to be a situation where people aren’t notified even though there are people who say “if it weren’t for me there wouldn’t be a room full of people here.” He said he has never seen an item go all the way through the process and adopted and then someone comes forward to weigh in on it. Somewhere through the process notice is provided and notice is picked up. He said he was not sure the process is broke.

Commissioner Dominguez felt that 200’ was not enough range for notification.

Commissioner Rasmussen felt the 200’ criteria was good enough.

Commissioner Dominguez asked what the largest notification has been.

Mr. McCullough said the recent Lawrence Community Shelter Special Use Permit was approximately 400 letters.

Ms. Leininger said that Long Range Sector Plan notification letters could be 500-700 letters, three to five times.

Commissioner Harris suggested having a neighborhood association structure that covers everyone in the city and have a Planning and Development Committee in each association. Then have some kind of training (possibly online) available so those groups understand what their role is in notification and understand how the development of planning process works. Then notify the president of the association and committee of development and zoning issues that affect that area and have the city proactively notify those people instead of relying on Lawrence Association of Neighborhoods to do that.

Mr. McCullough said staff experience is that neighborhood associations are ebb and flow out of activity. There are many areas of the city that do not have associations and the city cannot make them associate and organize. He said they can keep this kind of discussion going and maybe bring back next month for additional consideration. He said the city does not have authority and control over neighborhood associations and that they are private organizations. Staff are challenged in getting updated contact info for neighborhood associations. He said a staff employee attends the monthly Lawrence Association of Neighborhoods meetings when invited. They are private organizations and sometimes city employees are not always welcome.

Commissioner Harris said to answer Mr. McCullough’s question about if the process is broken; there has been some evidence from people that think the notice isn’t working well and they are angry and in some cases do not know if people have been notified.

Commissioner Rasmussen said having angry citizens is not good for the community but that he feels the system is working. He said even Mr. Bill Mitchell said in a previous meeting that he found out by reading the paper and saw the public notice so the system works. He did not feel substantial changes should be made.
MISCELLANEOUS NEW OR OLD BUSINESS

MISC NO. 1  Provide comment on Lawrence Wastewater Master Plan boundaries and growth assumptions. (SDM)

Mr. Mike Lawless, Utilities Department, and Mr. Scott McCullough presented the item.

Commissioner Finkeldei asked if City Commission approves this then it will go to consultants.

Mr. Lawless said that was correct.

Commissioner Finkeldei asked what the report will be that is received from the consultants.

Mr. Lawless said it will summarize the public comments received and the master plan will include a working model of the collection system to assist in planning for the future.

Commissioner Harris asked in developing a wastewater master plan if commercial and industrial development is considered.

Mr. Lawless said it is. It’s included in terms of the actual population. The modeling program allows projections to be changed.

MISC NO. 2  Letter received regarding Woody Park

Consideration of any other business to come before the Commission.

Recess at 12:00am until 6:30pm on May 26, 2010.
Reconvene May 26, 2010 - 6:30 p.m.

Commissioners present: Blaser, Carter, Chaney, Dominguez, Finkeldei, Harris, Hird, Moore, and Rasmussen
Staff present: McCullough, Stogsdill, J. Miller, M. Miller, and Ewert

BEGIN PUBLIC HEARING (MAY 26, 2010):

COMMUNICATIONS
No communications received.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST
- Ex parte:
  Commissioner Hird said the Agri-Tourism Committee met and in the process of drafting a mission statement for the committee. He also said he visited Pinwheel Farm after the last meeting walked the property.
- No abstentions.
ITEM NO. 8  CONDITIONAL USE PERMIT FOR BLUEJACKET CROSSING WINERY; 1969 N 1250 RD (MKM)

CUP-3-2-10: Consider a Conditional Use Permit for accessory uses such as outdoor weddings, picnicking, and outdoor music, with the Bluejacket Crossing Winery, approximately 20 acres, located at 1969 N 1250 Rd, Eudora. Submitted by Kandaya Selvan, property owner of record. A joint Planning Commission meeting will be held with the Eudora Planning Commission.

Eudora PC members present:
Mr. Kurt von Achen, Mr. Pat Jankowski, and Mr. David Montgomery

STAFF PRESENTATION
Ms. Mary Miller presented the item.

Commissioner Dominguez asked how close the neighbors homes were to the road.

Ms. Miller showed on a map on the overhead.

Commissioner Dominguez expressed concern about dust.

Ms. Miller said a chemical palliative treatment can be applied to gravel roads, but that there is a charge for it.

Commissioner Hird asked if the restricted number of guests, ending time, and number of times per year were proposed by the applicant or staff.

Ms. Miller said the applicant proposed them based on his intentions.

APPLICANT PRESENTATION
Mr. Kandaya (‘Pep’) Selvan, Bluejacket Crossing Winery, said at the intersection of 1975 and N 1250 both homes are quite close to the road. Most of the dust problems affect the people living on the north side of the road. He said during the Farm Tour in October they had 300 guests per day during those two days and that should have been a reasonable test for the extreme. He gave his background on his involvement in the wine industry. He is the President of the Local Vineyard and Winery Association. He said there are 2 ½ full time employees and 6-12 seasonal employees for harvest from April to October. He said most work at the winery is done by volunteers. He felt there was a need for increased opportunity with rural involvement. He said he sent a letter that extended the 1000’ notification area to make sure all residents on the unpaved portion of the preferred route were notified. He said earlier this month they had a birthday party with a loud band at the winery and that several neighbors complained. He apologized and said that was not a smart move on his part and that the party was more than he expected it to be. He felt it was important that his activities are limited in order to maintain the responsibility to his neighbors. He said the proposed location for the stage would decrease the noise level.

Commissioner Carter inquired about what it would entail to move the stage area.

Mr. Selvan said it is all portable, the stage is 4’x4’ and sits directly on the ground and can be picked up and moved. He said the goal is to build a new winery, tasting room, and storage facility and develop the landscape and then move the events to the western location.
Commissioner Carter asked if he was going to rent portable toilets.

Mr. Selvan said the Health Department wants to see one toilet for every 100 guests. He said there is one bathroom in the tasting room and that if needed they would rent a portable toilet.

Commissioner Blaser asked if there were any plans for the county to pave the road in front of his house.

Mr. Selvan said he had heard that N 1200 Road is a priority road due to its connection with the Eudora Subdivision but did not know of any set timeframe to do that.

PUBLIC HEARING

Mr. Richard Higgins said he lives next to applicant. He said he has been there for 30 years and the traffic has gotten worse since the winery was opened. He said the noise from bands is disturbing. He did not like the plan. He felt that 6-8 events a year might end up being 30 events a year. He was concerned about dust from road because he lives within 50’ of the county road.

Commissioner Hird said the new proposed winery location would be further away from his property. He asked Mr. Higgins if he thought moving the winery farther away would help reduce the noise.

Mr. Higgins said it would help but that the car traffic would increase greatly.

Commissioner Hird asked Mr. Higgins if the new winery was on a different area of the property would that help alleviate his concerns.

Mr. Higgins said no, not really.

Motioned by Commissioner Moore, seconded by Commissioner Blaser, to close the public comment.

          Motion carried 9-0.

APPLICANT CLOSING COMMENTS

Mr. Selvan said it makes a big difference to him that Mr. Higgins is comfortable with the effort that they are making.

Commissioner Finkeldei asked if Mr. Selvan would be okay with the condition of no electronic amplification.

Mr. Selvan said that would be fine.

Commissioner Finkeldei asked if he had a firm timeline on when the winery would be moved.

Mr. Selvan said the goal is to break ground in the fall but that the economy is affecting that so his best guess would be 2 years.

Commissioner Dominguez asked if he was willing to restrict the events to 8 per year.

Mr. Selvan said Springtime is about the only time it is comfortable for outdoor events and at this time 8 exterior events is more than he can handle. He said currently it is about 3 events per year.

Commissioner Rasmussen asked if the 10 year limitation makes it harder to get financing.
Mr. Selvan said yes.

**COMMISSION DISCUSSION**
Commissioner Rasmussen inquired about the parking capacity.

Ms. Miller said the site plan needs to clearly define the area which would show how many cars.

Mr. Selvan said there are 21 parking spaces and overflow in the pasture that holds 40 cars.

Commissioner Rasmussen asked if there would be cars backed up along the road.

Mr. Selvan said no, if parking is not available then he will turn people away.

Commissioner Rasmussen asked why there is a paved ADA requirement but not one for Pinwheel Farm.

Ms. Miller said with Pinwheel Farms there was a requirement for ADA spaces for the farmers market but with her other type of events of educational activities or camping there isn’t an established location so there wouldn’t be specific place to locate it. She said Planning Commission could require one ADA paved space at Pinwheel Farm if they desired. She said that Bluejacket Winery already has the ADA parking space for the wine tasting room which is required.

Commissioner Rasmussen asked why the Pinwheel Farms Conditional Use Permit expiration date was proposed for 20 years and Bluejacket Winery for only 10 years.

Ms. Miller said the expiration dates aren’t set by Code, time limits were something the previous County Commission wanted for Conditional Use Permits. She said with Pinwheel Farm staff originally suggested 10 years but the applicant requested 100 years and Planning Commission indicated at last months meeting that they were not comfortable with that and moved it to 20 years. Time limits can be set by Planning Commission.

Commissioner Rasmussen said it is difficult to get loans on shorter Conditional Use Permits.

Ms. Miller said if Planning Commission feels it is appropriate they can increase the 10 year time limit. She said 10 year is just the standard timeframe.

Commissioner Rasmussen said he would like to see a longer time period for this if approved.

Commissioner Carter asked if the applicant would like the time frame extended.

Mr. Selven said 20 years is a great starting point and would give a reasonable amount of time to cover the asset.

Commissioner Harris expressed concern about the dust that could be generated by the winery. She wondered if the neighbors have recourse if the dust becomes a problem. She suggested the possibility of the applicant paying for the dust treatment of the road.

Ms. Miller said it is not a current condition but could be added.
Commissioner Finkeldei said condition 1c in the staff report says ‘up to 8 live music events may occur per calendar year.’ He asked what the recourse would be if the number of events is exceeded.

Mr. McCullough said when staff knows that a condition is being exceeded the county office enforces the conditions of the Conditional Use Permit. If it is during the first year staff would work to remind the applicant of the condition and if it happens again then staff can initiate a revocation process to bring it back for hearing and revoke the Conditional Use Permit.

Commissioner Hird said this topic ties into the Agri-Tourism Committee that he serves on and Mr. Selvan has been attending those meetings as well. He said he is a vineyard owner himself. He said on April 8th he and his wife toured Bluejacket Winery but were not aware of this Conditional Use Permit at the time and did not discuss it. He felt this is exactly the type of activity the state is trying to promote and this is what gets people out to the country. He felt it was a positive activity. He said the dust problem is inevitable in the country and he hoped the county and township can help address the issue. He did not think a total of 8 afternoons a year for outdoor events was a terrible imposition, especially with the ending time of 8:30pm. He felt this was the type of thing that should be promoted and extending the timeframe for the Conditional Use Permit made sense because a vineyard is a long term investment. He would like to see the Conditional Use Permit extended 20 years at a minimum. He felt the applicant has gone above and beyond the call of duty to include the neighbors in the process. The new facility will be built a lot farther away from Mr. Higgins property. He said he would support the application.

Mr. Kurt von Achen, Eudora Planning Commission, said a quorum could not be formed since there were only three members of the Eudora Planning Commission present this evening. He expressed concerns about traffic and dust. He said as a consensus they recommend approval but would not be in favor of extending the Conditional Use Permit timeframe.

Mr. Selvan said he will be part of the Farms Tour this year and the committee is doing research to find some public form of transportation such as a school bus or senior citizen bus to move 20-40 people.

Commissioner Carter asked when the 6-8 outdoor events will occur.

Mr. Selvan said during a 6 week window in March, May, or April.

Commissioner Carter asked Mr. Selvan if he would be willing to pay for the county to treat the road during that 6 week time period.

Mr. Selvan said he would consider it if the cost was affordable. He said he thought the treatment lasted around 4 weeks.

Commissioner Hird said his neighbors treat the road in front of their homes and the treatments last longer than 4-6 weeks and he believed the cost was about $1.35 per foot so for Mr. Selvan to treat the entire road would be too costly.

Commissioner Rasmussen asked what the Eudora Planning Commission opposed about extending the Conditional Use Permit to 20 years.

Mr. von Achen said they felt the 5 year review with a 10 year permit was just fine. He said they felt that 20 years was too long.
Commissioner Blaser asked staff if the Conditional Use Permit is extended to 20 years could it be reviewed every 5 years.

Mr. McCullough said it could if it is written that way. He said the reason why there are expiration dates on many Special Use Permits is because it is a special use in an area that has the opportunity to evolve and change over the years. Often times what may be very compatible with an area today may grow out of its compatibility in a specified time period so part of the discussion and analysis should be how quickly an area is turning over, growing, and changing.

Commissioner Finkeldei asked if the applicant owns other property in the area.

Mr. Selven said he is the trustee to his mother's estate of 85 acres that is adjacent to the east and immediately south he has 22-23 acres.

Commissioner Finkeldei said he could support an extension of the overall length of the Conditional Use Permit with the condition of it moving to the future site. He said if the winery moves to the east he could support the 20 years, but if it stays to the west it should be 10 years. He also said that as long as it is located on the west side there should be no amplification for music.

Commissioner Rasmussen said he would support Commissioner Finkeldei's suggestions.

Commissioner Finkeldei said the 5 year review was appropriate as well.

Mr. McCullough said a typical review of conditions is administrative. If staff finds that a condition is not being met an avenue to seek relief from that could be an amended Conditional Use Permit and change one specific condition. 5 year reviews have been staff going to the site with a list of conditions.

Mr. von Achen said that the Eudora Planning Commission could support Commissioner Finkeldei's suggestion if the extension was tied to the new site.

Commissioner Moore asked if a requirement should be included to address no parking on N 1250 during events.

Ms. Miller said it is not a requirement since there usually is no parking on county roads but it could be added.

Commissioner Harris inquired about adding a condition regarding the dust.

Commissioner Blaser said he liked the 20 year timeframe with 5 year reviews. He said as far as the dust, he would not put a condition about the applicant paying for the treatment of the road. He thought if the entire road was treated the cost should be shared by neighbors, not just the applicant. He said he would support the project.

Commissioner Carter asked for clarification on Commissioner Finkeldei's 20 year timeframe.

Commissioner Finkeldei said he would suggest a 10 year Conditional Use Permit unless during that period it is moved to the future site, at which time it would be extended to 20 years.
Commissioner Hird asked if 3 years from now the applicant moves to the new location, he would have a total of 18 years left for the CUP. He asked if Commissioner Finkeldei is saying that it would be extended 20 years from that date.

Commissioner Finkeldei said he was saying 20 years total. He said he felt like they were pushing the limit anyway and if the applicant decides to move 9 years from now then it would be a 29 year Conditional Use Permit.

Commissioner Moore said financing is important but at the same time Planning Commission should look at the compatibility of the use.

Mr. McCullough suggested that they could consider the 20 year term with a specific condition to move the site within 5 years. If it is a condition that the facility move within 5 years and the applicant is coming up on that 5 years and it is not met he has the ability to go back through the public hearing process to ask for relief from that condition and explain the circumstances. Staff likes the expiration date to be firm instead of a moving date.

Commissioner Carter recapped what he was okay with; 20 years contingent upon moving in 5 years, a condition added for no parking on the road, no electronic amplification at least until it is moved, and he would not be in favor of putting the burden of the dust control on the applicant for 8 events over a 6 week period.

Mr. McCullough said he thought he heard the applicant say he was comfortable with the condition of no amplified noise. Noise is one of those tricky things that even moving it several hundred feet it isn’t probably going to mitigate it. He urged them to consider a condition of just no amplified music at the site.

Commissioner Hird said given the number of events a year he felt that was unreasonable. He said low level amplification of a blue grass band was not offensive and would be over by 8:30pm.

Commissioner Rasmussen agreed with Commissioner Hird.

Commissioner Finkeldei stated the applicant said there was a hill in between. He said he still thinks that as long as the winery is on the west there should be no amplification but once moved to the east he would withdraw that.

Commissioner Rasmussen asked if the condition was for no amplified music until the site is moved or no amplification at all.

Commissioner Moore felt it would be cleaner for it to say no amplification at the site.

**ACTION TAKEN**

Motioned by Commissioner Finkeldei, seconded by Commissioner Rasmussen, to approve Conditional Use Permit (CUP-3-2-10) for 1969 N 1250 Road and forward to the Board of County Commissioners subject to the following revised conditions of approval (new language is shown in **bold** print and deleted text is shown as **struckthrough**):

1) The provision of a revised site plan with the following changes:
   a) Addition of a note which states “The permit will be administratively reviewed by the County in every 5 years (Calendar Year 2015, **2020, 2025, 2030**)*.”
b) Addition of a note which states “The permit will expire at the end of 10 years (July 1, 2030), unless an application for renewal is approved by the local governing body.”

c) Add
tion of a note which states “The event area will be moved to the eastern location within 5 years of approval.”

d) Addition of a note which states “Events will typically occur on Saturdays, although Friday and Sunday events may be permitted. Up to 8 live music events may occur per calendar year. These events will conclude by 8:30 PM and the clean-up will be completed by 10 PM. Maximum attendance at live music events is 150.”

e) Addition of a note which states “No parking will be permitted on N 1250 Road.”

f) Addition of a note which states “No electric amplification of music in current location.”

g) Addition of a note which states “The parking area will be surfaced with gravel and the ADA accessible parking spaces will be paved. The ADA accessible parking space will be constructed to meet ADAAG (American with Disabilities Act Accessibility Guidelines) requirements, including signage.”

h) The second access shall be located per the County Engineer’s approval.

i) Landscaping shall be added to include evergreen trees and shrubs along west property to screen activity area from residence to the west.

j) The parking space dimensions shall be noted on the plan.

k) The capacity of the overflow parking area shall be noted on the plan.

l) A parking summary which notes the number of parking spaces required per Code, and the amount of parking provided shall be included on the site plan.

m) Both the event area being proposed at this time and the future event area shall be shown on one plan along with a proposed phasing schedule.

n) Addition of a note on the plan which states: “A revised site plan showing the details of the future event area and any associated parking would return for Staff approval prior to construction of the future event area.”

o) Additional measures being used to buffer the property to the west shall be noted on the plan (orientation of music, use of farm vehicles, etc).

p) Note added to the plan which states that chemical toilets may be used for the first year, at a rate of 1 toilet per 100 attendees. Any use of chemical toilets past the first year would require approval of the County Health Official.

2) Permits secured from the Douglas County Health Department for new septic system, if applicable.

3) Approval of an entrance permit for the new driveway from Eudora Township.

4) Chemical toilets may be used for the first year of the CUP to allow the applicant to determine if the events are successful.

5) When the plans are combined, Note No. 1 regarding RV parking spaces should be removed.

Commissioner Harris said she would support the motion but felt the dust issue should be addressed. She said the area wasn’t really designed for a business out there. She felt there should be clarification for amplification at the new location to say low to moderate amplification at the new site.

Commissioner Hird said he would reluctantly vote in favor of the motion. He said his reluctance has to do with the amplification issue. He said he understood the concern about dust and wished there was a solution. He did not agree with the condition of no amplification and felt it was unnecessary for 8 events a year and felt it was micromanaging.
Commissioner Rasmussen said he did not want to micromanage the amplification. Agreed with Commissioner Hird about not wanting to micromanage by putting this restriction on it.

Commissioner Chaney agreed with Commissioner Hird about the micromanaging. He said there are only 8 events a year that will end by 8:30pm. He thought the applicant was really working to come up with something that will make everyone as happy as possible. He said he would reluctantly support the motion.

Commissioner Dominguez said he would support the motion but felt they have over managed the issue of amplification and financing. He said he was still concerned about the dust but felt the applicant would do what he could to try to fix the problem.

Commissioner Hird said he would be willing to vote against the motion and remake a motion without the condition regarding the amplification.

Commissioner Moore said he would support the motion as is.

Commissioner Carter said when amplification was initially brought up the applicant readily nodded about not needing amplification in its current spot. He said he would be in favor of approving the motion as is.

Commissioner Rasmussen thanked the Eudora Planning Commission for their assistance.

Unanimously approved 9-0, with consensus from Eudora Planning Commission.
ITEM NO. 9  PRELIMINARY PLAT FOR JOHNSON & ELLIS INVESTMENTS ADDITION; .538 ACRES; 1804 W 6TH ST (MKM)

PP-3-3-10: Consider a Preliminary Plat for Johnson & Ellis Investments Addition, with one lot, approximately 0.538 acres, located at 1804 W 6th St. and a variance from the right-of-way requirements in Section 20-810(d)(4)(i). Submitted by Bartlett & West, Inc., for Johnson & Ellis Investments, property owner of record.

STAFF PRESENTATION
Ms. Mary Miller presented the item.

Commissioner Finkeldei inquired about sidewalk connection.

Ms. Miller said it would not connect but that the City has identified the area as part of their gap program and are willing to make that connection.

APPLICANT PRESENTATION
Mr. Darron Ammon, Bartlett & West, was present for questioning.

PUBLIC HEARING on Variance Only
No public comment.

Motioned by Commissioner Hird, seconded by Commissioner Carter, to close the public comment.

   Motion carried 9-0.

ACTION TAKEN
Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve the variance requested from Section 20-810(d)(4)(i) to permit the right-of-way for W 6th Street to remain at 100 ft.

   Unanimously approved 9-0.

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve the Preliminary Plat of the Johnson & Ellis Investments Addition and forwarding it to the City Commission for consideration of dedication of easements subject to the following conditions of approval:

1) City Commission approval of the variance request from City Code Section 19-214 to permit the private sanitary sewer line to extend more than 15 ft into the right-of-way.
2) The preliminary plat shall be revised with the following changes:
   a. A 5 ft wide sidewalk shall be shown along Colorado Street, 3 ft from the curb as approved by the City Engineer.

   Unanimously approved 9-0.
ITEM NO. 10  CONDITIONAL USE PERMIT FOR PINWHEEL FARM; 1478 N 1700 RD  (MKM)

CUP-2-1-10: Consider a Conditional Use Permit for camping, sale of farm products, and events at Pinwheel Farm, approximately 11.79 acres, located at 1478 North 1700 Road. Submitted by Natalya Lowther, property owner of record. Deferred by Planning Commission on 4/26/10.

STAFF PRESENTATION
Ms. Mary Miller presented the item.

Commissioner Moore asked about a timeline for the maintenance of structures.

Ms. Miller said staff had not considered a timeline but that it could be included.

Commissioner Dominguez asked if there was a charge for camping.

Ms. Miller said there is no charge, this is just to house the volunteers.

Commissioner Dominguez asked if Ms. Lowther would keep a log of the campers.

Ms. Miller said yes. Staff recommended camping for 2 week intervals.

Commissioner Dominguez inquired about the alternative pavement.

Ms. Miller said it would be wood chips.

Commissioner Dominguez asked if campers would need to be in a tent, not just a sleeping bag on the ground.

Ms. Miller said the applicant has asked for tents and mobile homes.

Commissioner Rasmussen stated that the original application included components for operating a farmers market or vegetable stand.

Ms. Miller said the applicant has decided to stay with the temporary stand.

Commissioner Rasmussen asked what a registered natural landscape is.

Ms. Miller said it is landscaping you allow to grow intentionally. She said there is a registration process through Development Services.

APPLICANT PRESENTATION
Ms. Natalya Lowther, Pinwheel Farm, said when she read the comments from the North Lawrence community there were several people’s names she did not recognize so she said they must not live all that close. She said Pinwheel Farm is here to stay. She said what the neighborhood is afraid of is not the farm and that she’s just the scapegoat. She presented alternative conditions on the overhead. She said she cannot justify moving forward with the current restrictions of the staff report.
Commissioner Moore asked if she wouldn’t proceed with the Conditional Use Permit as presented by staff.

Ms. Lowther said that was correct. She said she is being asked to do a lot of things and they would have to be in place before camping.

Commissioner Harris asked if her objections were based on principal or cost.

Ms. Lowther said more on cost, time, and energy. She said she is trying to run a farming operation and this is the busy season and she needs to do what needs to be done. She said it is looking like it would be quicker to put in a septic system and mobile home. She said she just can't comply with all of staff provisions.

Commissioner Rasmussen asked if staff have seen the alternative conditions she presented on the overhead.

Ms. Lowther said no.

Commissioner Rasmussen said he liked her suggestion of a 1 year time period. He asked her to comment on the two month time limit on volunteers.

Ms. Lowther said some of the volunteers want to learn the farming process through the seasons of the year.

Commissioner Carter expressed concern about the months of the year where vegetation would not shield tents and toilets.

Ms. Lowther said if someone camps year round it would probably be a self contained camper, not just a tent. She said she would like to install bamboo screening. She said she would not have a problem with putting a wood fence around a chemical toilet.

Commissioner Finkeldei asked staff to comment on the applicants proposed conditions.

Mr. McCullough said staff prefers hard expiration dates but that sometimes a use demands a short timeframe to demonstrate to the neighborhood that it cannot impact the neighbors. He said he could not offer an official answer since this is the first time staff has seen the revised conditions.

Commissioner Dominguez asked if the item should be deferred since the applicant was not willing to accept it.

Mr. McCullough said it may be worth going through the public hearing because the applicant has not withdrawn the application. He said it was the will of the Commission.

PUBLIC HEARING

Mr. Ted Boyle, president of North Lawrence Improvement Association, said the signatures that were submitted were from individuals who live in the North Lawrence area. He said they did not have a problem with the agricultural part of this. The only objection is the camping part. He said this is not a camping area and that there is a KOA nearby for people wanting to camp. He said during the discussion of Bluejacket Winery the owner said they have volunteers who help with the harvest that only come during the day and do not stay overnight. He wondered why Pinwheel Farm couldn’t do the same. He said there have been past problems with campers who moved from the river to
Pinwheel Farm. He felt it would set a precedence. The said their only objection was to the camping part of it.

Commissioner Rasmussen asked if he would have the same objection if there were bunk houses instead of camping.

Mr. Boyle said no, as long as there were water and sewer facilities. He said he did not know a property owner could not pitch a tent and felt that policy was a bit too strict.

Ms. Laylee Campbell said she was opposed to camping of any kind. She said she used to live next to Ms. Lowther and moved because of her. She said she was in favor of a water line being installed. She said yesterday she was walking on the levee and was hassled by transients and that transients have been a problem in the area.

Ms. Diane Hamblin, 509 North Street, said her property is separated from Pinwheel Farms by 6’ privacy fence on the north side and half of a privacy fence on the west side. She appreciated the cleanup that Ms. Lowther has done lately to clean up. She expressed concerns about the main access driveway being a mud puddle and that it is 22’ from her property line. She would like to see requirements for how far away chemical toilets would be from her back property line. She wondered how often the toilets would need to be dumped. She was concerned about an increase of mosquitoes and flies.

Ms. Kristen Walker asked for clarification on camping and wondered if any of the state/federal regulations on camping would apply.

Ms. Sarah Campbell expressed concern for the neighborhood children’s safety and wondered about background checks for the volunteers. She was concerned about increased traffic and how to keep track of the people camping.

Commissioner Hird asked if Ms. Campbell knew of any instances where workers from Pinwheel Farm molested a child in the area.

Ms. Campbell said no, but that there is a large population of transients in the area.

Commissioner Hird asked if KOA requires a background check of their campers.

Ms. Campbell said she did not know but that the people coming and going from Pinwheel Farm would not be known to the neighborhood.

Ms. Barbara Higgins-Dover said in the past homeless individuals have been pushed away from the river and ended up living at Pinwheel Farm. She said that Ms. Lowther has even mentioned she has received physical and verbal threats.

Commissioner Carter asked if she was referring to past incidences of violence that were directed at Ms. Lowther.

Ms. Dover said yes that is what she understands, physical and verbal violence toward the property and owner.

Motioned by Commissioner Finkeldei, seconded by Commissioner Dominguez, to close the public comment.
Motion carried 9-0.

APPLICANT CLOSING COMMENTS
Ms. Lowther said she would like to correct the misunderstanding. She said the Lawrence Journal World ran an article about 10 years ago where she explored the idea of camping. She said nobody actually camped there. She said she did offer those people a piece of garden land which they used responsibly. She said there were a lot of other misconceptions of truth stretching. She said it does not sway her from wanting to camp on her land. She said she did not know how she could summon the courage to knock on her neighbors doors who have expressed negative comments and does not want to be thrown off their property for trespassing.

Commissioner Carter asked how many people have stayed at the farm recently.

Ms. Lowther said the most number of people staying at the farm would probably have been 9 for a short period and several were in the residence.

Commissioner Carter asked if there were any issues with people staying there.

Ms. Lowther said there was one person that lived in the structure who displayed belligerent behavior so she asked him to leave. She said she does not tolerate inappropriate behavior.

COMMISSION DISCUSSION
Commissioner Dominguez said he was torn. He said he admires what she does in teaching a skill to people but can empathize with the neighbors. He said he was willing to think about the applicants proposal if staff wants. He said he would like to see a police record of calls made to the area. He said the way it stands now he would not vote for it.

Commissioner Moore said he would lean more toward staff recommendations but felt the applicants proposal should be looked at. He asked staff to look into initiating a Text Amendment for camping on own property.

Ms. Miller said staff talked to Keith Dabney, Director of Douglas County Zoning and Codes, he suggested that it be included in the revisions of the County Zoning Regulations.

Commissioner Moore said that might resolve some of Ms. Lowther’s issues.

Mr. McCullough said there are different levels of camping, private and public.

Commissioner Rasmussen inquired about county enforcement.

Ms. Miller said it is complaint driven.

Commissioner Finkeldei gave an example of abuse in the county where a house had three RV’s where people were living for long periods of time and let the raw sewage run into the yard. He said it is very hard to regulate agriculture property in the context of a neighborhood. He agreed with Ms. Lowther that these recommendations on the Conditional Use Permit go far beyond what could ever be required of someone who lives in an agriculture zone but that they are appropriate recommendations.
Commissioner Hird said part of Horizon 2020 talks about conserving class 1 and 2 soils and this is one of those uses that promotes it. He said he visited Pinwheel Farm and Ms. Lowther was not there so the workers gave him a tour and they were fully committed to learning the agriculture process and made a favorable impact on him lessening the fear that the people camping there were pedophiles. He felt the fear of the workers and transient issue is unfounded. He said he liked the idea of a trial period and that it would give the neighbors the chance to see what it is about.

Ms. Miller pointed out the condition that says the camping would be reviewed after one year.

Commissioner Rasmussen asked who would review it.

Mr. McCullough said that language could be worked on to firm it up. He said review is typically administrative but that it could be brought back to the governing body or Planning Commission for a formalized review. As long as the conditions are being met then the Conditional Use Permit remains.

Commissioner Finkeldei asked if it is denied then the applicant could reapply for the Conditional Use Permit in one year.

Mr. McCullough said it would have to be reviewed.

Commissioner Rasmussen said property owners should be able to camp on their own property. He said he was not worried about people staying there. He stated he is not worried about visitors to his own neighbors house or who they might rent a room out to. He said there has been a negative foundation laid in the neighborhood. He said he was more concerned about camping on the south end of the property with how close it is to the neighborhood. He said he wouldn't be as concerned if the camping was restricted to the northern portion of the property. He liked the idea of a one year trial period. He was optimistic that the neighbors would not be back because it would be working. He said the location for this application is important and should be held to a different standard because it is at the edge of the city. Micromanaging may be necessary given the location of this particular piece of property. That being said there are 4 pages of recommendations and restrictions and that was a red flag to him. It all seems to go back to the camping. If camping is so important to the WWOOFing activities maybe they should consider turning one of those structures into a bunkhouse. Almost all of the proposed recommendations from staff deal with camping. He felt they should encourage this type of activity and figure out a way to make this application work.

Commissioner Carter said at this point he would be in favor of deferring the item instead of denying it. He suggested a way to identify farm workers and perhaps having volunteers sign something regarding their commitment to the neighborhood. He suggested maybe something such as an armband to identify to the neighbors who the volunteers are to better associate them to the neighborhood.

Commissioner Finkeldei said he would not support deferring the item. There are rules in the County Code that allow great possibilities to allow Ms. Lowther do what she wants to do under the existing rules. He recommended non-approval.

Commissioner Harris agreed with what Commissioner Hird said earlier about the project. She was in favor of deferring. She said she visited with some of the workers at the farmers market, not about the project, and found them to be intelligent and delightful. She did not feel it was their job to regulate the people who are there. She said a Conditional Use Permit can contain sensible restrictions that address proximity to neighbors but should not restrict farm operations that are allowed by right. She objected to the word micromanage when talking about a Conditional Use
Permit. She said it was their job to create restrictions that they feel are appropriate. She said she would vote for a deferral.

Commissioner Moore said he would support a deferral.

Commissioner Dominguez asked if they defer the item what will change.

Mr. McCullough said it would help to get direction of what they hope the outcome of deferral would be.

Commissioner Hird said a deferral could allow time to examine and explore alternatives that Ms. Lowther has presented tonight. He said the best alternative for camping would perhaps be to move to the north end of the property which may reduce impact issues. He said they need to examine whether there have been too many conditions created and see if they can be simplified. He felt the main issue of the timeframe for the Conditional Use Permit is for the camping and he felt there should be review of that.

Commissioner Finkeldei inquired about condition 1 regarding the physical appearance condition.

Commissioner Hird said to his understanding if those are buildings used for agricultural purposes they are exempt anyway and he was not sure they had right legally to impose conditions on those.

Mr. McCullough said there is a nexus between the conditions and request. He said the applicant handed him a note that said if the item is deferred she cannot get back to it until January because of the season.

Commissioner Blaser said the physical conditions should be included. He said he got the feeling the camping is only a means for the neighbors frustrations to come out about the physical condition of the property.

Commissioner Harris inquired about timing.

Mr. McCullough said if the County Commission approves it then Ms. Lowther would have a year to act on it or it expires and she would have to make the request again.

Commissioner Blaser asked Ms. Lowther what she would prefer.

Ms. Lowther said she was not sure she could predict the outcome of either option.

Commissioner Moore said they need to make a motion to approve, deny, or defer.

Commissioner Rasmussen said the only two options he would support would be denial or deferral. He thought it needed to be reworked. He said if deferred he would like the applicant attempt to talk to neighbors.

**ACTION TAKEN**

Motioned by Commissioner Hird, seconded by Commissioner Harris, to defer indefinitely, subject to the applicant requesting placement on the agenda.

Motioned carried 7-2, with Commissioners Blaser and Finkeldei voting in opposition.
ITEM NO. 11  TEXT AMENDMENT; LAND DEVELOPMENT CODE; ADAPTIVE REUSE OF DESIGNATED HISTORIC PROPERTY (SDM)

TA-7-20-09: Consider Text Amendments to various sections of the City of Lawrence Land Development Code to (1) correct language regarding Adaptive Reuse of Designated Historic Property in section 20-501, and (2) revise language in sections 20-1310 and 20-1311.

STAFF PRESENTATION
Mr. Scott McCullough presented the item.

Commissioner Finkeldei inquired about the scenario of a single family home with an attached dwelling that has been used as a fraternity for the past 60-80 years.

Mr. McCullough said there were some of those scenarios that were talked about and looked at and at the end of those discussions this is the language that staff felt gave the neighborhoods the protection. If it was built for residential purposes then it could be used for residential purposes.

Mr. Finkeldei inquired about a house at 805 Ohio Street that he thought was originally built as a hospital.

Mr. McCullough said this reduces its use and flexibility. The neighborhood association is looking for ways to restrict its use as a land use tool.

Commissioner Rasmussen inquired about the definition of adaptive reuse.

Mr. McCullough said it is the conversion of a structure listed individually or as a contributing structure to another specified use, with the intent of preserving the listed structure. He said if there is a listed structure in the RM district that wants to do light manufacturing it is a possible use that could be considered through the Special Use Permit process.

PUBLIC HEARING
Mr. Jim O'Malley, 626 Ohio, spoke on behalf of the Old West Lawrence Neighborhood Association, thanked staff. He said the best way to promote historic preserve of Old West Lawrence and other single family historic districts is to promote and protect the single family use. He felt the current adaptive reuse ordinance is so overbroad that it invites efforts to convert single family houses to uses that are inconsistent with the historic single family use and character of the houses in those districts. He said the proposed amendments would remedy that and the Old West Lawrence Neighborhood Association supports the Text Amendment.

Motioned by Commissioner Carter, seconded by Commissioner Hird, to close public comment.

Motion carried 9-0.

COMMISSION DISCUSSION
Commissioner Harris thanked staff for being willing to make changes to make this better than it was before.

ACTION TAKEN
Motioned by Commissioner Harris, seconded by Commissioner Hird, to approve Text Amendment (TA-7-20-09) to various sections of the City of Lawrence Land Development Code to (1) correct language regarding Adaptive Reuse of Designated Historic Property in section 20-501, and (2) revise language in sections 20-1310 and 20-1311, and forward to the City Commission.

Commissioner Finkeldei said he would reluctantly support.

Unanimously approved 9-0.
ITEM NO. 12 TEXT AMENDMENT; LAND DEVELOPMENT CODE; BOARDING HOUSE (SDM)

TA-6-17-09: Reconsider Text Amendments to various sections of the City of Lawrence Land Development Code to review standards related to “Boarding House.” This item was originally heard by Planning Commission on 12/16/09. City Commission returned this item on 2/2/10 for additional consideration.

STAFF PRESENTATION
Mr. Scott McCullough presented the item.

Commissioner Finkeldei asked if staff wants specific language.

Mr. McCullough asked for majority direction and unity to take back to City Commission.

PUBLIC HEARING
Mr. Dennis Brown, President of Lawrence Preservation Alliance, supports property investors that have gone through the site plan process and worked to adhere the Code. He said the time limit for illegal properties to come into compliance should be 3 years. He said congregate living should be limited. He felt the parking requirement should be 1 space per bedroom unless otherwise defined by overlay district guidelines, if applicable. He felt there should be an on-site authority.

Ms. Gwen Klingenberg, President of Lawrence Association of Neighborhoods, said there is no better place to look for goals than Horizon 2020. She reviewed the goals.

Mr. Jim Hicks said there is no other use for a 14 bedroom house than to turn them into boarding house. He said large houses are no longer able to be used by families. He did not want a policy that drives down property tax.

Ms. Marci Francisco, 1101 Ohio Street, agreed that very large historic properties are appropriate for this use but that language allows for expansion to create them. She wondered why they are giving special uses special parking, when in fact they should be looking at special structures and finding ways to use.

Ms. Candice Davis said she wants to save the integrity of the neighborhood. She reviewed the letter she sent that was included in the packet. She suggested text for a minimum of 6 bedrooms to be boarding houses. She would like to see smaller structures be eliminated as boarding houses. She supported legal non-conforming uses and should be grandfathered in. She was concerned about illegal cheaters and that they should not be given special consideration. They can become legal by reducing the number of people in their houses.

Mr. David Holroyd requested copies of correspondence from the Oread Neighborhood Association when initiated, a list of Oread Neighborhood Association membership at that time, and a list of City Commission members at that time as well.

Ms. Fadila Boumaza said she was still not sure what problem was trying to be solved. Is it parking, safety, preservation of historical structure, or all of the above. She felt they were trying to solve too many things at one time and the document was taking on many forms.
Mr. Shane Munch asked if anyone on the Planning Commission has applied for a boarding house. (The Planning Commission indicated no) He said it is not that common. He said he has a 5 bedroom house and wanted to legally put 5 people in the house. He followed the process through the city and was told he had to install a sprinkler system. He felt the Text Amendment was another layer of excess regulation further restricting and confusing people like himself trying to run a rental business on the side. He said they need to deal with the problem of 4 unrelated people.

Motioned by Commissioner Rasmussen, seconded by Commissioner Dominguez, to close the public comment.

Motion carried 9-0.

COMMISSION DISCUSSION
Commissioner Dominguez asked why speakers mentioned bringing the number of bedrooms down from 8 to 6 in boarding houses.

Ms. Francisco said there needs to be a minimum because many single-family homes will be converted into boarding houses. It makes sense to have a minimum so it is clear that some houses are single-family and some congregate living in order to keep a variety of housing types.

Commissioner Rasmussen inquired about parking for fraternities.

Ms. Francisco said she addressed that in her letter. She would consider any uses that do not have a structured meal plan to have the same parking requirements.

Commissioner Finkeldei felt they should simplify the standards relating to building additions. He said he would need to know more information about the standard of 1 parking space per parking and variance possible for large structures before agreeing to it. He said he did not support Special Use Permits. He said he would not support all the language from March. He did not feel that they had come up with the answer yet.

Commissioner Moore said he did not support a Special Use Permit either.

Commissioner Harris agreed about the comments by the Lawrence Preservation Alliance and that this is a good use for large historic structures. She said they should focus on the historic structures for this use.

Commissioner Carter wondered what the neighborhood associations thoughts were.

Commissioner Rasmussen said when they first started looking at this the concerns were party houses, damaging the quality of life in the neighborhood, parking, taking a small home drastically increasing the size to a boarding house, and taking advantage of parking. He did not feel like the current proposal solved those issues. He said rather than putting maximum on the boarding house size, it should be a minimum of at least 5 bedrooms so it ties it into the definition of family. He favored the same type of parking restrictions as apartments. He did not feel they should be subject to Special Use Permits. He did not feel that boarding houses were oversaturated.

Mr. Hicks said the Oread Neighborhood Association meets tomorrow night to address this issue and that’s why they didn’t speak tonight because they did not have a consensus.
Commissioner Hird said the nature of discussion has evolved from initially being about behavior and now about land use issue. He liked the concept of having a designated person of authority in the boarding houses. He did not think they should provide more favorable parking for this use but also did not want the backyards turned into concrete parking lots. He said the emphasis on historical structures is a very commendable route and he favored it.

Commissioner Rasmussen said he also liked the idea of a reasonable party being attached to these uses.

Commissioner Hird hoped they could craft a solution to stop the abuse of additions.

**ACTION TAKEN**
Motioned by Commissioner Hird, seconded by Commissioner Harris, to defer for two months.

Commissioner Finkeldei said he would rather defer it indefinitely to have something to come back with. He suggested possibly forming a committee to come up with ideas.

Commissioner Hird said the reason he motioned for 2 months was because the Oread Neighborhood Association would be meeting tomorrow and he was hoping for some leadership from them.

Commissioner Rasmussen said he would prefer to see it deferred indefinitely with the expectation of receiving leadership from the Oread Neighborhood Association.

    Motion failed 4-5, with Commissioners Blaser, Chaney, Finkeldei, Moore, and Rasmussen voting in opposition. Commissioners Carter, Dominguez, Harris, and Hird voted in favor.

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to defer indefinitely.

    Motion carried 6-3, with Commissioners Dominguez, Harris, and Hird voting in opposition. Commissioners Blaser, Carter, Chaney, Finkeldei, Moore, and Rasmussen voted in favor.
ITEM NO. 13 TEXT AMENDMENT; LAND DEVELOPMENT CODE; CHAPTER 20, ARTICLE 8 (SMS)

TA-3-3-10: Consider Text Amendments to the Land Development Code, Chapter 20, Article 8 – Code of the City of Lawrence, Kansas to revise requirements and standards related to the processing of Minor and Major Subdivisions. Initiated by City Commission on 2/16/10.

Item 13 was deferred prior to the meeting.

MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

PUBLIC COMMENT SECTION

ADJOURN 11:50pm
2010
LAWRENCE-DOUGLAS COUNTY METROPOLITAN PLANNING COMMISSION
MI D-MONTH & REGULAR MEETING DATES

<table>
<thead>
<tr>
<th>Mid-Month Meetings, Wednesdays 7:30 - 9:00 AM</th>
<th>Mid-Month Topics</th>
<th>Planning Commission Meetings 6:30 PM, Mon &amp; Wed</th>
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<tbody>
<tr>
<td>Jan 13</td>
<td>Midland Junction Sand Facility</td>
<td>Jan 25</td>
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<td>Feb 10</td>
<td>KU Endowment</td>
<td>Feb 22</td>
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<td>Mar 10</td>
<td>Industrial Design Guidelines</td>
<td>Mar 22</td>
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<td>Apr 14</td>
<td>Environmental Chapter Presentation</td>
<td>Apr 26</td>
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<td>May 12</td>
<td>APA Conference Report</td>
<td>May 24</td>
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<td>Jun-09</td>
<td>Cancelled due to Friday Training this week</td>
<td>June 11</td>
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<td>Air Quality/Ozone Issues</td>
<td>October 20</td>
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<td>Nov 13</td>
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<td>Dec 01</td>
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Suggested topics for future meetings:
- Joint meeting with other Cities’ Planning Commissions
- Joint meeting with other Cities and Townships – UGA potential revisions
- Presentation from KC-metro Planning Directors
- Tour City/County Facilities

Meeting Locations
The Planning Commission meetings are held in the City Commission meeting room on the 1st floor of City Hall, 6th & Massachusetts Streets, unless otherwise noticed.

Planning & Development Services | Lawrence-Douglas County Planning Division | 785-832-3150 | www.lawrenceks.org/pds

Revised 06/11/10
ITEM NO. 1   FINAL DEVELOPMENT PLAN; PARKWAY PLAZA PCD; 8.03 ACRES; 3504 CLINTON PKWY (SLD)

FDP-4-5-10: Consider a Final Development Plan for Phase I of the Parkway Plaza PCD for a building addition to the Hy-Vee Grocery Store, approximately 8.03 acres, located at 3504 Clinton Parkway. Submitted by Landplan Engineering, P.A., for Hy-Vee Food Stores, Inc., property owner of record.

STAFF RECOMMENDATION: Planning staff recommends approval of the Final Development Plan based upon the findings of fact presented in the body of the Staff Report subject to the following conditions:

1. Submission of mylar and applicable recording fees for the document to be recorded with the Register of Deeds prior to the issuance of building permits.
2. Provision of a revised Final Development Plan to show final building elevations per staff approval.

Reason for Request: Request is for proposed building addition on east side of development consistent with planned phased development of the site.

KEY POINTS:
- The site is part of a phased commercial development including a strip center, commercial pad sites and multi-family development.
- Original approval of the development included a 65’ by 225’ area for a future building addition of 15,000 SF.
- The focus of this report is on Phase I of the development.
- Also proposed is a façade change to the front elevation of the building.

Design Standards to Consider
- Consistency with approved Preliminary Development Plan.
- Consistency with Article 10 of the 1966 Zoning Code.
- Consistency with the Commercial Design Guidelines.

ASSOCIATED CASES/OTHER ACTION REQUIRED
- Z-11-22-92: C-2, RO-1 & RS-2 w/PUD to PCD-2; 20.86 ac.; NW corner of Kasold Dr. and Clinton Pkwy; CC approved April 6, 1993, Ordinance 6420.
- Phase I & II Hy-Vee Grocery Store and retail center; City Commission approved 2/16/1993.
- Phase I Revised Final Development Plan, Hy-Vee seasonal sales area addition, Planning Commission approved April 24, 1996.
- FDP-07-10-01; Addition of canopy over drive-through pharmacy window; administratively approved October 18, 2002.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING
- Request for copy of plan from adjacent property owner. No comments provided.
PLANS AND STUDIES REQUIRED

- Traffic Study – approved by staff.
- Downstream Sanitary Sewer Analysis – approved by staff.
- Drainage Study – approved by staff.
- Commercial Design Guidelines – to be approved by staff.

GENERAL INFORMATION

Current Zoning and Land Use:
PCD-[Rose Hy-Vee Center] Planned Commercial Development (District).
Grocery Store, part of a multi-phase commercial/multi-family development.

Surrounding Zoning:
To the east:
RS-7 (Single-Dwelling Residential) District; existing homes; and;
RS-10 (Single-Dwelling Residential) District; existing homes and;
RSO (Single-Dwelling Residential-Office) District; existing office.

To the north:
PCD-[Rose Hy-Vee Center] Planned Commercial Development (District).
Commercial Pad Site and apartments along W. 22nd Street, part of a multi-phase commercial/multi-family development.

To the east:
PCD-[Rose Hy-Vee Center] Planned Commercial Development (District);
existing commercial pad sites along Quail Creek Drive and strip commercial center along Clinton Parkway.

To the south:
PCD-[Rose Hy-Vee Center] Planned Commercial Development (District); existing commercial pad sites along Clinton Parkway.

| Site Summary |
|--------------|--------------------------------------------------|
| **Phase I**  | Grocery Store – 3504 Clinton Parkway             |
| Phase II     | Retail Center and pad sites                     |
| Phase II A   | North portion of retail center – 3514 Clinton Parkway |
| Phase II B   | Pad Site (restaurant) 3512 Clinton Parkway      |
| Phase II C   | South portion of retail center – 3514 Clinton Parkway |
| Phase III    | Pad Site (bank) 3500 Clinton Parkway            |
| Phase IV     | ATM – 3530 Clinton Parkway                      |
| Phase IV A   | Pachamama and Office Pad Site                    |
| Phase IV B   | (restaurant) 2161 Quail Creek Drive              |
|              | pad site is undeveloped – no address            |
| Phase IV C   | Apartments and commercial pad site               |
| Phase IV D   | Apartments - 3520 W. 22nd Street                 |
| Phase IV E   | Pad Site – 2121 W. 22nd Street.                 |
STAFF REVIEW
The subject property is located on the northwest corner of Kasold and Clinton Parkway. The grocery store represents the first phase of a multi-phase commercial/residential development. The focus of this report is on Phase I of the development as it relates to the building addition and alteration of the interior parking lot and traffic circulation. The Preliminary Development Plan for “Rose Hy-Vee Center” was approved by the City Commission in February 1993. More recent approval for Phase I include the establishment of a seasonal sales area (April 1996) and a covered drive-through pharmacy window (FDP-07-10-01). The original approval included a 65’ by 225’ area designated for a future addition. The proposed addition is 11,213 SF within that designated area. The addition expands the building to the east an additional 50’.

In addition to the building addition, the plan also proposes a new front façade to update the existing store front. Façade changes are generally administrative and subject to the Commercial Design Guidelines. Final elevations have recently been provided to staff. As a condition of approval this project shall be subject to the administrative review for compliance with the Commercial Design Guidelines. The main driveway along the building will be retained along with a pedestrian walkway along the store front.

Overall changes to the plan:
The plan modifies the building footprint and alters the parking lot area on the east side of the building. The plan proposes to retain a drive-through pharmacy window. The east parking lot is frequently used for seasonal sales. A portion of the area along the perimeter of the parking lot will continue to be used for seasonal sales. A new area on the south side of the main driveway is being designated with this plan as a new seasonal sales area.

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<th>Approved (SF)</th>
<th>Proposed (SF)</th>
<th>Change</th>
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<tr>
<td>Building coverage</td>
<td>64,357</td>
<td>75,570</td>
<td>17% increase</td>
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<td>Pervious Cover</td>
<td>58,314</td>
<td>61,190</td>
<td>4.9% increase (2,876 SF)</td>
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<tr>
<td>Impervious Cover</td>
<td>291,327</td>
<td>288,451</td>
<td>1% decrease (2,876 SF)</td>
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<tr>
<td>Grocery Store</td>
<td>60,700</td>
<td>64,357</td>
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<tr>
<td>Proposed Expansion</td>
<td>15,000</td>
<td>11,213</td>
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<tr>
<td>Parking</td>
<td>438 spaces</td>
<td>378 spaces</td>
<td>60 space reduction</td>
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</table>

The reconfiguration of the east parking lot provides additional green space including large foundation planting areas. These areas include new landscape that will provide additional softening of the building façade from the Kasold Drive view.

The character of the development will remain commercial with the grocery store an anchor to the development.

Commercial Design Guidelines
Changes to the front façade have recently been provided to staff. The applicant’s representative has clarified the intent to update the existing front façade as part of this project. Because of the recent change to the request staff will administratively complete a review of the front façade revisions administratively to assure full compliance with the guidelines.
The proposed addition is a secondary side of the building. Overall the building is not easily seen from any abutting public streets (other than the rear elevation). The revised development includes a larger foundation planting bed that will be landscaped. The east façade also includes windows along various panels of the building. Materials are intended to match existing materials utilized on the site. The proposed east side alteration is consistent with the Commercial Design Guidelines.

Utilities and infrastructure
Utilities and infrastructure are not altered by this proposed change. No new easements are required to accommodate the proposed building addition.

Pedestrian Connectivity
Pedestrian walkways provide connectivity through the development and to the public sidewalks along Kasold Drive and Clinton Parkway.

Procedure
The project was originally approved under the 1966 zoning code. A planned unit development, in this case a PCD is a specific zoning category. Existing planned unit developments converted to special purpose districts as part of the adoption of the 2006 Development Code (section 20-221)

The approval of a development plan per the 1966 code generally occurs as a two step process including a preliminary development plan and a final development plan. A public hearing is held at the time of the preliminary development plan consideration by the Planning Commission. The Planning Commission then makes a recommendation to the governing body that either approves, approves with conditions or denies a particular preliminary development plan. If a preliminary development plan is approved, a final development plan may be submitted. No public hearing is required for the final development plan so long as it is consistent with the approved preliminary development plan. The Planning Commission takes final action on a final development plan.

This application is for a revised final development plan that is consistent with the previously approved preliminary development plan for the commercial center and is consistent with planned building expansion for the grocery store.
PLANNING COMMISSION REPORT
Consent Agenda - Non-Public Hearing Item

PC Staff Report
06/21/10
ITEM NO. 2A: FINAL PLAT; BAUER FARM; 4.9 ACRES; 4700 W 6TH ST (MKM)

PF-4-3-10: Consider a Final Plat for Bauer Farm, a one lot residential subdivision containing approximately 4.9 acres, located at 4700 W 6th St. Submitted by Landplan Engineering, for Free State Holdings, Inc and Bauer Farms Residential, LLC, property owners of record.

STAFF RECOMMENDATION: Planning staff recommends approval of the Final Plat for the Bauer Farm 4th Plat Subdivision and forwarding it to the City Commission for acceptance of easements and rights-of-way, subject to the following conditions:

1. Recordation of revised maintenance agreement prior to the recording of the Final Plat with the Register of Deeds Office.
2. Provision of a revised Master Street Tree Plan and graphic which includes street trees for the street right-of-way being shown along the west property line on the Preliminary Development Plan. A note may be added to the street tree plan clarifying the status of the street to the west.
3. Provision of a revised final plat with the following changes:
   a. Planning Commission chairperson signature blank updated to ‘Charles Blaser’.
   b. Dimensions of the access break on Overland Drive included on the plat.
4. Provision of the following fees and documentation:
   a. Recording fees made payable to the Douglas County Register of Deeds.
   b. Street sign fees as determined by the City Traffic Engineer.
5. Pinning of lots in accordance with Section 20-811(g)(8) of the Subdivision Regulations.
6. Submission of public improvement plans prior to the recording of the Final Plat with the Register of Deeds Office.

Applicant’s Reason for Request: Subdivision necessary prior to development of retirement facility in portion of Bauer Farm PRD.

KEY POINTS
- The Preliminary Development Plan, which also serves as the preliminary plat for the Bauer Farm Development, was submitted prior to the 2006 Development Code. Easements and rights-of-way were not dedicated with the preliminary plat in the pre-2006 Development Code; therefore, the final plat will be submitted to the City Commission for acceptance of easements and rights-of-way.
- The Bauer Farm PRD will be developed in phases. This plat will provide one lot for a retirement facility which is the first phase of the residential portion of the 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/ OTHER ACTION REQUIRED**

**Associated Cases**

- **Z-06-08-07:** 16.53 acres from PRD-2 to PRD-3 to increase maximum density from 15 to 25 dwelling units per acre. Approved by City Commission on August 8, 2007; [pending recordation of final plat].
- **PDP-1-1-10:** Revised Preliminary Development Plan for Bauer Farm PUD, to replace the residential structures in the northeast corner of the development with a residential retirement facility. Approved by City Commission on April 6, 2010.
- **FDP [FDP-4-6-10],** also being considered by the Planning Commission at the June meeting, supersedes this previously approved plan.

**Cases requiring action:**

- City Commission acceptance of dedication of easements and rights-of-way as shown on the final plat.
- Execution and recordation of maintenance agreement with revised Exhibit B.
- Planning Commission approval of Final Development Plan for Bauer Farms-Phase IV, also being considered at the June Planning Commission meeting.
- Submittal and approval of public improvement plans prior to recording the final plat.
- Recordation of final plat at the Douglas County Register of Deeds.
- Recordation of final development plan at the Douglas County Register of Deeds.
- Publication of rezoning ordinance for the pending rezoning: Z-06-08-07 (PRD-3).

**GENERAL INFORMATION**

**Current Zoning and Land Use:** PRD-Bauer Farm (Planned Residential Development) District. Property is being prepared for development, but is currently undeveloped.

**Surrounding Zoning and Land Use:**

To the west:
PRD-[Bauer Farm] the remainder of the Bauer Farm Residential Development; development pending approval of a final development plan and final plat.

To the north:
RSO (Single-Dwelling Residential-Office) District across Overland Drive; apartments.

To the east:
PRD-[Briarwood Cottages] (Planned Residential Development) District across Folks Road; Multi-dwelling residences.

To the south:
A parcel in the southeastern corner of the Bauer Development, currently zoned PRD-[Bauer Farm] has POD Zoning (Planned Office Development) District pending; undeveloped land with office uses shown on the approved preliminary development plan. and
PRD-[Bauer Farm] a portion of the multi-family residential development planned along W 6th Street.
Site Summary
Number of lots proposed: 1 Lot
Lot area: 231.833 sq. ft. (4.909 acres)
Drainage easements: 50,356 sq. ft
Rights-of-way: 60’ right-of-way for Bauer Farm Drive

STAFF REVIEW
The Bauer Farm Addition, 4th Plat proposes a 1 lot subdivision for development of a retirement facility within the residential portion of the Bauer Farm Planned Development. The subject property is located at the southwest corner of the Overland Drive and Folks Road intersection.

The Bauer Farm Preliminary Development Plan, which also serves as the preliminary plat, was originally submitted prior to the adoption of the 2006 Development Code. Prior to the 2006 Development Code and Subdivision Regulations, the City Commission did not accept dedications with the preliminary plat. The final plat must therefore be forwarded to the City Commission for acceptance of dedication of easements and rights-of-way.

Rezoning to the PRD-3 District has been approved, pending recordation of a final plat and the rezoning ordinance will be published for this lot following the recordation of the plat.

Street and Access
The development will take access from Folks Road with Bauer Farm Drive and from Overland Drive through a driveway. Access to Overland Drive is limited to this one access point and no direct access to Folks Road is permitted. The final plat shows access restrictions along Folks Road and Overland Drive as required in Section 20-915(e)(2)(ii) of the Development Code. The access break on Overland Drive is shown on the final plat, but dimensions have not been included. The final plat should be revised with the dimensions of the access break. A maintenance agreement for the streets and alleys located in the Bauer Farm Residential Development was recorded with the previous preliminary development plan. This agreement was revised to reflect the revised street and alley layout approved with the revised Preliminary Development Plan with the retirement facility. The revised maintenance agreement shall be recorded prior to the recording of the final plat.

Master Street Trees
The Master Street Tree Plan and graphic provided with the plat lists required street trees for Folks Road, Bauer Farm Drive, and Overland Drive, but does not list the trees required for the future street shown on the west of Lot 1, on the Preliminary Development Plan. The applicant indicated that the street tree requirement is being met with the landscaping shown with the Final Development Plan. The street tree plan should be revised to note the number and species of trees required for this future street right-of-way with this plat, as there will be no future trigger to revise the street tree plan when this right-of-way is dedicated in the future. A note may be added to the street tree plan regarding the status of the street to the west.

Utilities and Infrastructure
The Preliminary Development Plan, which serves as the Preliminary Plat, was approved with a sanitary sewer line being provided along the western boundary of Lot 1 to serve the lots upstream from the subject lot. This sanitary sewer line has been removed from the Final Plat. The City Utility Department indicated that it is necessary for each development to extend public infrastructure to the development limits so that future development upstream may be accommodated. The applicant indicated that there are various options for providing sanitary sewer to the lots beyond this proposed development, (lots along the W 6th Street frontage and at the northwest corner of W 6th Street and Folks Road). This situation is rather unique in that all the property is under a common ownership and the land use to the immediate west is currently in question; therefore, the Planning Director determined the sanitary sewer line would not be required at this time provided the current property owner provide a letter indicating that they would commit to extending sanitary sewer lines for the lots beyond this proposed development in the future. The property owner provided the letter and it is included in the Commissioner's agenda packet.

The stormwater drainage study and the stormwater features on the final plat have been approved by the City Stormwater Engineer.

**Public improvements**
Public improvements include the extension of the sanitary sewer and water mains, stormwater management facilities, and the construction of Bauer Farm Drive. Adequate guarantee of improvements shall be provided prior to the recording of the final plat.

**Easements**
A 10 ft wide utility easement is being proposed along the north and east property lines, adjacent to Overland Drive and Folks Road. An off-site drainage easement for the detention pond serving this lot is being recorded with this plat and the Book and Page Number will be noted on the face of the plat. A 15 ft wide off-site utility easement is being dedicated for the underground stormwater facilities linking Lot 1 with the detention pond in the drainage easement.

**Compliance with preliminary plat**
The final plat conforms to the approved preliminary development plan [PDP-1-1-10] with the exception of the removal of the sanitary sewer line along the west property line. The Planning Director indicated that a letter indicating the property owner’s commitment to extend sanitary sewer to the lots south of the subject property would be acceptable in lieu of extending the line at this time.

**Summary**
The proposed subdivision is in conformance with the minimum lot area and dimension requirements for the Planned Residential Development in the 1966 Zoning Ordinance. The final plat, as submitted, is consistent with the requirements of the subdivision regulations.
June 14, 2010

Mr. Scott McCullough
City of Lawrence
PO Box 708
Lawrence, Kansas 66044
RE: Bauer Farm Sanitary Sewer Extension

Dear Scott:

Pursuant to our June 10, 2010, discussion regarding the extension of sewer service to the Harvest Development site, on behalf of Free State Development, Inc. (the “Developer”), the developer or record for Bauer Farm, and the other property owners, Free State Group, LLC, and Bauer Farm Residential, LLC, (collectively, the “Development Group”) this letter documents our understanding and agreement that (1) the Bauer Farm Phase 4 FDP and Bauer Farm 4th Plat does not need to show the extension of sewer service located on property owned by Bauer Farm Residential, LLC, along the west edge of the Harvest property line; and (2) the location of any future sanitary sewer line to serve a future lot or lots located in the southeast corner of the Bauer Farm property (intersection of 6th and Folks Road) and other prospective lots or parcels located along the south side of the property shall be planned for by the Development Group and located in an appropriate location (e.g., along Bauer Farm Drive or other approved location) at the time that subsequent preliminary and final development plans are submitted for this parcel or parcels.

Please contact me if you have any questions regarding this letter. Thank you and the rest of the City staff for your assistance in this matter.

Sincerely,

[Signature]
William N. Fleming
General Counsel
Treanor Architects, P.A.

cc: Tim Herndon
Christopher Storm
Dan Roach
**PLANNING COMMISSION REPORT**  
**Non-Public Hearing Item**

PC Staff Report  
06/21/10  
**ITEM NO. 2B**  
**FINAL DEVELOPMENT PLAN; BAUER FARM PHASE 4; 5.39 ACRES; 4700 W 6TH ST (MKM)**

**FDP-4-6-10:** Consider a Final Development Plan for Bauer Farm Phase 4, approximately 5.39 acres, located at 4700 W 6th St. The Development Plan proposes the construction of a 124 unit retirement residence, an assisted living use, and associated parking area. Submitted by Landplan Engineering, for Free State Group, LLC, Free State Holdings, Inc, and Bauer Farms Residential, LLC, property owner of record.

**STAFF RECOMMENDATION:** Planning staff recommends approval of the Final Development Plan based upon the findings of fact presented in the body of the Staff Report subject to the following conditions:

1. A Final Plat must be recorded with the Register of Deeds prior to the issuance of building permits.
2. Provision of a revised Final Development Plan with the following changes:
   a. Revision of phasing lines on all plan sheets to reflect those shown on Sheet 1.
   b. Delineate the walkway connections through the parking area on the plan and on site with pavement treatment or markings.
   c. Note 43 shall be revised with the new Book and Page Number of the revised Maintenance Agreement.
   d. Identify ‘Tract A, Block Five’ as a drainage easement rather than as a ‘tract’ to maintain consistency with the final plat.
3. Provision of a photometric plan for all exterior lighting, for planning approval prior to recording of the Final Development Plan.
4. Provision of an updated Common Open Space exhibit which shows the common open space being provided along with the calculations of the area (sq ft) and percentage of common open space being provided with this phase of the development.

**Reason for Request:** The Final Development Plan serves as a site plan for the development of a retirement facility in a portion of the Bauer Farm Planned Residential Development.

**KEY POINTS:**
- The property is currently unplatted. A final plat shall be recorded prior to issuance of building permits.
- The proposed development is in the northeast corner of the Bauer Farm Planned Residential Development and is the first residential project implementing the residential portion of Bauer Farm.
- A revised Preliminary Development Plan for Bauer Farms PRD [PDP-1-1-10] which modified the residential portion of the development to replace single-attached- and multi-dwelling...
structures in the northeast portion with a retirement facility was approved by the City Commission at their April 6, 2010 meeting.

- Changes have been proposed to the facility from that shown in the Preliminary Development Plan, but as they constitute minor changes a public hearing is not required for the Final Development Plan.
- The Maintenance Agreement has been revised to reflect the revised street and alley layout and has been provided to City Staff for review.
- The Planning Commission approved several waivers and variances with the previously approved Preliminary Development Plan and re-approved these with the approval of PDP-1-1-10.

**Design Standards to Consider**
- Consistency with approved Preliminary Development Plan, PDP-1-1-10.
- Consistency with Article 10 of the 1966 Zoning Code.

**ASSOCIATED CASES/ OTHER ACTION REQUIRED**

**Cases previously approved:**
- Z-6-20-03; 25.214 acres, A to PRD-2; Ord. 7757 [original request]
- Z-06-08-07: 16.53 acres from PRD-2 to PRD-3 to increase maximum density from 15 to 25 dwelling units per acre. Approved by City Commission on August 8, 2007; [pending recordation of final plat].
- PDP-03-02-05; Preliminary Development Plan for Bauer Farm PUD, a mixed use development consisting of planned commercial, office and residential development. Approved by City Commission on March 04, 2008.
- FDP-1-2-09; Bauer Farms-Phase 2 (residential development). The PC approved on 5/18/09. Placed ‘on hold’ at applicant’s request. The current FDP [FDP-4-6-10] supersedes this previously approved plan for the area labeled Block A, Lot 1 on this FDP.
- PDP-1-1-10; Revised Preliminary Development Plan for Bauer Farm PUD, to replace the residential structures in the northeast corner of the development with a residential retirement facility. Approved by City Commission on April 6, 2010.

**Cases requiring action:**
- Execution and recordation of maintenance agreement with revised Exhibit B.
- Planning Commission approval of Final Plat for Bauer Farms-Phase IV, also being considered at the June Planning Commission meeting, and City Commission acceptance of dedication of easements and rights-of-way.
- Submittal and approval of public improvement plans.
- Recordation of final plat at the Douglas County Register of Deeds.
- Publication of rezoning ordinance for the pending rezoning: Z-06-08-07 (PRD-3)

**PUBLIC COMMENT RECEIVED PRIOR TO PRINTING**
- None received to date.

**PLANS AND STUDIES REQUIRED**
- *Traffic Study* – Study provided and accepted with preliminary development plan.
- *Downstream Sanitary Sewer Analysis* - Provided and accepted with the preliminary development plan.
- *Drainage Study* – Provided and accepted with preliminary development plan.
GENERAL INFORMATION
Current Zoning and Land Use: PRD-[Bauer Farm] Planned Residential Development (District). Rezoning to the PRD-3 Zoning District [Z-06-08-07] approved pending the recordation of the final plat. Undeveloped land with residential development approved on the Bauer Farm Preliminary Development Plan [PDP-1-1-10].

Surrounding Zoning: To the west:
PRD-[Bauer Farm] the remainder of the Bauer Farm Residential Development; Residential development approved with the Preliminary Development Plan [PDP-1-1-10], development pending approval of a final development plan and final plat.

To the north:
RSO (Single-Dwelling Residential-Office) District across Overland Drive; apartments.

To the east:
PRD-[Briarwood Cottages] (Planned Residential Development) District across Folks Road; Multi-dwelling residences.

To the south:
A parcel in the southeastern corner of the Bauer Development, currently zoned PRD-[Bauer Farm] has POD Zoning (Planned Office Development) District pending; undeveloped land with office uses shown on the approved preliminary development plan; and
PRD-[Bauer Farm] a portion of the multi-family residential development planned along W 6th Street frontage as part of Bauer Farm.

<table>
<thead>
<tr>
<th>Site Summary: Bauer Farm - Residential; Phase 4 FDP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Lots:</td>
</tr>
<tr>
<td>Net Area:</td>
</tr>
<tr>
<td>Dwelling Units:</td>
</tr>
<tr>
<td>Off-Street Parking Required:</td>
</tr>
<tr>
<td>Off-Street Parking Provided:</td>
</tr>
</tbody>
</table>
Open Space and density calculations: Bauer Farm - Residential; Overall

<table>
<thead>
<tr>
<th>Net Residential Area overall:</th>
<th>11.08 acres</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dwelling units overall:</td>
<td>272 dwelling units</td>
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<tr>
<td></td>
<td>Single dwellings: 130</td>
</tr>
<tr>
<td></td>
<td>Multi-dwellings: 14 (including 8 carriage houses)</td>
</tr>
<tr>
<td></td>
<td>Non-ground floor dwelling units in ancillary structures: 4</td>
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<tr>
<td></td>
<td>Retirement facility (Phase 4): 124</td>
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<tr>
<td>Density Provided</td>
<td>24.55 dwelling units per net acre</td>
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<tr>
<td>Density Permitted</td>
<td>25 dwelling units per net acre permitted per Code</td>
</tr>
<tr>
<td>Open Space Required:</td>
<td>20% of the land for residential use per 20-1006 (g)</td>
</tr>
<tr>
<td></td>
<td>1.84 acres (80,237 sq ft) required [20% of 9.21 acres]</td>
</tr>
<tr>
<td>Open Space Provided:</td>
<td>3.3 acres (143,748 sq ft) provided.</td>
</tr>
</tbody>
</table>

STAFF REVIEW

This Final Development Plan is for Phase 4 of the Bauer Farm Development, the retirement facility. Phase 4 is located in the northeast 5.39 acres of the development, at the southwest corner of the intersection of Overland Drive and Folks Road. A revised Preliminary Development Plan for Bauer Farm [PDP-1-1-10, approved by the City Commission at their April 6, 2010 meeting] replaced several detached homes, row houses, and multi-dwelling structures in this portion of the development with the retirement facility.

Approval of the original Preliminary Development Plan [PDP-03-02-05] included the approval of several waivers from the Development Code and variances from the Subdivision Design Standards. The Planning Commission voted to re-enact those variances and waivers with the approval of the revised Preliminary Development Plan [PDP-1-1-10] in April, 2010. An application for a final plat of the subject property was submitted and is being considered concurrently with this development plan.

The Bauer Farm Development was proposed and planned as a New Urbanism type of development which would utilize several Traditional Neighborhood Design concepts. The waivers which were approved by the Planning Commission were necessary to accommodate these TND concepts such as smaller lots, narrower rights-of-way, and reduced peripheral setbacks. This retirement facility is not being designed with Traditional Neighborhood or New Urbanism design concepts; however, it is still compliant with the recommendations for this area in the 6th and Wakarusa Area Plan.

“The area located west of Folks Road (the northwest corner of the West 6th Street/Folks Road intersection) is recommended as most appropriate for medium-to-high density residential development. This area could also serve well as a mixed office-residential development or public/semi-public/institutional use. It is recommended no commercial, retail or otherwise, be located at this intersection as such activity would disrupt the residential character and feel of adjacent land use activities and residential neighborhoods. Commercial activity at this intersection would also expand the commercial center at West 6th Street and Wakarusa Drive from a center into a strip development, which is in conflict with the goals and policies of Horizon 2020 and the Northwest Plan. It is recommended the existing A, Agricultural, zoning designation be rezoned to PRD-2 with the intent of encouraging
a mixed-use office-residential development that would be complimentary to existing and future developments and neighborhoods.” (page 19, An Area Plan for the Intersection Area of West 6th Street & Wakarusa Drive)

The character of the development will remain dense residential with a mix of structure types. The retirement facility will provide additional variety to the mix of structure types as well as to the demographics in the development.

**Variation from Preliminary Development Plan**

The items on the Final Development Plan which vary from the approved Preliminary Development Plan include the following:

1) The sanitary sewer line shown along the west side of Lot 1 in the PDP has been removed. (Figures 1 and 2)
2) The pool and cabana on the north side of the facility have been replaced with a fountain, seating area and plantings.
3) The garages on the west side were reconfigured from 3 garages with 20 parking spaces to 5 garages with 18 parking spaces.

Section 20-1011(d) of the pre-2006 Code states that substantial changes proposed with the Final Development Plan would require reapproval of the Preliminary Development Plan. The Planning Director determined that the changes being proposed to the garages and patio area do not constitute substantial changes. The City’s development policy is to require the extension of public infrastructure to the limits of the development, to make them available to adjacent properties when they develop. As the applicant indicated there are different options for extending the sanitary sewer to the adjacent lots to the south, and the property is currently under one ownership; the Planning Director determined the sanitary sewer line could be removed from this plan if the property owner provided a letter to the Planning Office expressing their commitment to extending sanitary sewer lines to serve the properties to the south of the retirement facility. A letter to this effect was provided by the property owner and is included in the Planning Commission’s agenda packet for this item.

**Phasing**

The proposed Final Development Plan is for Phase 4, the retirement facility in the northeast corner of the PRD portion of Bauer Farm. This Phase includes Lot 1, Block A, Tract A, Block Five (off-site stormwater detention) and associated easements linking Tract A with Lot 1. Tract A, Block Five is identified on the Final Development Plan as a tract, but is being platted as an easement, rather than a tract, with the final plat. This terminology should be revised on the Final Development Plan.

In addition, the Phase Line on Sheet 1 correctly shows the applicant’s intention to construct Bauer Farm Drive only to the westernmost drive for the retirement facility. The other sheets should be revised to clearly show this phase line as well. The right-of-way for Bauer Farm Drive is being dedicated to the west property line with the final plat; however the street will not be constructed to the west property line with this phase of the development. As noted above, it is the City’s general policy that public infrastructure be constructed to the property line to accommodate future development; however, given the fact that the property is all under one ownership and the development to the immediate west is uncertain; Bauer Farm Drive is not required to be constructed to the west property line at this time. A note on the plan indicates that the property owner of the property to the west will be responsible for the extension of Bauer Farm Drive at time of future development.
Common Open Space
A minimum of 20% of the area in the Planned Development is required to be placed into Common Open Space. The figures indicate that the common open space being provided for the development exceeds this requirement. As this development is for one phase of the project, an updated common open space exhibit with calculations of the area and percentage of common open space being provided with this phase of the development should be provided.

Pedestrian Connectivity
Internal pedestrian walkways are provided throughout the site to provide connections between entrances to the retirement facility and to the parking lots; and connections are made to the peripheral sidewalk. (Figure 3) The pedestrian routes to the peripheral sidewalk are somewhat indirect, but this is necessary due to the topography of the site. Adequate pedestrian connections are being provided.

The walkway connections through the parking area should be marked with pavement treatment or markings to clearly define the crossing areas.

Lighting
A photometric plan will be required for the parking lot lighting being proposed with this development.

Maintenance agreement
A maintenance agreement was executed between the City and the property owner which outlined the city’s maintenance responsibilities. This agreement was revised with the Preliminary Development Plan to reflect the changed layout of the streets and alleys and provided to City staff for approval. The approved maintenance agreement should be recorded and the Book and Page Number noted on the Final Development Plan.
Figure 1. Sanitary sewer line (in yellow) on west property line of subject property as approved on Preliminary Development Plan. Arrow marks location where sanitary sewer line has been revised on the Final Development Plan.

Figure 2. Sanitary sewer lines proposed with Final Development Plan. _____ Public Lines; _____ Private Lines. Arrow shows previously approved location of sewer line.
Figure 3. Pedestrian Connections
June 14, 2010

Mr. Scott McCullough
City of Lawrence
PO Box 708
Lawrence, Kansas 66044
RE: Bauer Farm Sanitary Sewer Extension

Dear Scott:

Pursuant to our June 10, 2010, discussion regarding the extension of sewer service to the Harvest Development site, on behalf of Free State Development, Inc. (the “Developer”), the developer or record for Bauer Farm, and the other property owners, Free State Group, LLC, and Bauer Farm Residential, LLC, (collectively, the “Development Group”) this letter documents our understanding and agreement that (1) the Bauer Farm Phase 4 FDP and Bauer Farm 4th Plat does not need to show the extension of sewer service located on property owned by Bauer Farm Residential, LLC, along the west edge of the Harvest property line; and (2) the location of any future sanitary sewer line to serve a future lot or lots located in the southeast corner of the Bauer Farm property (intersection of 6th and Folks Road) and other prospective lots or parcels located along the south side of the property shall be planned for by the Development Group and located in an appropriate location (e.g., along Bauer Farm Drive or other approved location) at the time that subsequent preliminary and final development plans are submitted for this parcel or parcels.

Please contact me if you have any questions regarding this letter. Thank you and the rest of the City staff for your assistance in this matter.

Sincerely,

[Signature]

William N. Fleming
General Counsel
Treanor Architects, P.A.

cc: Tim Herndon
    Christopher Storm
    Dan Roach
PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item

ITEM NO. 3: PD-[HOME IMPROVEMENT CENTER-PCD-2 WITH USE RESTRICTIONS] TO PD-[HOME IMPROVEMENTS CENTER-PCD-2 WITH USE RESTRICTIONS AMENDED TO INCLUDE OFFICE USES]; 2040 AND 2000 W. 31st STREET (SLD)

Z-3-4-10: Consider a request to rezone approximately 2.61 acres from PD-[Home Improvement Center PCD-2 (Planned Commercial Development)] with uses restricted to retail and restaurant uses) to PD-[Home Improvement Center PCD-2 (Planned Commercial Development) to additionally permit office uses], located at 2000 & 2040 W 31st St. Submitted by Landplan Engineering, for Broadway Plaza II Lawrence Inc., property owners of record.

STAFF RECOMMENDATION: Staff recommends approval of the rezoning request for approximately 2.61 acres Lot 2, First National Addition No.2, a replat of Lots 1 & 4 First National Addition, and Lot 3, First National Addition from PD-[Home Improvement Center PCD-2] with use restrictions to PD-[Home Improvement Center PCD-2] with modified use restrictions to include office uses and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

REASON FOR REQUEST
“Based on the new development code this property to come in compliance with the code, the property must be rezoned to match the use.”

KEY POINTS
- The request affects only the two pad sites identified in the legal description for the overall PCD.
- The change will not affect uses approved for other phases of the PCD.
- No physical changes to the building exteriors are proposed with this change.
GOLDEN FACTORS TO CONSIDER
CHARACTER OF THE AREA
• Existing commercial corridor.

CONFORMANCE WITH HORIZON 2020
• Proposed change conforms with land use recommendations in Article 6 of Horizon 2020.

ASSOCIATED CASES/OTHER ACTION REQUIRED
• See attached document for summary of related historical cases.
• FDP-3-4-10; Revised Final Development to amend applicable notes allowing office uses.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING
• Email from Peter Dellaportas
• Email from Sheryl Vickers

GENERAL INFORMATION
Current Zoning and Land Use: PD – [Home Improvement Center PCD]; existing retail pad sites including 5 Guys Burgers restaurant and vacant building.

Surrounding Zoning and Land Use: PD-[Home Improvement Center PCD] to the north, east and west. Existing commercial development.

PD – [Pine Ridge Plaza PCD]; existing commercial development to the south.

GPI (General Public and Intuitional) District; existing post office to the southeast.

Project Summary
This request is to amend the permitted uses within an existing Planned Development (PD-[Home Improvement Center – PCD]) for two specific pad sites of the development:

2040 W. 31\textsuperscript{st} – [Lot 3, First National Addition] Pad Site “C” – 5 Guys Burgers;
2000 W. 31\textsuperscript{st} – [Lot 2, First National Addition #2] Pad Site “D” – vacant building

REVIEW & DECISION-MAKING CRITERIA

1. CONFORMANCE WITH THE COMPREHENSIVE PLAN
Applicant’s Response: “This change in zoning would conform to the basic commercial land use as maintaining a system of commercial development nodes at selected intersections which provide for the anticipated neighborhood, community and regional commercial development needs of the community throughout the planning period.”

The property is part of the S. Iowa Street Regional Commercial Center. Basic land use recommendations in this section specific to this area include the need to upgrade properties
to remain viable. (Pg 6-12) This recommendation is directed toward landscaping and amenities to address aesthetics as properties redevelop or uses change. The plan states:

“Commercial property exists both east and west of S. Iowa Street along 31st Street. Emphasis shall be given to maintain this commercial node and requests to extend the commercial corridor for additional retail development shall not be considered; however office and office research activities would be appropriate land uses along this arterial corridor.” (Pg 6-15)

The proposed request does not seek to expand the commercial uses beyond the existing confines. The proposed request would allow office uses within the commercial center if approved.

**Staff Finding** -- This section cited above address the 31st Street corridor within the S. Iowa Regional Center. The proposed zoning change to allow office uses is consistent with the Comprehensive Plan.

### 2. ZONING AND LAND USES OF NEARBY PROPERTY, INCLUDING OVERLAY ZONING

**Staff Finding** -- The property is surrounded by planned commercial development. The two lots proposed to be rezoned are part of a larger PCD known as Home Depot. Surrounding uses are listed in General Information section of this report.

### 3. CHARACTER OF THE AREA

Applicant’s Response: “The neighborhood is generally commercial and retail use with restaurants to the west and northwest. Commercial/retail exists adjacent to the subject property on the east. Commercial/retail exists on the south across 31st Street and west along Iowa Street.”

**Staff Finding** -- The area is part of the S. Iowa Street (23rd Street to K-10) Regional Commercial Center. The area is characterized with a variety of retail uses including restaurants and entertainment uses.

### 4. PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY

**Staff Finding** -- The subject property is not included in any adopted area and/or sector plans. *Horizon 2020* is the guiding plan for this property.

### 5. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS

Applicant’s Response: “The proposed PCD-2 zoning is to accommodate adding the use group of “Professional Offices to Lot 2, First National Addition No. 2 and to Lot 3, First National Addition. According to the Land Development Code “professional Offices” are allowed per permitted use. Planned Unit Development Districts (b)(1)(b) Use Group 9 – Professional Offices. The existing uses conform; the proposed Professional Office use group was restricted from this particular PCD-2 zoning.”
The original zoning was granted under the 1966 Zoning Code. As a PCD-2 the allowed uses included the following: [Refer to Articles 6, 7, and 7A for a complete list of uses]

- Residential Dwelling Units
- Use Group 7 - Community Facilities - Public Utilities
- Use Group 8 - Temporary Uses
- Use Group 9 - Professional Offices
- Use Group 9A - Limited Services
- Use Group 11 - Inner Neighborhood Commercial uses
- Use Group 12 - Retail Stores - Personal Services
- Use Group 13 - Automotive Services; Retail Sales; Other
- Use Group 14 - Retail - Wholesale Sale and Services
- Use Group 15 - Amusement, Recreational and Cultural Facilities.

As part of the rezoning (Z-7-28-01) of the property establishing the PCD-2 district uses were restricted as noted on the face of the Preliminary Development Plan. The PCD was restricted to the following uses: PDP-7-6-01; original Preliminary Development Plan;

- "Home Improvement Store" (specific use listed in Use Group 13)
- "Retail Electronics Store" (Similar to Computer Store listed in Use Group 12)
- "Restaurant/Retail" (specific use listed in Use Group 11 without drive-up facilities)

The development plan was revised in 2002 incorporating (annexing) in several lots along Iowa Street. These lots were rezoned from C-4 and C-5 to PCD-2 (Z-11-41-01). The associated Preliminary Development Plan is PDP-2-6-03. Uses are restricted as follows:

- "Home Improvement Store"
- "Retail Electronic Store"
- "Restaurant/Retail"

Two of the current use restrictions are related to very specific uses in Use Groups 12 and 13 of the 1966 Development code. There was not a specific listed use "retail store" in the 1966 code. The use is generally includes a variety of uses specifically listed in Use Groups, 11, 12 and 13. The text accompanied with the Development Plan would prohibit entertainment uses (theaters and bowling alleys) and automotive service (sales and service) with the exception of the approval for the property at 3020 Iowa a gas/convenience store.

If approved the following uses would be allowed within the development, but restricted to 2040 W. 31st and 2000 W. 31st Street:

<table>
<thead>
<tr>
<th>Use Group 9 - Professional Offices. Office for medical, professional and governmental purposes and accessory uses, but not including retail sales to the public that are of a nature that may be located adjacent to or combined with residential uses without harmful effects to said residential use.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Medical and Related Offices, Chiropody, Chiropractic, dental, electrology, medical, optical, optometric, osteopathic, including a clinic.</td>
</tr>
<tr>
<td>2. Ambulatory (Outpatient) Surgery Center</td>
</tr>
<tr>
<td>3. Professional and Government Offices, Accounting, architecture, engineering, governmental, insurance sales, law, real estate and sales and brokerage, motion</td>
</tr>
<tr>
<td>4. Veterinarian office and incidental boarding, with no open kennel or yard where animals are confined or exercised</td>
</tr>
<tr>
<td>5. Financial Institutions</td>
</tr>
<tr>
<td>6. Studio for Professional work or for teaching of any form of fine arts e.g. photography, music, dancing, drama, etc.</td>
</tr>
<tr>
<td>7. Other offices, All other offices which (1) are similar to the listed uses in function, traffic-generating capacity, effects on other land use, and (2) are not included in any other use group.</td>
</tr>
<tr>
<td>8. Accessory Uses.</td>
</tr>
</tbody>
</table>

Staff Finding – As zoned the uses are very restrictive for the development. The addition of offices uses would not be out of character with the development and would allow occupancy options for currently vacant space within the two pad sites along 31st street. These two buildings were designed to be multi-tenant user buildings. Approval of the change will not alter that design element.

6. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED
Applicant’s Response: “The property is not vacant. Proposing to add the use group of “Professional Office” as an upgrade to the existing PCD-2 development.”

The buildings located at 2000 W. 31st Street and 2040 W. 31st Street were constructed in 2005. Both buildings are 12,000 SF. Currently 2040 W. 31st Street is fully occupied. Temporary occupancy was granted for a small leasing office space to accommodate timing of this rezoning request.

Staff Finding – The properties are developed with two free standing structures.

7. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETERIMENTALLY AFFECT NEARBY PROPERTIES
Applicant’s Response: “This PCD-2 zoned area has been in this location beginning in late 2003 (31st and Iowa Street FDP) with no problems or affect to the existing nearby properties. With this change to add the use group “Professional Office” to the existing PCD-2 zoned area it will increase business and support to neighboring businesses and properties.”

Many office uses are considered to be less intensive that commercial uses based on parking requirements. Some uses such as banks are equal to or more intensive and are typically associated with drive-through windows, ATM’s and similar services. This is not a permitted activity per the design of the development plan at this time. The uses listed in Use Group 9-Professional Offices are not associated with drive-through elements found in automotive related use groups such as Use Group 12 and 13.

Staff Finding – No detrimental effects are anticipated by approval of the proposed change of use to allow office uses in this PCD.

8. THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP
IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION

Applicant’s Response: “Rezoning would allow proposed improvement, under the Land Development Code to be in compliance. Hardship, due to denial of this request, would result in the inability of the Owner to make necessary improvements.”

Staff Finding – Approval of the request will result in improvements to the tax base to the public. Approval of the request provides a greater ability for the applicant to secure tenants from a wider pool of uses for the center.

9. PROFESSIONAL STAFF RECOMMENDATION

The proposed change affects only two specific properties within the existing commercial development. The proposed change does not result in a need to change physical elements of the site. A related Final Development Plan (FDP-3-4-10) has been submitted for administrative approval to update use restrictions on the face of the Final Development Plan. Staff recommends approval of the proposed zoning change to allow office uses for approximately 2.61 acres Lot 2, First National Addition No.2, a replat of Lots 1 & 4 First National Addition, and Lot 3, First National Addition also known as 2000 W. 31st Street and 2040 W. 31st Street.
I read Peter's comments below. We want the city to agree to unlimited office use, so that we don't have to re-visit the city in the future, but we will agree to the 1200 sq. ft. office restriction for now (since that is the most we want currently for our own office) and we agree to get the Dellaportas signature prior to leasing to any office users exceeding the 1200 limit, in the future.

We work closely with Peter and believe we can get him to agree, but not before our June deadline to run this through the city. (have have a temporary occupancy permit now)

Please let me know if we can agree to this 1200 restriction and get the rezoning, but with the understanding that the city won't require more than the Dellaportas signature to move forward with more office at a later date.

Sheryl

From: Sandra Day [sday@ci.lawrence.ks.us]
Sent: Thursday, May 06, 2010 12:40 PM
To: clm@landplan-pa.com; Sheryl Vickers
Subject: FW: Application Z-3-4-10 31st and Iowa

Below is the email communication I received from Mr. Dellaportas.

What is important for this application is to have a clearly established owner authorization. Since the property is listed as Broadway Plaza II something must be provided showing that property owner's permission to proceed. Please also provide a legal description of the portion being rezoned. If you have questions please call me.

I had not considered restricting the amount office space. If that is an option you wish to consider do let me know.

Sandra L. Day, AICP, City/County Planner- sday@ci.lawrence.ks.us<mailto:sday@ci.lawrence.ks.us>
Planning Division | www.lawrenceks.org/pds<http://www.lawrenceks.org/pds>
P.O. Box 708, Lawrence,KS 66044
From: Peter Dellaportas [mailto:peter@fndltd.com]
Sent: Tuesday, May 04, 2010 12:24 PM
To: Sandra Day
Subject: Application Z-3-4-10 31st and Iowa

Sandra
It was a pleasure speaking with you today thanks for bringing me up to date on above referenced application. I represent Plaza Lawrence llc, Iowa & 31st Real Estate Ventures llc and First National Development ltd. With the recent request of our neighbors seeking a 2.61 acre zoning change to add office zoning we do not support this request and would hope it gets denied. The application that was mailed to adjacent property owners showed First National Development as a Joint applicant “this is absolutely not a true statement”. If the City of Lawrence is considering to allow, but limit the owners of the 2.61 Acres to operate a roughly 1200 s.f. Leasing office suite at one of the buildings and no other or future office uses we can probably work and support something like that….please call me or let me know if anything else may be needed. Thank you...... Peter Dellaportas
Z-3-4-10: Rezone 2.6 acres from PCD-2 to PCD-2
2000 & 2040 W 31st St.

Lawrence-Douglas County Planning Office
June 2010

Area Requested
Scale: 1 Inch = 700 Feet
PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item

ITEM NO. 4:  PD-[TANGER PCD-1] TO CS; 1025 N. 3rd STREET (SLD)

Z-4-5-10: Consider a request to rezone approximately 11.99 acres from PCD-1 (Planned Commercial Development) to CS (Strip Commercial), located at 1025-1035 North 3rd Street. Submitted by KDL, Inc. for I-70 Business Center, LLC., property owner of record.

STAFF RECOMMENDATION: Staff recommends approval of the rezoning request for approximately 11.99 acres from PCD-1 (Planned Commercial Development) to CS (Strip Commercial), located at 1025-1035 North 3rd Street and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Development Summary:
The Tanger PCD includes a total of 17.9 acres. The property was zoned in two phases:
- Phase I included 11.99 acres (Wickes Subdivision) - developed as Tanger Outlet Mall and converted to I-70 Business Center.
- Phase II included 5.36 acres (Fosters Subdivision) – undeveloped.
This request is for only Phase I. As part of the development approval uses were restricted within the PCD. An attached summary of uses is included with this report for reference. Uses were categorized and defined differently in the 1966 Zoning Code.

REASON FOR REQUEST
“Additional Uses”

KEY POINTS
- Location of property within identified Commercial Strip area.
- Developed property with significant vacancy.

GOLDEN FACTORS TO CONSIDER
CHARACTER OF THE AREA
- Property is located within the North Lawrence Neighborhood and along the N 2nd Street/3rd Street Commercial Corridor.

CONFORMANCE WITH HORIZON 2020
- The property is zoned and designated for commercial uses. The proposed request modifies the restrictions of the property. Uses allowed in the CS district would be consistent with the adopted land use recommendations for the area.

ASSOCIATED CASES/OTHER ACTION REQUIRED
- Z-11-25-92: M-3 to C-4; 3.67 ac [replaced by Z-1-7-93]
- Z-1-7-93: M-3 and C-4 to PCD-1; Ord. 6432.
- Z-6-17-94: M-2 to PCD-1; Ord. 6679.
- Z-12-35-97: PCD-1 to PCD-1 to remove restrictions; Withdrawn by applicant 3/19/98.
- Planning Commission approved PDP Tanger Outlet Mall Phase I 2/24/93.
- City Commission approved PDP Tanger Outlet Mall Phase I 3/16/93 .
PC Staff Report – 06/21/10  
Z-4-5-10

- 3/24/93 Planning Commission approved FDP Tanger Outlet Mall Phase I.
- FDP Tanger Outlet Mall Phase I recorded with register of deeds office 7/12/93.
- Planning Commission approved revised FDP Tanger Outlet Mall Phase I – Addition of ATM to parking lot 1/24/96.
- Revised FDP Tanger Outlet Mall Phase I – Addition of ATM to parking lot. Recorded with Register of Deeds Office 4/1/96.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING
- None

ATTACHMENTS/REFERENCES
- Rezoning ordinance number 6432 (uses listed on pages 12-13)
- Refer to Article 4 of the Development Code for complete listing of allowed uses in CS district.

GENERAL INFORMATION
Current Zoning and Land Use: PD [PCD-1 Tanger]; existing commercial development.

Surrounding Zoning and Land Use: PD [PCD-1 Tanger Phase 2] to the south; approved development plan not constructed. Property currently vacant.

RS10 (Single-Dwelling Residential) to the north; I-70 Turnpike.

OS (Open Space) Riverfront Park and IG (General Industrial) Union Pacific Railroad to the west.

RS-10 (Single-Dwelling Residential) and CS (Commercial Strip) to the east; existing highway interchange and commercial businesses.

Project Summary
This request is to amend the permitted uses within an existing commercially zoned area.

REVIEW & DECISION-MAKING CRITERIA

1. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant’s Response: “We believe it does.”

Horizon 2020 addresses properties along N. 2nd and N. 3rd Street in Chapter 6 of the Plan. The plan identifies the “intersection of N. 3rd Street and I-70 as a possible location for an Auto-Related Commercial Center (pg 6-14).” The current PD zoning restricts land uses that could be considered consistent with the approved development plan. (Uses are listed later in this report). Approval of the request will allow for a greater variety of land uses to occupy the existing development or for the property to be further redeveloped in the future. Such redevelopment would be subject to design standards of the Development Code and the Commercial Design Guidelines.

Staff Finding – The proposed request is consistent with Horizon 2020.
2. ZONING AND LAND USES OF NEARBY PROPERTY, INCLUDING OVERLAY ZONING

**Staff Finding** – The property is surrounded by a variety of zoning districts including residential and open space districts. The land use, however, includes the turnpike and interchange that are clearly not residential in nature. Much of the N. 2nd Street/N. 3rd Street corridor is zoned commercially. The open space zoning represents a linear park located along the Kansas River and encompasses the levee in this area as well. The abutting IG district represents the boundary of the Union Pacific Railroad.

3. CHARACTER OF THE AREA

Applicant’s Response: “Business, Manufacturing, retail, warehousing.”

This property is part of the North 2nd Street Corridor and part of the North Lawrence Neighborhood. The corridor is recognized as a gateway into the City of Lawrence. Commercial uses are generally located along the corridor south of I-70 Highway regardless of the base zoning district. Some industrial uses are interspersed within the corridor and along the Union Pacific Railroad.

**Staff Finding** – The property is part of the N. 2nd Street/N. 3rd Street commercial corridor of the North Lawrence Neighborhood. The corridor is characterized by commercial uses and underutilized properties expected to redeveloped over time.

4. PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY

*Horizon 2020* identifies future plans for the general area as appropriate for an auto-related commercial district. A neighborhood plan was completed for North Lawrence in 1981 and an area wide drainage study was completed in January 2006.

Key elements of the neighborhood plan included goals to reduce incompatible land uses, provide adequate transition of uses and to “consider the appropriateness of zoning of under-utilized commercially and industrially zoned area to determine the amount necessary to meet anticipated neighborhood and city needs.” (Page 3-3 North Lawrence Neighborhood Plan). The subject property is included in the City’s commercial inventory.

Approval of the request will retain the property in the commercial inventory and expand the potential uses on this property.

**Staff Finding** – Approval of the request is consistent with land use plans for the corridor.

5. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS

Applicant’s Response: “Large amount of vacancy of the site”

The property was developed as a planned unit development per the 1966 code. As part of the approval, uses were restricted including a limitation on the amount of restaurant uses that could be developed within the project. A list of these uses is attached to this report, see pages 12-13 of the original ordinance (ord. No. 6432).
Adoption of the 2006 Development Code stresses the importance of good design, institution of buffer yards and transitions between land uses, and the adoption of Commercial Design Guidelines. The Development Code allows for the limitation or restriction of land uses as part of a conventional zoning district. Prior to the adoption of the 2006 Development Code uses could only be restricted as part of a planned unit development. The Development Code allows for planned unit developments to continue within the boundary of their use approvals. Changes of uses that were not otherwise permitted require a change in zoning. The intent is to move away from planned developments as a matter of course, limiting their use to properties where special circumstances are present.

The continued use of a planned unit development in this location is limited and does not facilitate redevelopment opportunities.

**Staff Finding** - The existing planned commercial development zoning is limited for this portion of the corridor. The standards of the Commercial Design Guidelines and design standards of the Development Code assure appropriate treatment of the property with future redevelopment of the site.

6. **LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED**

Applicant’s Response: “More than 5 years +.”

The property is developed with two buildings and a supporting parking lot. The north building includes 35,210 SF and the south building includes 58,500 SF. The applicant indicates that the property suffers from lack of tenant occupancy.

**Staff Finding** - While the property is not technically vacant, staff concurs that the property is underutilized and has been so for a number of years.

7. **EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES**

Applicant’s Response: “None.”

As noted above the property is currently restricted to uses as listed in Ordinance No. 6432. Uses are limited to the following:

1. Use Group 7; Community Facilities;
2. Use Group 9; Professional Offices;
3. Use Group 11; Inner Neighborhood Commercial Uses; and
4. Uses in Use Group 12; Retail Sales- Personal Services which are specified in the memorandum of agreement and listed on the preliminary development plan.
5. No more than 7.5% of the gross leasable space shall be dedicated to food service uses.
   This equates to 7,000 SF in Phase I.
6. The maximum size of a single store is not allowed to exceed 50,000 GSF

The applicant’s specific request that initiated this rezoning was the consideration of a mini-warehouse type use within the existing building. This use was allowed in Use Group 14 “Retail-Wholesale Sales and Services” and Use Group 17 “Manufacturing – Low Nuisance” of the 1966 Code. As such, those use groups were not allowed in a PCD-1 district and would have required rezoning to a PCD-2 or a PID district. Rezoning to a former code district is no longer an option.
The 2006 Development Code includes Mini-Warehouse in the “Wholesale, Storage & Distribution Category”, a sub category of the Industrial Use Group. This use is allowed in the CS district. Refer to Use Tables found in Article 4 of the Development Code for a complete listing of allowed uses.

The original approval included a limitation on the amount of food service related business and a cap on the development that one individual tenant could not exceed 50,000 SF. These limits were established in an effort to reduce potential impacts to downtown. By limiting these two factors it was anticipated that shoppers would be drawn to downtown restaurants and retailers. The development code includes a provision that a market study shall be required for a site plan or rezoning that could result in 50,000 SF of added retail space in the city. However, this requirement is exempted for developments that would reoccupy retail space that is all ready part of the City’s retail database. Approval of the request will remove the limitation on leasable space dedicated for food service uses and a tenant that occupies more than 50,000 SF.

**Staff Finding** – Approval of the request will alter the allowed uses but will retain the retail commercial character of the property. Approval of the request is intended to facilitate re-purposing the existing development and to accommodate future redevelopment of the corridor.

8. **THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION**

Applicant’s Response: “It will broaden the tax base if approved.”

**Staff Finding** – Approval of the request will accommodate a greater variety of tenant options for the property. Proposed options utilize existing infrastructure and improvements on the site.

9. **PROFESSIONAL STAFF RECOMMENDATION**

The purpose of the CS district is to reflect existing strip commercial development. *Horizon 2020* describes this area as existing strip commercial development and designates it as an “Auto Related Commercial Center.” The Development Code does not include a corresponding zoning district to the land use recommendation of “Auto Related Commercial Center.” The current intersection includes a variety of zoning districts, uses, and parcel size. Approval of the CS district will facilitate redevelopment of the area. Staff recommends approval of the proposed zoning change.
ORDINANCE NO. 6432

AN ORDINANCE PROVIDING FOR THE REZONING OF CERTAIN TRACTS OF LAND IN THE CITY OF LAWRENCE, KANSAS, FROM C-4 (GENERAL BUSINESS) AND M-3 (INTENSIVE INDUSTRIAL) TO PCD-1 (PLANNED COMMERCIAL DEVELOPMENT) AS HEREAFTER SET FORTH, AND AMENDING THE ZONING DISTRICTS MAP INCORPORATED BY REFERENCE IN CHAPTER 20, ARTICLE 5, SECTION 501, OF THE "CODE OF THE CITY OF LAWRENCE, KANSAS, 1990."

WHEREAS, after due and lawful notice and hearing, the Lawrence-Douglas County Metropolitan Planning Commission recommended that the zoning classifications for the following described tracts of land within the City of Lawrence, Douglas County, Kansas, to-wit:

Tract I

M-3 to PCD-1:

Block 1, Wickes Addition to the City of Lawrence, Douglas County, Kansas, less the East 400 feet, containing 3.668 acres,

be changed from M-3 (Intensive Industrial) to PCD-2 (Planned Commercial Development), subject to conditions; and,

Tract II

C-4 to PCD-1:

The East 400 feet of Block 1, Wickes Addition to the City of Lawrence, Douglas County, Kansas, containing 8.323 acres; and the west half of the right-of-way for U.S. Highway 24, 40 & 59 adjoining Block 1, Wickes Addition, containing 1.735 acres,

be changed from C-4 (General Commercial) to PCD-2 (Planned Commercial Development), subject to conditions; and,

WHEREAS, after due and lawful notice the zoning recommendation came on for hearing before the governing body of the City of Lawrence, Douglas County, Kansas, and after due consideration and deliberation the recommended zoning change was approved.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAWRENCE, KANSAS:

SECTION I. The above stated recitals are by reference incorporated herein, and shall be as effective as if repeated verbatim.
SECTION II. That the zoning district classifications for the following described tracts of land situated in the City of Lawrence, Douglas County, Kansas, to-wit:

Tract I

M-3 to PCD-1:

Block 1, Wickes Addition to the City of Lawrence, Douglas County, Kansas, less the East 400 feet, containing 3.668 acres,

be and the same is hereby changed from that of M-3 (Intensive Industrial) to PCD-1 (Planned Commercial Development) as such district is defined and prescribed in Chapter 20 of the "Code of the City of Lawrence, Kansas, 1990," and amendments thereto, subject to the following conditions:

1) That a flood plain development permit be issued;

2) That the developer implement the traffic improvements proposed in a manner acceptable to KDOT, KTA and the Lawrence Public Works Department;

3) That the uses be limited to Use Groups 7, 9, 11, and those uses in Use Group 12 which are specified in the memorandum of agreement and listed on the preliminary development plan;

4) That the size of Phase 1 of the project cannot be increased by administrative approval, rather such approval must be granted by the governing body of the city; and,

5) The applicant execute an agreement not to protest benefit districts for street and/or drainage improvements;

AND,

Tract II

C-4 to PCD-1:

The East 400 feet of Block 1, Wickes Addition to the City of Lawrence, Douglas County, Kansas, containing 8.323 acres; and the west half of the right-of-way for U.S. Highway 24, 40 & 59 adjoining Block 1, Wickes Addition, containing 1.735 acres,

be and the same is hereby changed from that of C-4 (General Commercial) to PCD-1 (Planned Commercial Development) as such district is defined and prescribed in Chapter 20 of the "Code of the City of Lawrence, Kansas, 1990," and amendments thereto, subject to the following conditions:

1) That a flood plain development permit be issued;

2) That the developer implement the traffic improvements proposed in a manner acceptable to KDOT, KTA and the Lawrence Public Works Department;
3) That the uses be limited to Use Groups 7, 9, 11, and those uses in Use Group 12 which are specified in the memorandum of agreement and listed on the preliminary development plan;

4) That the size of Phase 1 of the project cannot be increased by administrative approval, rather such approval must be granted by the governing body of the city; and,

5) The applicant execute an agreement not to protest benefit districts for street and/or drainage improvements;

SECTION III. That the Zoning Districts Map incorporated by reference in and by Chapter 20, Article 5, Section 501, of the "Code of the City of Lawrence, Kansas, 1990," be and the same is hereby amended by showing and reflecting thereon the new zoning district classification for the aforesaid tracts, as set forth in Section II of this ordinance.

SECTION IV. This ordinance shall be in full force and effect from and after its passage and publication as provided by law.

PASSED by the Governing Body of the City of Lawrence, Kansas, the 14th day of April, 1993.

APPROVED:

[Signature]

JOHN NALBANDIAN, Mayor

I hereby certify that the foregoing is a true and correct copy of the original ordinance, that said ordinance was passed on the 27th day of April, 1993, that the record of the final vote on the passage is found on page 5 of Journal 1993, that it was published in the Lawrence Daily Journal-World on the 30th Day of April, 1993.

[Signature]

RAYMOND J. HUMMERT, City Clerk

APPROVED AS TO FORM AND LEGALITY:

[Signature] 4/1/93

Date

LEGAL DESCRIPTION VERIFIED:

[Signature] 4/15/93

Date
MEMORANDUM OF UNDERSTANDING AND COOPERATION

This Memorandum of Understanding and Cooperation is entered into this 22nd day of February, 1993 between STANLEY K. TANGER & COMPANY ("Tanger") and DOWNTOWN LAWRENCE, INC. ("DLI").

WHEREAS, Tanger has proposed the development and construction of a factory outlet center project ("project") in Lawrence, Kansas at the intersection of North 3rd Street (US 24/40/59) and the Kansas Turnpike (I-70) and Tanger and DLI have had discussions regarding the ways and means to enhance the project so that it reaches its maximum potential benefit for the City of Lawrence as a whole, Tanger and DLI; and

WHEREAS, the parties have met and discussed issues of mutual interest on a number of occasions and have reached an understanding and agreement regarding the pending application for rezoning ("rezoning application") and development plan for the project and other related matters and Tanger and DLI agree to the provisions described in this Memorandum and DLI agrees to express its support for the rezoning application and development plan for the project without condition or delay, except as provided in this Agreement.

In consideration of the mutual promises and agreements contained herein the parties agree as follows:

A. CONDITIONS TO BE INCLUDED IN PCD-1 REZONING ORDINANCE AND/OR DEVELOPMENT PLAN

Tanger agrees that the following items shall be specifically included as conditions, restrictions or amendments to the
rezoning application and/or development plan with respect to the project, as follows:

1. **Signage.**

   (a) Tanger agrees to grant an easement or license for the erection and maintenance of a sign on the 25 foot greenspace along North 3rd Street approximately 90' to 100' south of the main entrance, angled so that it would be visible to motorists at the stoplight exiting from the KTA access road. The sign shall be approximately 5' by 25' in size, the top of which is not more than 6' above the ground, with wording to the effect of "Historic Downtown Lawrence and Riverfront Factory Outlet Center" with an arrow pointing to the left and "Tanger Factory Outlet Center" with an arrow pointing straight ahead. Other conditions include the following:

   (1) it will be well designed and attractive;

   (2) it will be kept free of obstructions from landscaping and the like;

   (3) electrical service shall be available so that it can be lighted; and

   (4) costs of construction, maintenance, and operation shall be shared among DLI, Tanger and the Chelsea Group ("Chelsea").

The easement or license is conditioned on the agreement by DLI, Chelsea and Tanger to request the City of Lawrence (and all other authorities) to erect signage at (1) 23rd & Massachusetts
Streets; (2) at the City parking lot directly across from the exit of the City parking garage at the Riverfront Plaza Outlet Center; and (3) directional signage at the exit of the City parking garage at the Riverfront Plaza Outlet Center, which signage will specifically direct motorists to the Tanger Factory Outlet Center.

(b) Tanger will erect, at its cost, directional signs at the two exits from the Tanger project directed toward eastbound traffic exiting the parking lot which signage shall contain information to the effect of "Thank You For Shopping With Us. Turn Right For More Shopping At The Riverfront Outlet Mall And Historic Downtown Lawrence". Such signs will be of sufficient size to be legible to motorists exiting the project and, if necessary, Tanger will request a variance to increase the size of such signage, so long as the size increase will not impair operation of the project or safety.

2. **Brochure Exchange.** Tanger shall make available in the enclosed common area at the project a brochure rack or other facility in which DLI, downtown merchants and Chelsea may place brochures available for visitors to the project, on condition that a similar brochure rack or facility is made available at (1) the Riverfront Plaza Factory Outlet Center and (2) at other stores or
locations, over which DLI or its members have control, in which locations Tanger may place its brochures.

3. Limitation on Floor Size, Uses and Food Service.

Tanger and DLI will propose and advocate to the Lawrence-Douglas County Planning Commission and the Lawrence City Commission that the rezoning ordinance and/or development plan for the project should contain restrictions or limitations as follows:

(a) That the size of any single store at the project be limited to a maximum of 50,000 s.f.;

(b) That the uses permitted may include but shall not be limited to:

(A) Residential dwelling units (attached, detached, or mixed).

(B) Any use permitted in Use Group 7 - Community Facilities - Public Utilities; Use Group 9 - Professional Offices; Use Group 11 - Inner Neighborhood Commercial Uses; and Use Group 12 - Retail Stores - Personal Services, except those stricken on Exhibit "A", and allowing a use of "appliance, furniture, home furnishings, sales, rental repair" but limited to a maximum of 15,000 s.f. in size; and

(c) No more than 7 1/2% of the gross leasable space of the project may be used for food service, provided however, that intermittent or occasional temporary food service for special events such as charity
sales and vending machines shall not be included within the definition of "food service".

4. **Landscaping.** The development plan will contain a specific requirement that trees, shrubbery and other landscaping which die shall be replaced on a timely basis.

B. **ITEMS INCLUDED IN THE MEMORANDUM OF UNDERSTANDING AND COOPERATION**

The following agreements shall be binding on the parties and shall not be included as conditions, restrictions or amendments to the rezoning ordinance and/or development plan.

5. **Additional Signage.**

(a) Tanager and DLI will continue to request the Kansas Turnpike Authority ("KTA") to install signage at the access road between the East Lawrence Toll Booth and North 3rd Street which will direct travelers to "Historic Downtown Lawrence and Factory Outlet Shopping" south and "Factory Outlet Shopping" straight ahead. Tanger will attempt to gain the agreement of KTA and other agencies as required for the installation of such signage, particularly overhead signage over the KTA access road.

(b) Tanager and DLI will request that the City of Lawrence and other necessary agencies will allow the erection of signage at the intersection of
23rd Street and Massachusetts Street, along 6th Street and such other locations as is appropriate in the City of Lawrence directing motorists to "Historic Downtown Lawrence and Factory Outlet Shopping".

6. **Transportation Linkage.** Tanger commits to work with DLI, the City of Lawrence and other interested groups toward future planning and appropriate cost sharing for a bus, trolley or other transportation linking the project, Downtown Lawrence and the Riverfront Plaza Factory Outlet Center. Any such transportation system must, however, be accomplished consistent with and in order to promote expansion of other public transportation facilities in the City of Lawrence as needed.

7. **Accessibility South on North 3rd Street.** Tanger agrees to continue to support the design of the south exit from the project onto North 3rd Street as shown on the preliminary development plan.

8. **North 2nd Street Land Use Plan.** Tanger agrees to indicate its support for the development of a reasonable land use plan for North 3rd and North 2nd Street. Such plan must allow for reasonable land use and development along North 2nd Street and promote improvement of property use along North 2nd Street in a manner which is beneficial for North 2nd Street landowners, north Lawrence homeowners, Downtown Lawrence and the entire community.
9. **Lobbying for Eastern Parkway.** Tanger will join in and commit to be an active participant in lobbying for the Eastern Parkway with local, state and federal authorities. Tanger recognizes the importance of prompt construction of the Eastern Parkway and its beneficial impact on the entire community, as well as improvement of other transportation facilities in Lawrence and Douglas County.

10. **Joint Marketing.** Tanger agrees to participate in the funding, planning and expenditure of an annual joint marketing fund, the purpose of which would be strictly limited to marketing shopping at the Tanger project, Riverfront Plaza Factory Outlet Center and Downtown Lawrence. Tanger and Chelsea will make annual contributions to the fund in an amount equal to 10¢ per square foot of gross leasable space at each outlet center and DLI will contribute $3,000.00 per year. Expenditure of the funds will require unanimous approval of a three person joint marketing committee comprised of representatives of Tanger, Chelsea and DLI and, in the event of a dispute, the Lawrence Convention and Visitors Bureau would be requested to mediate and reach a resolution regarding specific plans for expenditure.

11. **Architecture.** Tanger will comply with the planned commercial development zoning regulations regarding architectural issues, including depiction of elevations.
on the final development plan in the event such elevations are substantially amended from those shown on the preliminary development plan. Additionally, Tanger will continue to provide DLI representatives the opportunity to review preliminary architectural drawings as the design phase continues and to receive input regarding design and architecture. In particular, Tanger agrees that the design of the building will contain red brick trim or accent and distinctive architectural features so that the project will be esthetically pleasing to the extent reasonably possible. Tanger will make its best efforts to make available to the public a rendered elevation or drawing of the final architectural design prior to consideration of the application and development plan by the Lawrence City Commission.

This Memorandum of Understanding and Cooperation is entered into the day and date first written above.

STANLEY K. TANGER & COMPANY

By [Signature]
Steven B. Tanger, Vice-President

DOWNTOWN LAWRENCE, INC.

By [Signature]
Earl Reineman, President
<table>
<thead>
<tr>
<th>Zoning Districts</th>
<th>Permitted Use Groups</th>
<th>Parking Group Special Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>20-709.1</td>
<td>USE GROUP 1. AGRICULTURE-ANIMAL HUSBANDRY</td>
<td>1428/1446/1447</td>
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<td></td>
<td>as set forth in Section 20-610.1 subject to &quot;Special Conditions&quot; reference set forth therein.</td>
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<td>20-709.2</td>
<td>USE GROUP 2. AGRICULTURE-FIELD CROPS</td>
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<td>as set forth in Section 20-610.2.</td>
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<td>20-709.21</td>
<td>USE GROUP 3. RESIDENTIAL-SINGLE-FAMILY DETACHED</td>
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<td>as set forth in Section 20-610.3.</td>
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<td>USE GROUP 4. RESIDENTIAL-MULTI-FAMILY</td>
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<td>20-709.4</td>
<td>USE GROUP 5. RESIDENTIAL-DORMITORY</td>
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<td>20-709.5</td>
<td>USE GROUP 7. COMMUNITY FACILITIES AND UTILITIES-RESIDENTIAL</td>
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<td></td>
<td>as set forth in Section 20-610.8, subject to &quot;Special Conditions&quot; reference set forth therein.</td>
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<td>20-709.6</td>
<td>USE GROUP 8. TEMPORARY USES</td>
<td>1428/1447</td>
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<td></td>
<td>as set forth in Section 20-610.9 subject to &quot;Special Conditions&quot; reference set forth therein.</td>
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<tr>
<td>20-709.7</td>
<td>USE GROUP 9. PROFESSIONAL OFFICES</td>
<td>1428/1447</td>
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<td></td>
<td>as set forth in Section 20-610.10, subject to &quot;Special Conditions&quot; reference set forth therein.</td>
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<td>20-709.8</td>
<td>USE GROUP 10. OFF STREET PARKING.</td>
<td>1213</td>
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<tr>
<td></td>
<td>Off-street parking areas and accessory uses for customer parking or parking for a fee</td>
<td></td>
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<tr>
<td></td>
<td>1. Off-Street Parking</td>
<td></td>
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<tr>
<td></td>
<td>Off-street parking lot, fee or customer</td>
<td></td>
</tr>
<tr>
<td>20-709.9</td>
<td>USE GROUP 11. INNER NEIGHBORHOOD COMMERCIAL USES. These uses are limited in development, intensity and traffic-generating capacity to uses which are compatible with established residential neighborhoods.</td>
<td>1428/1446</td>
</tr>
<tr>
<td></td>
<td>Bicycle sales, rental or repair</td>
<td>13</td>
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<td></td>
<td>Book store, new or used</td>
<td>12</td>
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<td></td>
<td>Dry cleaning outlet store</td>
<td>12</td>
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<td></td>
<td>Food store, not including 24 hr. convenience store</td>
<td>11</td>
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<td></td>
<td>Hair care establishment</td>
<td>11</td>
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<td></td>
<td>Laundry, self-serve</td>
<td>11</td>
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<td></td>
<td>Quick copy center</td>
<td>11</td>
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<td></td>
<td>Restaurant, not including one with drive-up facilities or service to automobiles</td>
<td>26</td>
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<td></td>
<td>Retail bakery</td>
<td>11</td>
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<td></td>
<td>Shoe repair service</td>
<td>12</td>
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<td></td>
<td>Studio for professional work or for teaching of any form of fine arts i.e. photograph, music, dancing, drama, etc. (Ord. 36.55, Sec. VI)</td>
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</tr>
<tr>
<td>20-709.10</td>
<td>USE GROUP 12. RETAIL STORES-PERSONAL SERVICES. Certain types of retail stores and service establishments which: (a) Provide for a wide variety of local consumer and transient needs, and (b) Have a small service area and are, therefore, not distributed widely throughout the city (1) Retail Stores and Service Establishments</td>
<td></td>
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<tr>
<td></td>
<td>Altering, pressing, repairing of wearing apparel</td>
<td>12</td>
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<tr>
<td></td>
<td>Antique sales</td>
<td>13</td>
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<tr>
<td>Zoning Districts</td>
<td>Permitted Use Groups</td>
<td>Parking Group Special Condition</td>
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<td>Apartment, furniture, home furnishings, sales, rental repair</td>
<td>12</td>
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<td></td>
<td>Art supply sales</td>
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<td></td>
<td>Automobile service-stations</td>
<td>12</td>
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<td></td>
<td>Bank, savings and loan and trust company</td>
<td>24</td>
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<td></td>
<td>Barber or beauty shop</td>
<td>11</td>
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<td></td>
<td>Beer sales for consumption on the premises</td>
<td>11</td>
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<td></td>
<td>Bicycle sales, rental, repair</td>
<td>13</td>
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<td></td>
<td>Book sales</td>
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<td></td>
<td>Bowling-alleys</td>
<td>12</td>
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<td></td>
<td>Camera or photographic supply sales</td>
<td>10</td>
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<td>Clothing sales</td>
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<td>Club or lodge, whose chief activity is carried on as a business</td>
<td>15</td>
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<td>Confectionery store</td>
<td>16</td>
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<td>Department store</td>
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<td></td>
<td>Drug store</td>
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<td></td>
<td>Dry cleaning</td>
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<td></td>
<td>Eating place, enclosed, without dancing or entertainment and not providing service in automobiles</td>
<td>12</td>
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<td></td>
<td>Florist shop and greenhouse</td>
<td>12</td>
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<td></td>
<td>Food-convenience store, including gasoline sales</td>
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<td></td>
<td>Food store, including retail bakery</td>
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<td>Furrier shop, including storage of furs</td>
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<td>Garden-supplies sales</td>
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<td>Gift, novelty, souvenir sales</td>
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<td>Hardware store and small tool rental, but not including sales of hand- or industrial-hardware</td>
<td>12</td>
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<td>Hot-blocking and repair</td>
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<td>Hobby supply sales</td>
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<td>Ice-vending machine</td>
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<td>Interior decorating shop</td>
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<td>Jewelry sales and repair</td>
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<td></td>
<td>Laundry-pick-up station</td>
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<td></td>
<td>Laundry, self-service only</td>
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<td>Liquor, wine and beer sales, for consumption off the premises</td>
<td>11</td>
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<td>Pawn-office</td>
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<td></td>
<td>Bookstore, key shop</td>
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<td></td>
<td>Mail-order agency</td>
<td>12</td>
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<td>Music, musical instrument and phonographic record sales</td>
<td>12</td>
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<td>Newsstand</td>
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<td></td>
<td>Nursery-stock sales</td>
<td>11</td>
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<td>Optical goods, sales</td>
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<td>Orthopedic or medical appliance sales</td>
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<td>Paint and wall paper sales</td>
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<td></td>
<td>Pawnshop</td>
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<td>Photographic processing</td>
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<td></td>
<td>Photographic studio</td>
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<td>Quick copy or duplicating center</td>
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<td></td>
<td>Radio and television store</td>
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<td></td>
<td>Reading room</td>
<td>12</td>
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<td>Sewing machine sales and repair</td>
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<td>Shoe repair and sales</td>
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<td>Sporting goods sales</td>
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<td></td>
<td>Surgical and dental supply sales</td>
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<td>Theatre, indoor commercial</td>
<td>9</td>
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<tr>
<td></td>
<td>Variety store</td>
<td>12</td>
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<tr>
<td></td>
<td>Similar Uses</td>
<td>20</td>
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<td></td>
<td>Other uses which (1) are similar to the listed uses in function, traffic-generating capacity, and effects on other land uses, and (2) are not included in any other use group (Ord. 5625, Sec. VII)</td>
<td>20</td>
</tr>
</tbody>
</table>
Z-4-5-10: Rezone 11.99 acres from PCD-1 to CS
1025-1035 North 3rd St.

Lawrence-Douglas County Planning Office
June 2010

Area Requested
Scale: 1 Inch = 700 Feet
Memorandum
City of Lawrence
Planning & Development Services

TO: Planning Commission
FROM: Mary Miller, Planner

CC: Scott McCullough, Director of Planning and Development Services
    Sheila Stogsdill, Assistant Planning Director

Date: For June 21, 2010 Planning Commission meeting

RE: Item No. 5--TA-12-27-07: Text Amendment for Protection of Environmentally Sensitive Lands with Density Bonus Incentive

At their April, 2010 meeting, the Planning Commission directed staff to incorporate the density bonus incentives into the proposed text amendment TA-12-27-07 which revises the protection standards for environmentally sensitive lands in Sections 20-701, 20-702, 20-703 and 20-1101, and revises definitions in Section 20-1701 of the Development Code. The draft text amendment clarifies the definitions of environmentally sensitive lands, broadens the development options for properties which contain environmentally sensitive lands, and includes density bonus incentives for developments that protect more environmentally sensitive lands than required by Code.

The proposed text amendment is included with this memo in two forms, one showing the changes from the existing code language and another with the changes incorporated into a clean copy. The back-up material for the density bonus incentive from the April Commission meeting is included in the Commission’s agenda packet for reference.

RECENT DISCUSSION WITH DEVELOPMENT COMMUNITY
Following the April Planning Commission meeting, staff met with a member of the development community who indicated they preferred the use of a straight density factor (such as 60% of the maximum density permitted) for the determination of the base density rather than the use of a ‘concept plat’ or ‘sketch plan’. The difficulty lies in determining the density factor. As seen in the plat review provided in April, and included in the agenda packet, the actual density achieved varies quite a bit between properties. Realizing that the use of a concept or sketch plan may be additional work, staff still prefers the use of these tools for the determination of the base density, or the actual density which may be achieved for the property, as it will be based on the individual property.

STAFF RECOMMENDATION
Staff recommends that the Planning Commission consider the proposed draft language and forward it to the City Commission with a recommendation for approval.
ARTICLE 7. PLANNED DEVELOPMENTS

20-701 PD, Planned Development Overlay District
20-702 Cluster Housing Projects
20-703 Open Space Standards in Cluster and Planned Developments

20-701 PLANNED DEVELOPMENT OVERLAY DISTRICT

(a) Purpose
The PD, Planned Development regulations are intended to:

(1) ensure development that is consistent with the Comprehensive Plan;

(2) ensure that development can be conveniently, efficiently and economically served by existing and planned utilities and services;

(3) allow design flexibility that results in greater public benefits than could be achieved using conventional Zoning District regulations;

(4) preserve environmental and historic resources; and

(5) promote attractive and functional residential, nonresidential, and mixed-use developments that are compatible with the character of the surrounding area.

(b) Procedure
PDs shall be reviewed and approved in accordance with the procedures of Section 20-1304.

(c) Developer’s Statement of Intent
Each PD application shall include a comparison of the proposed development with the standards of the Base District and the otherwise applicable standards of this Development Code. Applications shall also include a Statement by the applicant describing how the proposed development provides greater benefits to the City than would a development carried out in accordance with otherwise applicable Development Code standards.

(d) Effect of Other Development Code Standards
Except as expressly authorized by the regulations of this section and approved as part of a PD plan (in accordance with the procedures of Section 20-1304), all of the standards of this Development Code apply to development within a PD District.

(e) Minimum District Size
Minimum area for a PD district shall be five acres.

(f) Standards Eligible for Modification
As a condition of approval, the Planning Commission or City Commission may designate by ordinance or as a note on the face of the development plan, any specific use, Structure or Building Type which shall be restricted and excluded as part of the Planned Development Overlay District. The City Commission may modify the following standards during the PD approval process. Standards not listed are not eligible for modification.
Article 7 – Planned Developments

Effective July 1, 2006

Land Development Code

Amended November 21, 2008

(1) **Allowed Uses**

The Planning Commission shall recommend, and the City Commission shall approve, a list of uses allowed in a PD at the time of PD preliminary approval. Regardless of the fact that the approved uses may be determined by reference to a Base District, the list of approved uses shall be incorporated into and made a condition of the PD approval. The City Commission may approve only uses that are allowed in the Base District, provided that:

(i) PDs in Single-Dwelling and Multi-Dwelling (RS and RM) Districts may include land area for commercial uses at a ratio of up to 50 square feet of land area per Dwelling Unit.

(ii) Commercial uses, in addition to those otherwise permitted by right, may be approved in a PD in an RS or RM District, if the PD includes a minimum area of 10 acres or more than 100 Dwelling Units.

(2) **Lot Size**

The minimum Lot size standards of the Base District may be reduced by the City Commission, provided that Lot sizes shall be adequate to safely accommodate all proposed Buildings and site features.

(3) **Residential Density**

The City Commission may increase the maximum Net Density beyond that of the Base District by up to 25% if the City Commission determines that such an increase is warranted to support the public benefit likely to result from the proposed development.

(4) **Setbacks**

The minimum Setback standards of the Base District may be reduced by the City Commission, provided that:

(i) Buildings located within the PD, and along any District boundary that is adjacent to RS and or RM Zoning Districts shall be Setback a distance at least equal to the Height of the proposed Building; and

(ii) All exterior walls of detached Buildings shall be separated by a minimum distance of 10 feet.

(iii) Balconies shall not be located along peripheral site Setbacks adjacent to RS zoned properties unless privacy Screening and Landscaping is included in the design.
(g) Height
The City Commission may increase maximum Height limits of the Base District if the Commission determines that such an increase is warranted to support the public benefit likely to result from the proposed development. Height increases shall be permitted only for Buildings set back from the boundary of the PD by the Height of the proposed Building plus 25 feet, so that the primary impact of the increased Height is on property within the PD.

(h) Balconies
Balconies above the second Story of a multi-Dwelling Unit Building are prohibited along the exterior of a Planned Development unless the Building Setback is increased to at least double the required minimum Setback and Landscaping is enhanced with two or more of the following features: a minimum 4’ Berm, a solid Screening fence (6’ minimum Height) or a masonry wall (6’ minimum Height). This provision shall apply only to those exterior sides of a Planned Development that are adjacent to RS zoning or to detached Dwelling Units.

(i) Parking and Loading
The City Commission may decrease the number of off-Street Parking and loading spaces required. Parking and loading areas shall comply with all otherwise applicable design standards.

(j) Buffer Areas
Development within 60 feet of the peripheral boundary of the PD shall be limited to the following:

1. use category, Heights, Setbacks and minimum Lot sizes permitted in the Zoning District immediately adjoining the proposed PD on the date of preliminary development plan approval of the PD; and

2. a landscaped buffer, including a Berm (minimum 4’ in Height), a masonry wall (minimum of 6’ in Height) or a fence (minimum 6’ in Height).

(k) Common Open Space
1. Amount Required
The PD shall include at least the amount of Common Open Space computed using one of the following formulas, whichever produces the largest number:

   (i) (20%) of the total area included in the PD; or
(ii) 300 square feet for each proposed Dwelling Unit in the PD.  
20% of the total site area as Common Open Space. Environmentally sensitive lands, if present, shall be protected and included within the Common Open Space. 50% of the Common Open Space shall be developed as Recreational Open Space unless environmentally sensitive lands are present, in which case the amount of Recreational Open Space may be reduced to no less than 5% and no more than 10% of the Common Open Space, with the intent being to preserve all or as much environmentally sensitive lands as possible in their natural state.

(2) Recreational Open Space
At least one-half of the proposed Common Open Space shall be suitable for use as and proposed for development as Recreational Open Space.

(3) Natural Open Space
To the maximum extent practicable, the following types of lands shall be included in the Common Open Space as Natural Open Space. To the extent that it is not practicable to include all of such areas in the Common Open Space, the order of types of lands included in this list shall be considered a priority list, with the first item being the most important, the last being the least important.

(i) Floodway, based on a 100-year storm;
(ii) Floodplain outside the floodway, based on a 100-year storm;
(iii) Jurisdictional Wetlands;
(iv) Stream Corridors;
(v) Stand of Mature Trees or individually significant mature trees;
(vi) Prominent Geographic Features with Rocky Outcroppings; and
(vii) Archeological and Historic Sites.

(4) General Provisions
See Section 20-703 for General Provisions applicable to Open Space in a PD or Cluster Development.

(l) Additional Requirements and Standards

(1) Unified Control
No application for a PD will be accepted or approved unless all of the property included in the application is under unified Ownership or a single entity’s control.

(2) Street Access
PDs that will generate 100 or more average daily trips (based on traffic generation estimates of the Institute of Transportation Engineers’ Trip Generation Manual, 7th edition, or subsequent edition, or based on local estimates provided by the City) shall have Access to an Arterial Street using a Frontage or rear Access road or by taking direct Access to a Collector Street.
Individual residential Building Lot shall not take direct Access to an Arterial Street or a non-Residential Collector Street. Each individual residential Lot shall have Frontage on a public or Private Street that has been constructed to the Public Street standards of the City.

(3) Sidewalks
Sidewalks built to City specifications shall be built along both sides of all public and Private Streets. On Local Streets, sidewalks shall be at least 5 feet in width; on all other Streets sidewalks shall be at least 6 feet in width.

(4) Landscaping
The Landscaping and Screening standards of Article 10 apply to PDs. In addition, any part of the development area not used for Buildings, Structures, Parking, Streets, or Accessways shall be landscaped with a sufficient mixture of grass, vegetative Ground Cover, trees, and Shrubs, except those areas designated to be preserved with natural vegetation.

(5) Preservation of Natural Features
Mature stands of trees or individually significant mature trees, vegetative cover, watercourses and other natural site features shall be preserved to the greatest extent possible. At a minimum the common open space provisions in this section and the standards of Article 10 apply.

(6) Zoning Map
Approved PDs shall be identified on the Official Zoning District Map.

(7) Additional Conditions
The Planning Commission may recommend, and the City Commission may impose, other reasonable conditions and standards, as deemed necessary to ensure consistency with the purposes of this section and those of this Development Code. Such conditions may include limitations on the types of uses, Structures or Building Types to be allowed in the PD. When such conditions are imposed, an application will not be deemed approved until the applicant has complied with all of the conditions of approval.

(m) Additional Standards for PD’s with Residential and Nonresidential Uses
In PDs containing both residential and nonresidential uses, the nonresidential uses shall be designed, located, and oriented on the site so that such uses are directly accessible to residents of the PD. For the purposes of this Section, directly accessible shall mean pedestrian/Bicycle and automobile Access by way of improved sidewalks or paths and Streets that do not involve leaving the PD or using a major Thoroughfare. “Directly accessible” does not necessarily mean that nonresidential uses need to be located in a particular location but that the siting of such uses considers the accessibility of the residential component of the PD to the nonresidential use.

20-702 CLUSTER HOUSING PROJECTS

(a) Purpose
The cluster housing regulations of this section have several potential public benefits. They:
Article 7 – Planned Developments

(1) provide flexible development options where the standard Lot and Block pattern is not practical because of physical constraints;

(2) promote the preservation of open space and natural areas;

(3) allow for grouping of development on a portion of the site while using the entire site area to calculate Density of the Base District.

(4) support reductions in development costs.

(b) General

(1) A Cluster Housing Project is a subdivision containing five (5) or more detached Dwellings each on its own Lot with some or all of the Lots reduced below required minimum Lot Area and width requirements, but where the overall project complies with the maximum Density standard of the Base District. Cluster Housing Projects require that planning for Lots and the locations of houses on the Lots be done at the same time. Because the allowable Building Envelope of each house is predetermined, greater flexibility in development standards is possible while assuring that the single-Dwelling character of the Zoning District is maintained.

(2) Under the cluster housing option, a subdivision can contain no more Lots than would otherwise be allowed for a conventional subdivision in the same Zoning District, but the individual Lots within the development can be smaller than required in a conventional subdivision. Smaller Lot sizes within a Cluster Housing Project are required to be offset by a corresponding increase in Common Open Space.

(c) Where Allowed; Procedure

Cluster Housing Projects are allowed by right in all residential Zoning Districts and in the CN1 District, as provided below.

(1) In RS Districts and the CN1 District, Cluster Housing Projects shall not include more than 35 Dwelling Units. Larger projects in said Districts are subject to the Planned Development regulations of Section 20-701 and shall be reviewed and approved in accordance with the procedures of Section 20-1304.

(2) Cluster Housing Projects allowed by-right will be evaluated for compliance with applicable regulations and reviewed and approved in accordance with the subdivision procedures of Article 8 review process.

(d) Lot Area and Lot Width Requirements

There are no minimum Lot Area or Lot Width requirements for Cluster Housing Projects. Lots shall be adequate to meet all applicable standards of this Development Code.

(e) Housing Types

Detached Dwelling Units on individual Lots are the only type of housing allowed in a Cluster Housing Project. The proposed Building Envelope for all houses shall be shown on the subdivision plat with enough detail so that compliance with required Density and Dimensional Standards can be determined.
(f) **Setbacks**

(1) A Setback equal to the minimum Front Setback of the Base District shall be provided along the entire perimeter of the Cluster Housing Project that is adjacent to any Street or right-of-way.

(2) A Setback equal to the minimum Rear Setback of the Base District shall be provided along the entire perimeter of the Cluster Housing Project that is not adjacent to any Street or right-of-way.

(3) Within the project, the distance between houses shall be at least 10 feet (to be measured in accordance with the Setback measurement provisions of Section 20-602(e)).

(g) **Building Coverage**

The Building coverage standards of the Base District do not apply to each individual Lot, but the total Building coverage of all Lots (in aggregate) may not exceed the maximum Building coverage standard of the Base District.

(h) **Outdoor Area**

The required minimum outdoor area standard per Dwelling Units of 240 Sq. Ft. shall be on each Lot.

(i) **Common Open Space**

(1) **Amount Required**

The Cluster Housing Project shall include at least 10% of the total site area as **Common Open Space**, the amount of Common Open Space computed using whichever of the following formulas produces the largest number:

(i) The total area resulting from the sum of the following: the difference between the minimum Lot Area required for the Base District and the actual Lot Area proposed for each Lot in the Cluster Development, or

(ii) Ten percent (10%) of the total site area included in the Cluster Housing Project.

*Environmentally sensitive lands, if present, shall be protected and included within the Common Open Space. 30% of the Common Open Space shall be developed as Recreational Open Space, unless environmentally sensitive lands are present, in which case the amount of Recreational Open Space may be reduced to no less than 5% and no more than 10% of the Common Open Space, with the intent being to preserve all or as much environmentally sensitive lands as possible in their natural state.*

(2) **Recreational Open Space**

At least one-third of the proposed Common Open Space shall be suitable for use as and proposed for development as Recreational Open Space.
(3) Natural Open Space
   To the maximum extent practicable, the following types of lands shall be included in the Common Open Space as Natural Open Space. To the extent that it is not practicable to include all of such areas in the Common Open Space, the order of types of lands included in this list shall be considered a priority list, with the first item being the most important, the last being the least important, and so on:

   (i) floodway, based on a 100-year storm;
   (ii) Floodplain Outside The Floodway, based on a 100-year storm;
   (iii) jurisdictional Wetlands;
   (iv) Stream Corridor;
   (v) significant Stand of Mature Trees or individually significant mature trees;
   (vi) Prominent Geographic Features with Rocky Outcroppings; and
   (vii) archeological and historic sites.

(4) General Provisions
   See Section 20-703 for General Provisions applicable to Open Space in a Planned Development or Cluster Housing Project.

20-703 OPEN SPACE STANDARDS IN CLUSTER AND PLANNED DEVELOPMENTS

(a) Preservation Required
   The Open Space land shall be preserved and maintained solely for the purposes specified in this Section and in such a manner as may be acceptable to the City Commission. The method for accomplishing such preservation and maintenance of Open Space land shall be limited to one of the following:

   (1) establishment of a mandatory-membership homeowner’s association to own and maintain the land in common for the Open Space purposes intended; or

   (2) transfer of the land to a conservation trust or an institution, person, organization or other conservation-oriented entity together with the requisite requirements for maintenance of the land for the Open Space purposes intended; or

   (3) dedication of the land to the City with executed deed restrictions that the City is party to, which ensure the land shall remain as dedicated open space, subject to City Commission acceptance of such dedication.

(b) Execution of Instruments
The City Commission shall require the **Owner Developer** or Owner of the Open Space land to execute, acknowledge and file at the Register of Deeds office such maps and documents as, in the opinion of the Director of Legal Services, will effectively create a trust, Easement or covenant running with the land, for the benefit of the **abutting Dwelling Unit Owner property owners in the development** and of the City, which:

1. will be binding on all future Owners of the Open Space land;
2. will not be affected by any subsequent changes in zoning;
3. may be enforced by adjoining property Owner **property owners in the development** or the City by appropriate action in court for damage or equitable relief;
4. will be perpetual;
5. will assure appropriate maintenance of the Open Space land to the satisfaction of the City Commission;
6. shall provide that if maintenance, preservation and/or use of the Open Space land no longer complies with the provisions of the trust, Easement or covenant, the City may take all necessary actions to effect compliance and assess the costs against the Owner in default;
7. shall provide that such trust, Easement or covenant may not be modified, altered, amended, or changed without written approval of the City Commission, and all beneficiary property Owners in the **PD PUD or Cluster Housing Project development** except in the case of City-owned land in which case deed restrictions shall be binding.
ARTICLE 11. GENERAL DEVELOPMENT STANDARDS

20-1101 Protection Standards for Residential Districts

20-1102 Intersection Visibility

20-1103 Outdoor Lighting

20-1104 Performance Agreements; Guarantees

20-1105 Sidewalks

20-1106 Agreement Not to Protest Formation of a Benefit District

20-1107 Retail Market Impact Analysis

20-1108 General Development Standards for Mixed Use (MU) Districts

20-1101 PROTECTION STANDARDS FOR RESIDENTIAL DISTRICTS

(a) Design and Operational Compatibility Standards—Discretionary Approvals

As a condition of approval of any Special Use Permit, Map Amendment, site plan or other discretionary approval of any multi-Family use or nonresidential use located within 500 feet of any less intensive residential district, the City Commission, Planning Director, Planning Commission or other review body may impose conditions that exceed the minimum requirements of this Chapter and that, in the opinion of the review body, are necessary to reduce or minimize any potentially adverse impacts on residential property, including, but not necessarily limited to, the following:

(1) location on a site of activities that generate potential adverse impacts on adjacent uses, such as noises and glare;

(2) placement and buffering of trash receptacles;

(3) location of loading and delivery areas;

(4) lighting location, intensity, and hours of illumination;

(5) placement and illumination of outdoor vending machines, telephones, and similar outdoor services and activities;

(6) additional Landscaping and buffering;

(7) Height restrictions to preserve light and privacy and views of significant features as viewed from public property and rights-of-way;

(8) preservation of natural lighting and solar Access;

(9) ventilation and control of odors and fumes; and

(10) paving or other surface treatment for dust control.

(b) Height Limit on Projects Adjoining Certain Residential Zoning Districts

See Section 20-701(g) for Height limits in the PD district.

(c) Balconies of a multi-Dwelling Unit Building

Balconies above the second Story of a multi-Dwelling Unit Building are prohibited along the exterior of a RM development unless the Building Setback is increased to at least double the required minimum Setback and Landscaping is enhanced with two or more of the following
features: a minimum 4’ Berm, a solid Screening fence (6’ minimum height) or a masonry wall (6’ minimum height). This provision shall apply only to those exterior sides of a Planned Development that are adjacent to RS zoning or to detached Dwelling Units.

(d) **Implementation of Sensitive Land Standards** Standards for Environmentally Sensitive Lands

(1) **Applicability of Environmental Design Standards — Generally**

The provisions of this Article regarding environmental protection for sensitive lands shall apply to all construction and development in all RS and RM Districts, with the exception of individually platted lots for single or duplex dwellings which were platted prior to (the effective date of this Text Amendment), except as expressly exempted in this paragraph.

(2) **Applicability of Environmental Design Standards — Effect on Development Type** Principal Environmentally Sensitive Lands

(a) **Protected Areas.** If a significant portion, 500 sq ft or more, of a proposed development, as specified in this sub-section (d), consists of lands falling in the following categories, any proposed development may proceed only in accordance with the processes allowed by this subsection. The lands affected by this section shall include the following lands, are listed below in a priority order for protection:

a. Regulatory Floodways, based on 100 year storm designated on the FEMA Flood Insurance Rate Map for Douglas County and identified on the City GIS Baseline Environmentally Sensitive Areas Map;

b. Floodplain outside the Floodway; Regulatory Floodway Fringe, designated on the FEMA Flood Insurance Rate Map for Douglas County based on 100 year storm and identified on the City GIS Baseline Environmentally Sensitive Areas Map,

c. Jurisdictional Wetlands, as determined by the Army Corps of Engineers.

d. Stream Corridors as defined in this Code and identified on the City GIS Baseline Environmentally Sensitive Areas Map

e. Stands of Mature Trees or Individually Significant Mature Trees as defined in this Code and identified on the City GIS Baseline Environmentally Sensitive Areas Map; and

f. Prominent Geographic Features with Rocky Outcroppings; and

g. Archaeological and Historic Sites listed on local, state, or federal registers.

(ii) **Determination of Development Land Area**

In determining whether a portion of a proposed development consists of sensitive lands, all contiguous lands under the same Ownership or control shall be considered. Lands owned or controlled by a partnership, trust or corporation
Article 11 – General Development Standards

(3) Procedures to be Followed

Protection Standards

a. Sensitive Areas Site Plan

Development on a platted Lot or Parcel including more than 500 square feet of sensitive lands shall require submission of a Sensitive Areas Site Plan [see Section 20-1101(e)] which shall be consolidated with any other required site plan submitted. The development shall be subject to any conditions related to the sensitive lands included in approval of the subdivision or any Planned Development application including the platted Lot(s). REVISED AND MOVED TO SUBSECTION (b)-BELOW

(i) Platted Lots Amount Required

The minimum amount of environmentally sensitive lands which are required to be protected in Planned Developments and Cluster Housing Projects are noted in Sections 20-701 and 20-702 respectively. For other types of developments, required protection of environmentally sensitive lands shall be limited protected up to a maximum protection area of 20% of the total land area. The protected environmentally sensitive lands shall be set aside as private Common Open Space or dedicated to the City as parkland or open space. Incentives for protection of environmentally sensitive lands in amounts above 20% of the total land area are included in Section 20-1101(f).

(ii) Land not Previously Subdivided Development Process

Development on land not previously subdivided and including which contains more than 500 square feet of environmentally sensitive lands shall require submission of a Sensitive Areas Site Plan [see Section 20-1101(f)], and may proceed through one of the following processes:

a. Site Planning. Development on properties a platted Lot or Parcel including containing more than 500 square feet of environmentally sensitive lands shall require submission of a Sensitive Areas Site Plan [see Section 20-1101(f)], which shall may be consolidated with any other required site plan submitted, but will be, in any event, required prior to approval of a development proposal. The development shall be subject to any conditions related to the sensitive lands included in approval of the subdivision or any Planned Development application including the platted Lot(s). The plan shall clearly delineate the environmentally sensitive lands to be protected and shall include information regarding protection measures and maintenance.

b. Platting. Environmentally sensitive lands to be protected shall be located within tracts and/or easements. Information regarding ownership and maintenance responsibility of the tract or easement, as well as protection measures, shall be included on the preliminary and final plat.
Article 11 – General Development Standards
TA-12-27-07

1. If less than five percent (5%) of the land area consists of sensitive lands, the property may be developed through a conventional subdivision, a cluster subdivision, or Planned Development.

2. If five percent (5%) or more of the land area but less than 15% of the land area consists of sensitive lands, the property may be developed through a cluster subdivision or Planned Development, but may not be otherwise subdivided or developed.

3. If 15% or more of the land area consists of sensitive lands, the property may be developed only through as a Planned Development.

(3) Applicability of Environmental Design Standards – Effect on Development Plan for Sensitive Lands

(iii) Dedication
Where the following types of lands are included in a proposed development, such lands shall be included in any land dedicated to the City as part of any required Open Space dedication, in the priority order set forth in this paragraph, up to the required land dedication for the development,

a. Floodways, based on 100 year storm;

b. Floodplain outside the Floodway, based on 100 year storm;

c. Jurisdictional Wetlands;

d. Stream Corridors;

e. Stand of Mature Trees or individually significant mature trees;

f. Prominent Geographic Features with Rocky Outcroppings; and

g. Archaeological and Historic Sites.

(iv) Private Open Space
Where the following types of lands are included in a proposed development and will not be dedicated to the City, such lands shall be included in required Open Space for the development, in the priority order set forth in this paragraph, up to one-half the required Open Space for the development, with the remaining one-half of the Open Space to be suitable for active recreation:

a. Floodways;

b. Floodplains outside the Floodway, based on 100 year storm;

c. Jurisdictional Wetlands;

d. Stream Corridors;

e. Stand of Mature Trees or Individually Significant Mature Trees;
Article 11 – General Development Standards
TA-12-27-07

f. Prominent Geographic Features with Rocky Outcroppings; and

g. Archaeological and Historic Sites.

(v) Other
Where the following types of lands are included in a proposed development and will not be dedicated to the City or included in private Open Space, the development plan shall be arranged so that every proposed Lot has a Building Envelope meeting the other design standards of this Code without encroaching on the designated sensitive lands:

a. Floodways;
b. Floodplain outside the Floodway, based on 100 year storm;
c. Jurisdictional Wetlands;
d. Stream Corridors;
e. Stand of Mature Trees or Individually Significant Mature Trees;
f. Prominent Geographic Features with Rocky Outcroppings; and

g. Archaeological and Historic Sites.

F—Applicability of Environmental Design Standards—

(4). Effect of Protection Standards on Development Intensity or Density
Where the following types of lands listed in Section 20-1101(d)(2)(i) are included in a proposed development, that land, or a portion of that land, may be included in determining the allowable Density or intensity of development and the allowable density, calculated on the total land area, may be transferred to other developable portions of the property.

in accordance with the following table. The percentage appearing in a cell at the intersection of a type of sensitive land and its proposed disposition shall be multiplied by the land area of that site to determine the land area which may be considered in the computation of the allowed Density or intensity of development:

<table>
<thead>
<tr>
<th>Sensitive Land Features</th>
<th>Proposed for Dedication of Open Space</th>
<th>Percentage for Density Calculation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Floodways</td>
<td>100%</td>
<td>50%</td>
</tr>
<tr>
<td>Floodplains outside the Floodway, based on 100 year storm</td>
<td>50%</td>
<td>10%</td>
</tr>
<tr>
<td>Jurisdictional Wetland</td>
<td>100%</td>
<td>50%</td>
</tr>
<tr>
<td>Stand of Mature Trees</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Prominent Geographic Features and Rocky Outcroppings</td>
<td>50%</td>
<td>10%</td>
</tr>
<tr>
<td>Archaeological and Historic Sites</td>
<td>100%</td>
<td>50%</td>
</tr>
</tbody>
</table>

(e) Density Bonus Incentives for Protection of Additional Lands
Density bonuses are available to encourage the protection of environmentally sensitive lands in a greater amount than required.

(1). Applicability
A development shall qualify for a density bonus if environmentally sensitive areas noted in this Section are committed for preservation either through designation as a tract, through a conservation or landscape easement, or dedication to the City in addition to the area required in Section 20-1101(d)(3)(a).

(i) Native prairie remnants and/or slopes of 25% or greater can be included in the protected lands for this incentive, provided the required area being protected with features listed in Section 20-1101(d)(2)(i) equals or exceeds 20% of the total developable area.

(1) Approval Criteria
(i) In addition to these regulations, development on properties with certain environmentally sensitive lands, such as the regulatory floodway, may be restricted by state or federal regulations.

(ii) In order for a density bonus to be approved, City planning staff must determine that utilities and infrastructure are available to serve the additional density proposed and the design of the development does not negatively impact adjacent properties.

(iii) Land offered for dedication shall be subject to approval by the Governing Body.

(2) Density Bonus -- Increase in Number of Dwelling Units.
(i) Determination of Base Density.
The Base Density, the number of dwelling units which can be developed on a property, will be determined from a ‘concept plat’ or sketch plan provided by the applicant which shows the basic street layout and rights-of-way, the areas necessary for stormwater detention (based on an approved conceptual drainage study), the 20% of the site which is being protected with environmentally sensitive lands, and proposed lot layout in conformance with density and dimensional standards in Section 20-601.

(ii) Determination of Density Bonus.
If the density bonus meets the criteria noted in Section 20-1101(e)(1), the density bonus to be applied to the base density shall be calculated using the proportions in Table 1.

a. The density may exceed the Density Cap in multi-dwelling districts.
b. The density may equal but may not exceed the Density Cap for single-family and duplex districts.
c. Density Caps set by the Comprehensive Plan are noted in Table 2.
(iii) Standards Adjustment

a. In single-dwelling and duplex-dwelling zoning districts, it may be necessary to reduce the lot area and/or lot width requirements to permit the allowable density. These modifications may be made to the minimum degree necessary to accommodate the allowable density.

b. In multi-dwelling districts, it may be necessary to increase the height limitation, in addition to adjustments to the lot area and/or lot width requirements, to permit the allowable density. These modifications may be made to the minimum degree necessary to accommodate the allowable density.
(3). Density Bonus -- Increase in Developable Square Footage. This bonus permits the construction of larger structures, and/or the addition of more impervious surface on a lot, rather than an increase in the number of dwelling units. The proportions listed in Table 3 apply to the increase in developable square footage. Each 1% of protected environmentally sensitive lands protected above that required by Code results in a 1% increase in the building or impervious surface coverage up to a maximum of 40%. (In no case shall the building coverage or impervious surface coverage exceed 90% of the lot).

20-1101(e)-TABLE 3
Density Bonus — Increase in Developable Area

<table>
<thead>
<tr>
<th>Zoning District</th>
<th>Maximum Building Coverage (%)</th>
<th>Maximum Impervious Coverage (%)</th>
<th>Min Outdoor Area per Dwelling (sq ft)</th>
<th>Int Side Setback (ft)</th>
<th>Front Setback (ft)</th>
<th>Rear setback (ft)</th>
<th>Single frontage / double frontage</th>
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<td>20/25</td>
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<td>20/25</td>
<td></td>
</tr>
</tbody>
</table>

* for each 1% protection above the required 20% (to maximum of 40%)

(i) Standards Adjustment
In some cases the minimum outdoor area or setbacks may need to be reduced to accommodate the additional building or impervious surface coverage. This reduction may be made to the minimum degree necessary to accommodate the additional building or impervious surface coverage.

(f) Sensitive Areas Site Plan Required Process
Prior to development on tracts or portions of tracts of land where containing more than 500 square feet of environmentally sensitive lands listed in Section 20-1101(d)(2)(i) specified above exist, a Sensitive Areas Site Plan shall first be submitted to and approved by the City in accordance with the requirements of Site Plan Review Section 20-1305 including the public notice procedures of Section 20-1305(g). This application
process may occur as part of a Planned Development overlay zoning and/or subdivision review.

(1) Sensitive Areas Site Plan Contents
The Sensitive Areas Site Plan must be prepared in accordance with the requirements in Section 20-1305(f) with the exception that a Sensitive Areas Site Plan is not required to be completed by an engineer, architect or other qualified professional. In addition to the contents noted in Section 20-1305(f), the site plan shall:

(i) Clearly delineate the property boundaries.
(ii) Clearly delineate the boundaries of the environmentally sensitive lands listed in Section 20-1101(d)(2)(i).
(iii) Designate protected lands per the priority order in Section 20-1101(d)(2)(i).
(iv) Provide information on the ownership and maintenance responsibility for the protected lands.
(v) Provide information on the methods to be used to protect environmentally sensitive lands, both during construction and after.

[Followed by remainder of Article 11.)
ARTICLE 17
Proposed revisions to definitions in Section 20-1701:

**Common Open Space:** A Parcel of Land, water body, water course, or drainageway within a development site designated for a Planned Development or Cluster Housing Project, that is designed and intended for the use or enjoyment of all the residents and Landowners of the Planned Development or Cluster Housing Project. Common Open Space, except for Common Open Space designated as *Environmentally Sensitive Lands* Natural Open Space, may contain such supplementary Structures and improvements as are necessary and appropriate for the benefit and enjoyment of all the residents and Landowners of the Planned Development or Cluster Housing Project. Common open space shall not include space devoted to streets, alleys, or parking areas. While required setbacks may function as common open space, they may not be used to meet the minimum requirements.

**Jurisdictional Wetland:** Wetlands which are regulated by Section 404 of the Clean Water Act and are under the regulatory jurisdiction of the Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA). Wetlands—Any parcel or portion of a parcel which meets the state or federal definition of Wetlands that are under the jurisdiction of state or federal laws. Synonymous with ‘jurisdictional wetland’.

**Prominent Geographic Feature with Rocky Outcropping:** surrounding Grade and covering an area of one (1) or more acres. Exposed rock area is 50% or more limestone or sandstone.

**Stream Corridor:** A strip of land 100 feet wide, of which the centerline shall be the centerline of a stream that is not an intermittent stream or an intermittent stream specifically identified in the Comprehensive Plan as a significant intermittent stream subject to protection. *Ephemeral stream:* a stream where flow occurs for only a short time after extreme storms and does not have a well-defined channel, similar to a drainage way.

**Mature Trees, Stand of:** An area of ½ acre (21,780 sq ft) or more located on the ‘development land area’, per Section 20-1101(d)(2)(ii) or on other contiguous residentially zoned properties covered by densely wooded growth of mature containing trees having a minimum height of that are 25 feet or more in height, or are greater than 8” caliper, in an amount adequate to form a continuous or nearly continuous canopy. (Canopy may be determined from resources such as, but not limited to, NAIP, National Agricultural Imaging Program; City/County GIS aerials; and field surveys.)

**Base Density:** The number of dwelling units that can be developed on a subject property, rather than the number of dwelling units that are permitted for the zoning district. Base density is the number of dwelling units that can be developed given the size of the parcel, the area required for street rights-
of-way or infrastructure, the density and dimensional standards of Section 20-601(a), the environmental protection standards, as well as topographical or other features unique to the property.

Density Bonus: An incentive-based tool that permits property owners to increase the maximum allowable development on a property in exchange for helping the community achieve public policy goals, such as protection of environmentally sensitive areas.

Density Cap: Maximum density levels set by the Comprehensive Plan. Low-density (6 dwelling units per acre); medium density (15 dwelling units per acre) and high density (24 dwelling units per acre).
ARTICLE 7. PLANNED DEVELOPMENTS

20-701 PLANNED DEVELOPMENT OVERLAY DISTRICT

(a) Purpose
The PD, Planned Development regulations are intended to:

(1) ensure development that is consistent with the Comprehensive Plan;
(2) ensure that development can be conveniently, efficiently and economically served by existing and planned utilities and services;
(3) allow design flexibility that results in greater public benefits than could be achieved using conventional Zoning District regulations;
(4) preserve environmental and historic resources; and
(5) promote attractive and functional residential, nonresidential, and mixed-use developments that are compatible with the character of the surrounding area.

(b) Procedure
PDs shall be reviewed and approved in accordance with the procedures of Section 20-1304.

(c) Developer’s Statement of Intent
Each PD application shall include a comparison of the proposed development with the standards of the Base District and the otherwise applicable standards of this Development Code. Applications shall also include a Statement by the applicant describing how the proposed development provides greater benefits to the City than would a development carried out in accordance with otherwise applicable Development Code standards.

(d) Effect of Other Development Code Standards
Except as expressly authorized by the regulations of this section and approved as part of a PD plan (in accordance with the procedures of Section 20-1304), all of the standards of this Development Code apply to development within a PD District.

(e) Minimum District Size
Minimum area for a PD district shall be five acres.

(f) Standards Eligible for Modification
As a condition of approval, the Planning Commission or City Commission may designate by ordinance or as a note on the face of the development plan, any specific use, Structure or Building Type which shall be restricted and excluded as part of the Planned Development Overlay District. The City Commission may modify the following standards during the PD approval process. Standards not listed are not eligible for modification.
(1) **Allowed Uses**
The Planning Commission shall recommend, and the City Commission shall approve, a list of uses allowed in a PD at the time of PD preliminary approval. Regardless of the fact that the approved uses may be determined by reference to a Base District, the list of approved uses shall be incorporated into and made a condition of the PD approval. The City Commission may approve only uses that are allowed in the Base District, provided that:

(i) PDs in Single-Dwelling and Multi-Dwelling (RS and RM) Districts may include land area for commercial uses at a ratio of up to 50 square feet of land area per Dwelling Unit.

(ii) commercial uses, in addition to those otherwise permitted by right, may be approved in a PD in an RS or RM District, if the PD includes a minimum area of 10 acres or more than 100 Dwelling Units.

(2) **Lot Size**
The minimum Lot size standards of the Base District may be reduced by the City Commission, provided that Lot sizes shall be adequate to safely accommodate all proposed Buildings and site features.

(3) **Residential Density**
The City Commission may increase the maximum Net Density beyond that of the Base District by up to 25% if the City Commission determines that such an increase is warranted to support the public benefit likely to result from the proposed development.

(4) **Setbacks**
The minimum Setback standards of the Base District may be reduced by the City Commission, provided that:

(i) Buildings located within the PD, and along any District boundary that is adjacent to RS and or RM Zoning Districts shall be Setback a distance at least equal to the Height of the proposed Building; and

(ii) All exterior walls of detached Buildings shall be separated by a minimum distance of 10 feet.

(iii) Balconies shall not be located along peripheral site Setbacks adjacent to RS zoned properties unless privacy Screening and Landscaping is included in the design.
Article 7 – Planned Developments

(g) Height
The City Commission may increase maximum Height limits of the Base District if the Commission determines that such an increase is warranted to support the public benefit likely to result from the proposed development. Height increases shall be permitted only for Buildings set back from the boundary of the PD by the Height of the proposed Building plus 25 feet, so that the primary impact of the increased Height is on property within the PD.

(h) Balconies
Balconies above the second Story of a multi-Dwelling Unit Building are prohibited along the exterior of a Planned Development unless the Building Setback is increased to at least double the required minimum Setback and Landscaping is enhanced with two or more of the following features: a minimum 4’ Berm, a solid Screening fence (6’ minimum Height) or a masonry wall (6’ minimum Height). This provision shall apply only to those exterior sides of a Planned Development that are adjacent to RS zoning or to detached Dwelling Units.

(i) Parking and Loading
The City Commission may decrease the number of off-Street Parking and loading spaces required. Parking and loading areas shall comply with all otherwise applicable design standards.

(j) Buffer Areas
Development within 60 feet of the peripheral boundary of the PD shall be limited to the following:

1. use category, Heights, Setbacks and minimum Lot sizes permitted in the Zoning District immediately adjoining the proposed PD on the date of preliminary development plan approval of the PD; and

2. a landscaped buffer, including a Berm (minimum 4’ in Height), a masonry wall (minimum of 6’ in Height) or a fence (minimum 6’ in Height).

(k) Common Open Space

1. Amount Required
The PD shall include at least 20% of the total site area as Common Open Space. Environmentally sensitive lands, if present, shall be protected and included within the Common Open Space. 50% of the Common Open Space shall be developed as Recreational Open Space unless environmentally sensitive lands are present, in which case the amount of Recreational Open Space may be reduced to no less than 5% and no more than 10% of the
Common Open Space, with the intent being to preserve all or as much environmentally sensitive lands as possible in their natural state.

(2) General Provisions
See Section 20-703 for General Provisions applicable to Open Space in a PD or Cluster Development.

(l) Additional Requirements and Standards

(1) Unified Control
No application for a PD will be accepted or approved unless all of the property included in the application is under unified Ownership or a single entity’s control.

(2) Street Access
PDs that will generate 100 or more average daily trips (based on traffic generation estimates of the Institute of Transportation Engineers’ Trip Generation Manual, 7th edition, or subsequent edition, or based on local estimates provided by the City) shall have Access to an Arterial Street using a Frontage or rear Access road or by taking direct Access to a Collector Street.

Individual residential Building Lot shall not take direct Access to an Arterial Street or a non-Residential Collector Street. Each individual residential Lot shall have Frontage on a public or Private Street that has been constructed to the Public Street standards of the City.

(3) Sidewalks
Sidewalks built to City specifications shall be built along both sides of all public and Private Streets. On Local Streets, sidewalks shall be at least 5 feet in width; on all other Streets sidewalks shall be at least 6 feet in width.

(4) Landscaping
The Landscaping and Screening standards of Article 10 apply to PDs. In addition, any part of the development area not used for Buildings, Structures, Parking, Streets, or Accessways shall be landscaped with a sufficient mixture of grass, vegetative Ground Cover, trees, and Shrubs, except those areas designated to be preserved with natural vegetation.

(5) Preservation of Natural Features
Mature stands of trees or individually significant mature trees, vegetative cover, watercourses and other natural site features shall be preserved to the greatest extent possible. At a minimum the common open space provisions in this section and the standards of Article 10 apply.

(6) Zoning Map
Approved PDs shall be identified on the Official Zoning District Map.

(7) Additional Conditions
The Planning Commission may recommend, and the City Commission may impose, other reasonable conditions and standards, as deemed necessary to ensure consistency with the purposes of this section and those of this Development Code. Such conditions may include limitations on the types of uses, Structures or Building Types to be allowed in the PD. When such
conditions are imposed, an application will not be deemed approved until the applicant has complied with all of the conditions of approval.

(m) Additional Standards for PD’s with Residential and Nonresidential Uses
In PDs containing both residential and nonresidential uses, the nonresidential uses shall be designed, located, and oriented on the site so that such uses are directly accessible to residents of the PD. For the purposes of this Section, directly accessible shall mean pedestrian/Bicycle and automobile Access by way of improved sidewalks or paths and Streets that do not involve leaving the PD or using a major Thoroughfare. “Directly accessible” does not necessarily mean that nonresidential uses need to be located in a particular location but that the siting of such uses considers the accessibility of the residential component of the PD to the nonresidential use.

20-702 CLUSTER HOUSING PROJECTS

(a) Purpose
The cluster housing regulations of this section have several potential public benefits. They:

1. provide flexible development options where the standard Lot and Block pattern is not practical because of physical constraints;

2. promote the preservation of open space and natural areas;

3. allow for grouping of development on a portion of the site while using the entire site area to calculate Density of the Base District.

4. support reductions in development costs.

(b) General
1. A Cluster Housing Project is a subdivision containing five (5) or more detached Dwellings each on its own Lot with some or all of the Lots reduced below required minimum Lot Area and width requirements, but where the overall project complies with the maximum Density standard of the Base District. Cluster Housing Projects require that planning for Lots and the locations of houses on the Lots be done at the same time. Because the allowable Building Envelope of each house is predetermined, greater flexibility in development standards is possible while assuring that the single-Dwelling character of the Zoning District is maintained.

2. Under the cluster housing option, a subdivision can contain no more Lots than would otherwise be allowed for a conventional subdivision in the same Zoning District, but the individual Lots within the development can be smaller than required in a conventional subdivision. Smaller Lot sizes within a Cluster Housing Project are required to be offset by a corresponding increase in Common Open Space.

(c) Where Allowed; Procedure
Cluster Housing Projects are allowed by right in all residential Zoning Districts and in the CN1 District, as provided below.
In RS Districts and the CN1 District, Cluster Housing Projects shall not include more than 35 Dwelling Units. Larger projects in said Districts are subject to the Planned Development regulations of Section 20-701 and shall be reviewed and approved in accordance with the procedures of Section 20-1304.

Cluster Housing Projects allowed by-right will be evaluated for compliance with applicable regulations and reviewed and approved in accordance with the subdivision procedures of Article 8 review process.

There are no minimum Lot Area or Lot Width requirements for Cluster Housing Projects. Lots shall be adequate to meet all applicable standards of this Development Code.

Detached Dwelling Units on individual Lots are the only type of housing allowed in a Cluster Housing Project. The proposed Building Envelope for all houses shall be shown on the subdivision plat with enough detail so that compliance with required Density and Dimensional Standards can be determined.

A Setback equal to the minimum Front Setback of the Base District shall be provided along the entire perimeter of the Cluster Housing Project that is adjacent to any Street or right-of-way.

A Setback equal to the minimum Rear Setback of the Base District shall be provided along the entire perimeter of the Cluster Housing Project that is not adjacent to any Street or right-of-way.

Within the project, the distance between houses shall be at least 10 feet (to be measured in accordance with the Setback measurement provisions of Section 20-602(e)).

The Building coverage standards of the Base District do not apply to each individual Lot, but the total Building coverage of all Lots (in aggregate) may not exceed the maximum Building coverage standard of the Base District.

The required minimum outdoor area standard per Dwelling Units of 240 Sq. Ft. shall be on each Lot.

The Cluster Housing Project shall include at least 10% of the total site area as Common Open Space.

Environmentally sensitive lands, if present, shall be protected and included within the Common Open Space. 30% of the Common Open Space shall be developed as Recreational Open Space, unless environmentally sensitive lands
are present, in which case the amount of Recreational Open Space may be reduced to no less than 5% and no more than 10% of the Common Open Space, with the intent being to preserve all or as much environmentally sensitive

(2) General Provisions
See Section 20-703 for General Provisions applicable to Open Space in a Planned Development or Cluster Housing Project.

20-703 OPEN SPACE STANDARDS IN CLUSTER AND PLANNED DEVELOPMENTS

(a) Preservation Required
The Open Space land shall be preserved and maintained solely for the purposes specified in this Section and in such a manner as may be acceptable to the City Commission. The method for accomplishing such preservation and maintenance of Open Space land shall be limited to one of the following:

(1) establishment of a mandatory-membership homeowner’s association to own and maintain the land in common for the Open Space purposes intended; or

(2) transfer of the land to a conservation trust or an institution, person, organization or other conservation-oriented entity together with the requisite requirements for maintenance of the land for the Open Space purposes intended; or

(3) dedication of the land to the City with executed deed restrictions that the City is party to, which ensure the land shall remain as dedicated open space, subject to City Commission acceptance of such dedication.

(b) Execution of Instruments
The City Commission shall require the Developer or Owner of the Open Space land to execute, acknowledge and file at the Register of Deeds office such maps and documents as, in the opinion of the Director of Legal Services, will effectively create a trust, Easement or covenant running with the land, for the benefit of the property owners in the development and of the City, which:

(1) will be binding on all future Owners of the Open Space land;

(2) will not be affected by any subsequent changes in zoning;

(3) may be enforced by property owners in the development or the City by appropriate action in court for damage or equitable relief;

(4) will be perpetual;

(5) will assure appropriate maintenance of the Open Space land to the satisfaction of the City Commission;

(6) shall provide that if maintenance, preservation and/or use of the Open Space land no longer complies with the provisions of the trust, Easement
or covenant, the City may take all necessary actions to effect compliance and assess the costs against the Owner in default;

(7) shall provide that such trust, Easement or covenant may not be modified, altered, amended, or changed without written approval of the City Commission, and all beneficiary property Owners in the PD or Cluster Housing Project except in the case of City-owned land in which case deed restrictions shall be binding.
ARTICLE 11. GENERAL DEVELOPMENT STANDARDS

20-1101 Protection Standards for Residential Districts

(a) Design and Operational Compatibility Standards—Discretionary Approvals

As a condition of approval of any Special Use Permit, Map Amendment, site plan or other discretionary approval of any multi-Family use or nonresidential use located within 500 feet of any less intensive residential district, the City Commission, Planning Director, Planning Commission or other review body may impose conditions that exceed the minimum requirements of this Chapter and that, in the opinion of the review body, are necessary to reduce or minimize any potentially adverse impacts on residential property, including, but not necessarily limited to, the following:

1. Location on a site of activities that generate potential adverse impacts on adjacent uses, such as noises and glare;
2. Placement and buffering of trash receptacles;
3. Location of loading and delivery areas;
4. Lighting location, intensity, and hours of illumination;
5. Placement and illumination of outdoor vending machines, telephones, and similar outdoor services and activities;
6. Additional landscaping and buffering;
7. Height restrictions to preserve light and privacy and views of significant features as viewed from public property and rights-of-way;
8. Preservation of natural lighting and solar Access;
9. Ventilation and control of odors and fumes; and
10. Paving or other surface treatment for dust control.

(b) Height Limit on Projects Adjoining Certain Residential Zoning Districts

See Section 20-701(g) for height limits in the PD district.

(c) Balconies of a multi-Dwelling Unit Building

Balconies above the second Story of a multi-Dwelling Unit Building are prohibited along the exterior of a RM development unless the Building Setback is increased to at least double the required minimum Setback and Landscaping is enhanced with two or more of the following features: a minimum 4’ Berm, a solid Screening fence (6’ minimum height) or a masonry wall.
Article 11 – General Development Standards

(6’ minimum height). This provision shall apply only to those exterior sides of a Planned Development that are adjacent to RS zoning or to detached Dwelling Units.

(d) Standards for Environmentally Sensitive Lands

(1) Applicability
The provisions of this Article regarding environmental protection for sensitive lands shall apply to all construction and development in all RS and RM Districts, with the exception of individually platted lots for single or duplex dwellings which were platted prior to the effective date of this Text Amendment.

(2) Environmentally Sensitive Lands
(i) Protected Areas.
If 500 sq ft or more of a proposed development consists of lands falling in the following categories, any proposed development may proceed only in accordance with the processes allowed by this section. The lands affected by this section are listed below in a priority order for protection:

a. Regulatory Floodway, designated on the FEMA Flood Insurance Rate Map for Douglas County and identified on the City GIS Baseline Environmentally Sensitive Areas Map;

b. Regulatory Floodway Fringe, designated on the FEMA Flood Insurance Rate Map for Douglas County based on 100 year storm and identified on the City GIS Baseline Environmentally Sensitive Areas Map,

c. Jurisdictional Wetlands, as determined by the Army Corps of Engineers.

d. Stream Corridors as defined in this Code and identified on the City GIS Baseline Environmentally Sensitive Areas Map

e. Stands of Mature Trees as defined in this Code and identified on the City GIS Baseline Environmentally Sensitive Areas Map; and

f. Archaeological and Historic Sites listed on local, state, or federal registers.

(ii) Determination of Development Land Area
In determining whether a portion of a proposed development consists of sensitive lands, all contiguous lands under the same Ownership or control shall be considered. Lands owned or controlled by a partnership, trust or corporation under the same effective control shall be considered, along with lands owned directly by the applicant and lands under option to the applicant or a partnership, trust or corporation under the effective control of the applicant.

(3) Protection Standards

(i) Amount Required
The minimum amount of environmentally sensitive lands which are required to be protected in Planned Developments and Cluster Housing Projects are noted in Sections 20-701 and 20-702 respectively. For other types of developments, required protection of environmentally sensitive lands shall be limited to a
maximum protection area of 20% of the total land area. The protected environmentally sensitive lands shall be set aside as private Common Open Space or dedicated to the City as parkland or open space. Incentives for protection of environmentally sensitive lands in amounts above 20% of the total land area are included in Section 20-1101(f).

(ii) Development Process
Development on land which contains more than 500 square feet of environmentally sensitive lands shall require submission of a Sensitive Areas Site Plan [see Section 20-1101(f)], and may proceed through one of the following processes:

a. Site Planning. Development on properties containing more than 500 square feet of environmentally sensitive lands shall require submission of a Sensitive Areas Site Plan [see Section 20-1101(f)], which may be consolidated with any other required site plan submitted, but will be, in any event, required prior to approval of a development proposal.

b. Platting. Environmentally sensitive lands to be protected shall be located within tracts and/or easements. Information regarding ownership and maintenance responsibility of the tract or easement, as well as protection measures, shall be included on the preliminary and final plat.

c. Planned Development. Development standards in Section 20-701 apply. Environmentally sensitive lands to be protected shall be included within the Common Open Space.

d. Cluster Housing Project. Development standards in Section 20-702 apply. Environmentally sensitive lands to be protected shall be included within the Common Open Space.

4. Effect of Protection Standards on Development Density
Where the types of lands listed in Section 20-1101(d)(2)(i) are included in a proposed development, that land may be included in determining the allowable Density or intensity of development and the allowable density, calculated on the total land area, may be transferred to other developable portions of the property.

(e) Density Bonus Incentives for Protection of Additional Lands
Density bonuses are available to encourage the protection of environmentally sensitive lands in a greater amount than required.

(1) Applicability
A development shall qualify for a density bonus if environmentally sensitive areas noted in this Section are committed for preservation either through designation as a tract, through a conservation or landscape easement, or dedication to the City in addition to the area required in Section 20-1101(d)(3)(a).

i. Native prairie remnants and/or slopes of 25% or greater can be included in the protected lands for this incentive, provided the required area being protected with features listed in Section 20-1101(d)(2)(i) equals or exceeds 20% of the total developable area.
(2) **Approval Criteria**

(i) In addition to these regulations, development on properties with certain environmentally sensitive lands, such as the regulatory floodway, may be restricted by state or federal regulations.

(ii) In order for a density bonus to be approved, City planning staff must determine that utilities and infrastructure are available to serve the additional density proposed and the design of the development does not negatively impact adjacent properties.

(iii) Land offered for dedication shall be subject to approval by the Governing Body.

(3) **Density Bonus -- Increase in Number of Dwelling Units.**

(i) **Determination of Base Density.**

The Base Density, the number of dwelling units which can be developed on a property, will be determined from a ‘concept plat’ or sketch plan provided by the applicant which shows the basic street layout and rights-of-way, the areas necessary for stormwater detention (based on an approved conceptual drainage study), the 20% of the site which is being protected with environmentally sensitive lands, and proposed lot layout in conformance with density and dimensional standards in Section 20-601.

(ii) **Determination of Density Bonus.**

If the density bonus meets the criteria noted in Section 20-1101(e)(1), the density bonus to be applied to the base density shall be calculated using the proportions in Table 1.

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- a. The density may exceed the Density Cap in multi-dwelling districts.
- b. The density may equal but may not exceed the Density Cap for single-family and duplex districts.
- c. Density Caps set by the Comprehensive Plan are noted in Table 2.
(iii) Standards Adjustment

a. In single-dwelling and duplex-dwelling zoning districts, it may be necessary to reduce the lot area and/or lot width requirements to permit the allowable density. These modifications may be made to the minimum degree necessary to accommodate the allowable density.

b. In multi-dwelling districts, it may be necessary to increase the height limitation, in addition to adjustments to the lot area and/or lot width requirements, to permit the allowable density. These modifications may be made to the minimum degree necessary to accommodate the allowable density.

(4). Density Bonus -- Increase in Developable Square Footage.

This bonus permits the construction of larger structures, and/or the addition of more impervious surface on a lot, rather than an increase in the number of dwelling units. The proportions listed in Table 3 apply to the increase in developable square footage. Each 1% of protected environmentally sensitive lands protected above that required by Code results in a 1% increase in the building or impervious surface coverage up to a maximum of 40%. (In no case shall the building coverage or impervious surface coverage exceed 90% of the lot).

(i) Standards Adjustment

In some cases the minimum outdoor area or setbacks may need to be reduced to accommodate the additional building or impervious surface coverage. This reduction may be made to the minimum degree necessary to accommodate the additional building or impervious surface coverage.
Article 11 – General Development Standards

(f) **Sensitive Areas Site Plan Process**
Prior to development on land containing more than 500 square feet of environmentally sensitive lands listed in Section 20-1101(d)(2)(i), a Sensitive Areas Site Plan shall first be submitted to and approved by the City in accordance with the requirements of Site Plan Review Section 20-1305 including the public notice procedure of Section 20-1305(g).

(1) **Sensitive Areas Site Plan Contents**
The Sensitive Areas Site Plan must be prepared in accordance with the requirements in Section 20-1305(f) with the exception that a Sensitive Areas Site Plan is not required to be completed by an engineer, architect or other qualified professional. In addition to the contents noted in Section 20-1305(f), the site plan shall:

(i) Clearly delineate the property boundaries.
(ii) Clearly delineate the boundaries of the environmentally sensitive lands listed in Section 20-1101(d)(2)(i).
(iii) Designate protected lands per the priority order in Section 20-1101(d)(2)(i).
(iv) Provide information on the ownership and maintenance responsibility for the protected lands.
(v) Provide information on the methods to be used to protect environmentally sensitive lands, both during construction and after.
ARTICLE 17
Proposed revisions to definitions in Section 20-1701:

**Common Open Space:** Land, water body, water course, or drainageway within a development that is designed and intended for the use or enjoyment of all the residents and Landowners of the Development. Common Open Space, except for Common Open Space designated as Environmentally Sensitive Lands, may contain such supplementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of all the residents and Landowners of the Development. Common open space shall not include space devoted to streets, alleys, or parking areas. While required setbacks may function as common open space, they may not be used to meet the minimum requirements.

**Jurisdictional Wetland:** Wetlands which are regulated by Section 404 of the Clean Water Act and are under the regulatory jurisdiction of the Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA).

**Mature Trees, Stand of:** An area of ½ acre (21,780 sq ft) or more located on the ‘development land area’, per Section 20-1101(d)(2)(ii) or on other contiguous residentially zoned properties, containing trees that are 25 feet or more in height, or are greater than 8” caliper, in an amount adequate to form a continuous or nearly continuous canopy. (Canopy may be determined from resources such as, but not limited to, NAIP, National Agricultural Imaging Program; City/County GIS aerials; and field surveys.)

**Stream Corridor:** A strip of land 100 feet wide, of which the centerline shall be the centerline of a stream that is not an ephemeral stream: a stream where flow occurs for only a short time after extreme storms and does not have a well-defined channel, similar to a drainage way.

**Base Density:** The number of dwelling units that can be developed on a subject property, rather than the number of dwelling units that are permitted for the zoning district. Base density is the number of dwelling units that can be developed given the size of the parcel, the area required for street rights-of-way or infrastructure, the density and dimensional standards of Section 20-601(a), the environmental protection standards, as well as topographical or other features unique to the property.

**Density Bonus:** An incentive-based tool that permits property owners to increase the maximum allowable development on a property in exchange for helping the community achieve public policy goals, such as protection of environmentally sensitive areas.

**Density Cap:** Maximum density levels set by the Comprehensive Plan. Low-density (6 dwelling units per acre); medium density (15 dwelling units per acre) and high density (24 dwelling units per acre).
League of Women Voters of Lawrence-Douglas County  
P.O. Box 1072, Lawrence, Kansas 66044

June 20, 2010

Mr. Greg Moore, Chairman  
Members  
Lawrence-Douglas County Planning Commission  
City Hall  
Lawrence, Kansas 66044

RE: ITEM NO. 5, TEXT AMENDMENT; ENVIRONMENTALLY SENSITIVE AREAS

Dear Chairman Moore and Planning Commissioners:

You have received many letters from us on this subject and we appreciate the changes that you have made to the proposed text amendment in response. However, we continue to have serious concerns about the current proposed revisions. Below is a summary of these concerns.

1. Environmentally sensitive areas in the city and county should be protected prior to development. There should be a means of protecting sensitive land before it is disturbed such as requiring a development permit similar to that in the Floodplain Management Regulations.

2. The Environmentally Sensitive Areas Site Plan should be submitted first. Before a development is planned, as the first stage the Environmentally Sensitive Areas Site Plan should be submitted. The maximum amount of sensitive land should be set aside and the remaining developable land then designed for development. It is too late in the design, planning and development process to submit a Sensitive Areas Site Plan immediately prior to approval.

3. Some lands are protected by other laws. The lands that by law cannot be developed—Regulatory Floodways and Jurisdictional Wetlands—should not be included in the percentage of sensitive areas that must be protected.

4. We believe that the sensitive land itself should dictate how much and, in fact, whether each tract of land can be developed. We have always questioned the policy that there should be a set minimum or maximum amount of sensitive land that should be preserved. All environmentally sensitive areas should be preserved.

5. Serious deficiencies. However you plan to revise these regulations, as written now, they have some serious deficiencies that will make them difficult to administer. These are discussed below along with suggestions for corrections.

a. Definition of Open Space needs correcting. Although the definition of Open Space has been corrected to exclude setbacks, it still is not clear that the Open Space does not include required space between buildings such as the 10 feet required in PDs. Open Space also should not include private streets (in PDs) or driveways (in all developments).

b. Regulations on Cluster Development need revision. The amount of sensitive land as Common Open Space required in Cluster Developments at only 10% is totally deficient. Cluster Development is one of the most efficient and equitable methods of providing protection for sensitive lands. When the density is calculated based on the original tract, i.e., the original number of lots permitted, which was the intention with Cluster Development, the density...
does not require a bonus incentive because there is no need for a density bonus adjustment due to loss of developable land. The reason is because with protection of sensitive land there is no loss in potential number of dwellings that can be built. The same number of lots are simply made smaller.

c. **Expanding the use of the Cluster Development concept.** Making the lots smaller is an adjustment that is allowed for traditional development in these revised regulations. When sensitive land is present, if the density were to be calculated in the same way as that for Cluster Development, there would be no need for density bonus incentives.

d. **Problems with RM Districts.** The problems that appear with density bonus incentives in multiple family developments are due largely to the staff interpretation of allowing multiple buildings on one large lot. This is an anomaly that occurs because in the Land Development Code there is no required space—such as 10 feet—between buildings in RM Districts. The exterior yards at the edge of each large multiple family lot can provide the permeable space of 25% required in the Land Development Code Section 20-601 and therefore would not add to the amount of required open space. What this does is to create the opportunity for each large lot to have such a large net density that it can be built almost to its gross density. This is where there is a “loss” of density in conventional multiple family districts by adding the 20% open space requirement for sensitive land because it allows fewer dwelling units. Please see our letter sent in April, 2010 on this issue.

e. **The deficiency of not listing other sensitive lands in the priority list.** Prairies and steep slopes should be added to the priority list rather than treating them as a bonus. In addition, potential archeological and historic sites and significant but intermittent streams should also be added to the list. Actually, the priority list is an anomaly because all of these sensitive types should be preserved. Those required to be preserved by law—Regulatory Floodways and Jurisdictional Wetlands—should not be included to add to the total Open Space allotment; rather, they should be preserved over and above the allotment.

We sincerely hope that you will respond positively to our points and suggestions and make what we consider necessary changes before giving your approval. Attached is the Clear Copy of the staff proposed revisions that is annotated with our comments.

Thank you.

Sincerely yours,

Milton Scott
Vice President

[Signature]

Alan Black
Chairman
Land Use Committee

*Attachment*
ARTICLE 7. PLANNED DEVELOPMENTS

20-701 PD, Planned Development Overlay District
20-702 Cluster Housing Projects
20-703 Open Space Standards in Cluster and Planned Developments

20-701 PLANNED DEVELOPMENT OVERLAY DISTRICT

(a) Purpose
The PD, Planned Development regulations are intended to:

1. ensure development that is consistent with the Comprehensive Plan;
2. ensure that development can be conveniently, efficiently and economically served by existing and planned utilities and services;
3. allow design flexibility that results in greater public benefits than could be achieved using conventional Zoning District regulations;
4. preserve environmental and historic resources; and
5. promote attractive and functional residential, nonresidential, and mixed-use developments that are compatible with the character of the surrounding area.

(b) Procedure
PDs shall be reviewed and approved in accordance with the procedures of Section 20-1304.

(c) Developer’s Statement of Intent
Each PD application shall include a comparison of the proposed development with the standards of the Base District and the otherwise applicable standards of this Development Code. Applications shall also include a Statement by the applicant describing how the proposed development provides greater benefits to the City than would a development carried out in accordance with otherwise applicable Development Code standards.

(d) Effect of Other Development Code Standards
Except as expressly authorized by the regulations of this section and approved as part of a PD plan (in accordance with the procedures of Section 20-1304), all of the standards of this Development Code apply to development within a PD District.

(e) Minimum District Size
Minimum area for a PD district shall be five acres.

(f) Standards Eligible for Modification
As a condition of approval, the Planning Commission or City Commission may designate by ordinance or as a note on the face of the development plan, any specific use, Structure or Building Type which shall be restricted and excluded as part of the Planned Development Overlay District. The City Commission may modify the following standards during the PD approval process. Standards not listed are not eligible for modification.
(1) **Allowed Uses**
The Planning Commission shall recommend, and the City Commission shall approve, a list of uses allowed in a PD at the time of PD preliminary approval. Regardless of the fact that the approved uses may be determined by reference to a Base District, the list of approved uses shall be incorporated into and made a condition of the PD approval. The City Commission may approve only uses that are allowed in the Base District, provided that:

(i) PDs in Single-Dwelling and Multi-Dwelling (RS and RM) Districts may include land area for commercial uses at a ratio of up to 50 square feet of land area per Dwelling Unit.

(ii) Commercial uses, in addition to those otherwise permitted by right, may be approved in a PD in an RS or RM District, if the PD includes a minimum area of 10 acres or more than 100 Dwelling Units.

(2) **Lot Size**
The minimum Lot size standards of the Base District may be reduced by the City Commission, provided that Lot sizes shall be adequate to safely accommodate all proposed Buildings and site features.

(3) **Residential Density**
The City Commission may increase the maximum Net Density beyond that of the Base District by up to 25% if the City Commission determines that such an increase is warranted to support the public benefit likely to result from the proposed development.

(4) **Setbacks**
The minimum Setback standards of the Base District may be reduced by the City Commission, provided that:

(i) Buildings located within the PD, and along any District boundary that is adjacent to RS and or RM Zoning Districts shall be Setback a distance at least equal to the Height of the proposed Building; and

(ii) All exterior walls of detached Buildings shall be separated by a minimum distance of 10 feet.

(iii) Balconies shall not be located along peripheral site Setbacks adjacent to RS zoned properties unless privacy Screening and Landscaping is included in the design.
(g) **Height**
The City Commission may increase maximum Height limits of the Base District if the Commission determines that such an increase is warranted to support the public benefit likely to result from the proposed development. Height increases shall be permitted only for Buildings set back from the boundary of the PD by the Height of the proposed Building plus 25 feet, so that the primary impact of the increased Height is on property within the PD.

(h) **Balconies**
Balconies above the second Story of a multi-Dwelling Unit Building are prohibited along the exterior of a Planned Development unless the Building Setback is increased to at least double the required minimum Setback and Landscaping is enhanced with two or more of the following features: a minimum 4’ Berm, a solid Screening fence (6’ minimum Height) or a masonry wall (6’ minimum Height). This provision shall apply only to those exterior sides of a Planned Development that are adjacent to RS zoning or to detached Dwelling Units.

(i) **Parking and Loading**
The City Commission may decrease the number of off-Street Parking and loading spaces required. Parking and loading areas shall comply with all otherwise applicable design standards.

(j) **Buffer Areas**
Development within 60 feet of the peripheral boundary of the PD shall be limited to the following:

   1. use category, Heights, Setbacks and minimum Lot sizes permitted in the Zoning District immediately adjoining the proposed PD on the date of preliminary development plan approval of the PD; and
   2. a landscaped buffer, including a Berm (minimum 4’ in Height), a masonry wall (minimum of 6’ in Height) or a fence (minimum 6’ in Height).

(k) **Common Open Space**
   1. **Amount Required**
The PD shall include at least 20% of the total site area as Common Open Space. Environmentally sensitive lands, if present, shall be protected and included within the Common Open Space. 50% of the Common Open Space shall be developed as Recreational Open Space unless environmentally sensitive lands are present, in which case the amount of Recreational Open Space may be reduced to no less than 5% and no more than 10% of the
Common Open Space, with the intent being to preserve all or as much environmentally sensitive lands as possible in their natural state.

(2) General Provisions
See Section 20-703 for General Provisions applicable to Open Space in a PD or Cluster Development.

(l) Additional Requirements and Standards

(1) Unified Control
No application for a PD will be accepted or approved unless all of the property included in the application is under unified Ownership or a single entity’s control.

(2) Street Access
PDs that will generate 100 or more average daily trips (based on traffic generation estimates of the Institute of Transportation Engineers’ Trip Generation Manual, 7th edition, or subsequent edition, or based on local estimates provided by the City) shall have Access to an Arterial Street using a Frontage or rear Access road or by taking direct Access to a Collector Street.

Individual residential Building Lot shall not take direct Access to an Arterial Street or a non-Residential Collector Street. Each individual residential Lot shall have Frontage on a public or Private Street that has been constructed to the Public Street standards of the City.

(3) Sidewalks
Sidewalks built to City specifications shall be built along both sides of all public and Private Streets. On Local Streets, sidewalks shall be at least 5 feet in width; on all other Streets sidewalks shall be at least 6 feet in width.

(4) Landscaping
The Landscaping and Screening standards of Article 10 apply to PDs. In addition, any part of the development area not used for Buildings, Structures, Parking, Streets, or Accessways shall be landscaped with a sufficient mixture of grass, vegetative Ground Cover, trees, and Shrubs, except those areas designated to be preserved with natural vegetation.

(5) Preservation of Natural Features
Mature stands of trees or individually significant mature trees, vegetative cover, watercourses and other natural site features shall be preserved to the greatest extent possible. At a minimum the common open space provisions in this section and the standards of Article 10 apply.

(6) Zoning Map
Approved PDs shall be identified on the Official Zoning District Map.

(7) Additional Conditions
The Planning Commission may recommend, and the City Commission may impose, other reasonable conditions and standards, as deemed necessary to ensure consistency with the purposes of this section and those of this Development Code. Such conditions may include limitations on the types of uses, Structures or Building Types to be allowed in the PD. When such
Article 7 – Planned Developments

conditions are imposed, an application will not be deemed approved until the applicant has complied with all of the conditions of approval.

(m) Additional Standards for PD’s with Residential and Nonresidential Uses
In PDs containing both residential and nonresidential uses, the nonresidential uses shall be designed, located, and oriented on the site so that such uses are directly accessible to residents of the PD. For the purposes of this Section, directly accessible shall mean pedestrian/Bicycle and automobile Access by way of improved sidewalks or paths and Streets that do not involve leaving the PD or using a major Thoroughfare. “Directly accessible” does not necessarily mean that nonresidential uses need to be located in a particular location but that the siting of such uses considers the accessibility of the residential component of the PD to the nonresidential use.

20-702 CLUSTER HOUSING PROJECTS

(a) Purpose
The cluster housing regulations of this section have several potential public benefits. They:

(1) provide flexible development options where the standard Lot and Block pattern is not practical because of physical constraints;

(2) promote the preservation of open space and natural areas;

(3) allow for grouping of development on a portion of the site while using the entire site area to calculate Density of the Base District.

(4) support reductions in development costs.

(b) General
(1) A Cluster Housing Project is a subdivision containing five (5) or more detached Dwellings each on its own Lot with some or all of the Lots reduced below required minimum Lot Area and width requirements, but where the overall project complies with the maximum Density standard of the Base District. Cluster Housing Projects require that planning for Lots and the locations of houses on the Lots be done at the same time. Because the allowable Building Envelope of each house is predetermined, greater flexibility in development standards is possible while assuring that the single-Dwelling character of the Zoning District is maintained.

(2) Under the cluster housing option, a subdivision can contain no more Lots than would otherwise be allowed for a conventional subdivision in the same Zoning District, but the individual Lots within the development can be smaller than required in a conventional subdivision. Smaller Lot sizes within a Cluster Housing Project are required to be offset by a corresponding increase in Common Open Space.

(c) Where Allowed; Procedure
Cluster Housing Projects are allowed by right in all residential Zoning Districts and in the CN1 District, as provided below.
(1) In RS Districts and the CN1 District, Cluster Housing Projects shall not include more than 35 Dwelling Units. Larger projects in said Districts are subject to the Planned Development regulations of Section 20-701 and shall be reviewed and approved in accordance with the procedures of Section 20-1304.

(2) Cluster Housing Projects allowed by-right will be evaluated for compliance with applicable regulations and reviewed and approved in accordance with the subdivision procedures of Article 8 review process.

(d) Lot Area and Lot Width Requirements
There are no minimum Lot Area or Lot Width requirements for Cluster Housing Projects. Lots shall be adequate to meet all applicable standards of this Development Code.

(e) Housing Types
Detached Dwelling Units on individual Lots are the only type of housing allowed in a Cluster Housing Project. The proposed Building Envelope for all houses shall be shown on the subdivision plat with enough detail so that compliance with required Density and Dimensional Standards can be determined.

(f) Setbacks
   (1) A Setback equal to the minimum Front Setback of the Base District shall be provided along the entire perimeter of the Cluster Housing Project that is adjacent to any Street or right-of-way.
   
   (2) A Setback equal to the minimum Rear Setback of the Base District shall be provided along the entire perimeter of the Cluster Housing Project that is not adjacent to any Street or right-of-way.
   
   (3) Within the project, the distance between houses shall be at least 10 feet (to be measured in accordance with the Setback measurement provisions of Section 20-602(e)).

(g) Building Coverage
The Building coverage standards of the Base District do not apply to each individual Lot, but the total Building coverage of all Lots (in aggregate) may not exceed the maximum Building coverage standard of the Base District.

(h) Outdoor Area
The required minimum outdoor area standard per Dwelling Units of 240 Sq. Ft. shall be on each Lot.

(i) Common Open Space
   (1) Amount Required
The Cluster Housing Project shall include at least 10% of the total site area as Common Open Space.

Environmentally sensitive lands, if present, shall be protected and included within the Common Open Space. 30% of the Common Open Space shall be developed as Recreational Open Space, unless environmentally sensitive lands
effective July 1, 2006

Land Development Code
Amended November 21, 2008

are present, in which case the amount of Recreational Open Space may be reduced to no less than 5% and no more than 10% of the Common Open Space, with the intent being to preserve all or as much environmentally sensitive land as possible. (Please complete the sentence.)

(2) General Provisions
See Section 20-703 for General Provisions applicable to Open Space in a Planned Development or Cluster Housing Project.

20-703 OPEN SPACE STANDARDS IN CLUSTER AND PLANNED DEVELOPMENTS

(a) Preservation Required
The Open Space land shall be preserved and maintained solely for the purposes specified in this Section and in such a manner as may be acceptable to the City Commission. The method for accomplishing such preservation and maintenance of Open Space land shall be limited to one of the following:

(1) establishment of a mandatory-membership homeowner’s association to own and maintain the land in common for the Open Space purposes intended; or

(2) transfer of the land to a conservation trust or an institution, person, organization or other conservation-oriented entity together with the requisite requirements for maintenance of the land for the Open Space purposes intended; or

(3) dedication of the land to the City with executed deed restrictions that the City is party to, which ensure the land shall remain as dedicated open space, subject to City Commission acceptance of such dedication.

(b) Execution of Instruments
The City Commission shall require the Developer or Owner of the Open Space land to execute, acknowledge and file at the Register of Deeds office such maps and documents as, in the opinion of the Director of Legal Services, will effectively create a trust, Easement or covenant running with the land, for the benefit of the property owners in the development and of the City, which:

(1) will be binding on all future Owners of the Open Space land;

(2) will not be affected by any subsequent changes in zoning;

(3) may be enforced by property owners in the development or the City by appropriate action in court for damage or equitable relief;

(4) will be perpetual;

(5) will assure appropriate maintenance of the Open Space land to the satisfaction of the City Commission;

(6) shall provide that if maintenance, preservation and/or use of the Open Space land no longer complies with the provisions of the trust, Easement
or covenant, the City may take all necessary actions to effect compliance and assess the costs against the Owner in default;

(7) shall provide that such trust, Easement or covenant may not be modified, altered, amended, or changed without written approval of the City Commission, and all beneficiary property Owners in the PD or Cluster Housing Project except in the case of City-owned land in which case deed restrictions shall be binding.

Aside from the general criticisms that the sensitive land should be identified first and set aside as undevelopable, and the process and development should be designed around saving it, there are some new points that this version raises:

1. The cluster development provides one of the easiest methods to preserve sensitive land.
2. The system automatically provides a bonus because the allowed density is based on lot sizes as in standard single family districts, but as the open space increases the number of dwellings originally permitted remains unchanged. Reducing the lot size but maintaining the original number of dwellings provides the bonus. The concept of "base density" and bonus units is unnecessary because there is no loss of originally allowed development units.
3. Prairies and slopes are unlikely to be preserved here because only where there are other types of sensitive land preserved first will they be preserved, and then only if the bonus provisions take effect. Prairies usually are located away from other types of sensitive land. Prairies are irreplaceable and should be preserved.
4. If a cap is to be placed on amount of sensitive land required to be preserved then the types listed here should not include those required to be preserved by other laws: Floodways, wetlands, etc. They should automatically be identified and set aside.
5. The approval process should require submittal of the sensitive lands site plan initially with the application so that the staff and developer will know before expending time and effort what land can be developed. A development should be designed around preserving the sensitive land, not the reverse.
6. Driveways should not be included in the common open space (see annotation for 20-1701).
7. Steep slopes should be on the priority list to preserve. Potential historic and archeological sites should also be included; not just those already registered (which must be preserved anyway).
8. Intermittent streams can be just as important as those flowing. It's not clear whether intermittent streams with defined channels count.
ARTICLE 11. GENERAL DEVELOPMENT STANDARDS

20-1101 Protection Standards for Residential Districts
20-1102 Intersection Visibility
20-1103 Outdoor Lighting
20-1104 Performance Agreements; Guarantees
20-1105 Sidewalks
20-1106 Agreement Not to Protest Formation of a Benefit District
20-1107 Retail Market Impact Analysis
20-1108 General Development Standards for Mixed Use (MU) Districts

20-1101 PROTECTION STANDARDS FOR RESIDENTIAL DISTRICTS

(a) Design and Operational Compatibility Standards—Discretionary Approvals
As a condition of approval of any Special Use Permit, Map Amendment, site plan or other discretionary approval of any multi-Family use or nonresidential use located within 500 feet of any less intensive residential district, the City Commission, Planning Director, Planning Commission or other review body may impose conditions that exceed the minimum requirements of this Chapter and that, in the opinion of the review body, are necessary to reduce or minimize any potentially adverse impacts on residential property, including, but not necessarily limited to, the following:

1. location on a site of activities that generate potential adverse impacts on adjacent uses, such as noises and glare;
2. placement and buffering of trash receptacles;
3. location of loading and delivery areas;
4. lighting location, intensity, and hours of illumination;
5. placement and illumination of outdoor vending machines, telephones, and similar outdoor services and activities;
6. additional Landscaping and buffering;
7. Height restrictions to preserve light and privacy and views of significant features as viewed from public property and rights-of-way;
8. preservation of natural lighting and solar Access;
9. ventilation and control of odors and fumes; and
10. paving or other surface treatment for dust control.

(b) Height Limit on Projects Adjoining Certain Residential Zoning Districts
See Section 20-701(g) for Height limits in the PD district.

(c) Balconies of a multi-Dwelling Unit Building
Balconies above the second Story of a multi-Dwelling Unit Building are prohibited along the exterior of a RM development unless the Building Setback is increased to at least double the required minimum Setback and Landscaping is enhanced with two or more of the following features: a minimum 4’ Berm, a solid Screening fence (6’ minimum height) or a masonry wall
(6’ minimum height). This provision shall apply only to those exterior sides of a Planned Development that are adjacent to RS zoning or to detached Dwelling Units.

(d) Standards for Environmentally Sensitive Lands

(1) Applicability
The provisions of this Article regarding environmental protection for sensitive lands shall apply to all construction and development in all RS and RM Districts, with the exception of individually platted lots for single or duplex dwellings which were platted prior to the effective date of this Text Amendment.

(2) Environmentally Sensitive Lands
   (i) Protected Areas.
       If 500 sq ft or more of a proposed development consists of lands falling in the following categories, any proposed development may proceed only in accordance with the processes allowed by this section. The lands affected by this section are listed below in a priority order for protection:

       a. Regulatory Floodway, designated on the FEMA Flood Insurance Rate Map for Douglas County and identified on the City GIS Baseline Environmentally Sensitive Areas Map;

       b. Regulatory Floodway Fringe, designated on the FEMA Flood Insurance Rate Map for Douglas County based on 100 year storm and identified on the City GIS Baseline Environmentally Sensitive Areas Map,

       c. Jurisdictional Wetlands, as determined by the Army Corps of Engineers.

       d. Stream Corridors as defined in this Code and identified on the City GIS Baseline Environmentally Sensitive Areas Map

       e. Stands of Mature Trees as defined in this Code and identified on the City GIS Baseline Environmentally Sensitive Areas Map;

       f. Archaeological and Historic Sites listed on local, state, or federal registers.

   (ii) Determination of Development Land Area
       In determining whether a portion of a proposed development consists of sensitive lands, all contiguous lands under the same Ownership or control shall be considered. Lands owned or controlled by a partnership, trust or corporation under the same effective control shall be considered, along with lands owned directly by the applicant and lands under option to the applicant or a partnership, trust or corporation under the effective control of the applicant.

(3) Protection Standards
   (i) Amount Required
       The minimum amount of environmentally sensitive lands which are required to be protected in Planned Developments and Cluster Housing Projects are noted in Sections 20-701 and 20-702 respectively. For other types of developments, required protection of environmentally sensitive lands shall be limited to a

The regulatory floodway and jurisdictional wetlands by law cannot be built on or disturbed. These limitations should be enforced, but should not add to the required amount of open space protected as environmentally sensitive.
maximum protection area of 20% of the total land area. The protected environmentally sensitive lands shall be set aside as private Common Open Space or dedicated to the City as parkland or open space. Incentives for protection of environmentally sensitive lands in amounts above 20% of the total land area are included in Section 20-1101(f).

(ii) Development Process
Development on land which contains more than 500 square feet of environmentally sensitive lands shall require submission of a Sensitive Areas Site Plan [see Section 20-1101(f)], and may proceed through one of the following processes:

a. Site Planning. Development on properties containing more than 500 square feet of environmentally sensitive lands shall require submission of a Sensitive Areas Site Plan [see Section 20-1101(f)], which may be consolidated with any other required site plan submitted, but will be, in any event, required prior to approval of a development proposal.

b. Platting. Environmentally sensitive lands to be protected shall be located within tracts and/or easements. Information regarding ownership and maintenance responsibility of the tract or easement, as well as protection measures, shall be included on the preliminary and final plat.

c. Planned Development. Development standards in Section 20-701 apply. Environmentally sensitive lands to be protected shall be included within the Common Open Space.

d. Cluster Housing Project. Development standards in Section 20-702 apply. Environmentally sensitive lands to be protected shall be included within the Common Open Space.

4. Effect of Protection Standards on Development Density
Where the types of lands listed in Section 20-1101(d)(2)(i) are included in a proposed development, that land may be included in determining the allowable Density or intensity of development and the allowable density, calculated on the total land area, may be transferred to other developable portions of the property.

4. Density Bonus Incentives for Protection of Additional Lands
Density bonuses are available to encourage the protection of environmentally sensitive lands in a greater amount than required.

1. Applicability
A development shall qualify for a density bonus if environmentally sensitive areas noted in this Section are committed for preservation either through designation as a tract, through a conservation or landscape easement, or dedication to the City in addition to the area required in Section 20-1101(d)(3)(a).

i. Native prairie remnants and/or slopes of 25% or greater can be included in the protected lands for this incentive, provided the required area being protected with features listed in Section 20-1101(d)(2)(i) equals or exceeds 20% of the total developable area.
Article 11 – General Development Standards

(2) Approval Criteria

(i) In addition to these regulations, development on properties with certain environmentally sensitive lands, such as the regulatory floodway, may be restricted by state or federal regulations.

(ii) In order for a density bonus to be approved, City planning staff must determine that utilities and infrastructure are available to serve the additional density proposed and the design of the development does not negatively impact adjacent properties.

(iii) Land offered for dedication shall be subject to approval by the Governing Body.

(3) Density Bonus -- Increase in Number of Dwelling Units.

(i) Determination of Base Density.
The Base Density, the number of dwelling units which can be developed on a property, will be determined from a ‘concept plat’ or sketch plan provided by the applicant which shows the basic street layout and rights-of-way, the areas necessary for stormwater detention (based on an approved conceptual drainage study), the 20% of the site which is being protected with environmentally sensitive lands, and proposed lot layout in conformance with density and dimensional standards in Section 20-601.

(ii) Determination of Density Bonus.
If the density bonus meets the criteria noted in Section 20-1101(e)(1), the density bonus to be applied to the base density shall be calculated using the proportions in Table 1.

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a. The density may exceed the Density Cap in multi-dwelling districts.
b. The density may equal but may not exceed the Density Cap for single-family and duplex districts.
c. Density Caps set by the Comprehensive Plan are noted in Table 2.
(iii) Standards Adjustment

a. In single-dwelling and duplex-dwelling zoning districts, it may be necessary to reduce the lot area and/or lot width requirements to permit the allowable density. These modifications may be made to the minimum degree necessary to accommodate the allowable density.

b. In multi-dwelling districts, it may be necessary to increase the height limitation, in addition to adjustments to the lot area and/or lot width requirements, to permit the allowable density. These modifications may be made to the minimum degree necessary to accommodate the allowable density.

(4). Density Bonus -- Increase in Developable Square Footage.

This bonus permits the construction of larger structures, and/or the addition of more impervious surface on a lot, rather than an increase in the number of dwelling units. The proportions listed in Table 3 apply to the increase in developable square footage. Each 1% of protected environmentally sensitive lands protected above that required by Code results in a 1% increase in the building or impervious surface coverage up to a maximum of 40%. (In no case shall the building coverage or impervious surface coverage exceed 90% of the lot).

(i) Standards Adjustment

In some cases the minimum outdoor area or setbacks may need to be reduced to accommodate the additional building or impervious surface coverage. This reduction may be made to the minimum degree necessary to accommodate the additional building or impervious surface coverage.
**Article 11 – General Development Standards**

Prior to development on land containing more than 500 square feet of environmentally sensitive lands listed in Section 20-1101(d)(2)(i), a Sensitive Areas Site Plan shall first be submitted to and approved by the City in accordance with the requirements of Site Plan Review Section 20-1305 including the public notice procedure of Section 20-1305(g).

**(1) Sensitive Areas Site Plan Contents**

The Sensitive Areas Site Plan must be prepared in accordance with the requirements in Section 20-1305(f) with the exception that a Sensitive Areas Site Plan is not required to be completed by an engineer, architect or other qualified professional. In addition to the contents noted in Section 20-1305(f), the site plan shall:

**(i)** Clearly delineate the property boundaries.

**(ii)** Clearly delineate the boundaries of the environmentally sensitive lands listed in Section 20-1101(d)(2)(i).

**(iii)** Designate protected lands per the priority order in Section 20-1101(d)(2)(i).

**(iv)** Provide information on the ownership and maintenance responsibility for the protected lands.

**(v)** Provide information on the methods to be used to protect environmentally sensitive lands, both during construction and after.

*for each 1% protection above the required 20%  (to maximum of 40%)

**20-1101(e)-TABLE 3**

Density Bonus — Increase in Developable Area

| Zoning District | Maximum Building Coverage (%) | Maximum Impervious Coverage (%) | Min Outdoor Area per Dwelling (sq ft) | Int Side Setback (ft) | Front Setback (ft) | Rear setback (ft) | Single frontage / double frontage |
|-----------------|-------------------------------|---------------------------------|--------------------------------------|----------------------|-------------------|-----------------|--------------------------------|}
| RS40            | 15                            | 25                              | --                                   | 20                   | 25                | 30/35           |
| RS20            | 30                            | 50                              | --                                   | 20                   | 25                | 30/35           |
| RS10            | 40                            | 70                              | --                                   | 10                   | 25                | 30/25           |
| RS7             | 45                            | 70                              | --                                   | 5                    | 25                | 30/25           |
| RS5             | 50                            | 75                              | 240                                  | 5                    | 20                | 20/25           |
| RS3             | 50                            | 75                              | 150                                  | 5                    | 15                | 20/25           |
| RSO             | 50                            | 75                              | --                                   | 5                    | 25                | 20/25           |
| RM12D           | 50                            | 75                              | 50                                   | 5                    | 25                | 20/25           |
| RM12            | 50                            | 75                              | 50                                   | 5                    | 25                | 20/25           |
| RMO             | 50                            | 75                              | 50                                   | 5                    | 25                | 20/25           |
| RM15            | 50                            | 75                              | 50                                   | 5                    | 25                | 25/25           |
| RM24            | 50                            | 75                              | 50                                   | 5                    | 25                | 20/25           |
| RM32            | 60                            | 80                              | 50                                   | 5                    | 25                | 20/25           |

* for each 1% protection above the required 20%  (to maximum of 40%)

[Followed by remainder of Article 11.]
ARTICLE 17
Proposed revisions to definitions in Section 20-1701:

Common Open Space: Land, water body, water course, or drainageway within a development that is designed and intended for the use or enjoyment of all the residents and Landowners of the Development. Common Open Space, except for Common Open Space designated as Environmentally Sensitive Lands, may contain such supplementary structures and improvements as are necessary and appropriate for the benefit and enjoyment of all the residents and Landowners of the Development. Common open space shall not include space devoted to streets, alleys, or parking areas. While required setbacks may function as common open space, they may not be used to meet the minimum requirements. This is an essential additional statement but also should include driveways and required distance between buildings.

Jurisdictional Wetland: Wetlands which are regulated by Section 404 of the Clean Water Act and are under the regulatory jurisdiction of the Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA).

Mature Trees, Stand of: An area of ½ acre (21,780 sq ft) or more located on the ‘development land area’, per Section 20-1101(d)(2)(ii) or on other contiguous residentially zoned properties, containing trees that are 25 feet or more in height, or are greater than 8” caliper, in an amount adequate to form a continuous or nearly continuous canopy. (Canopy may be determined from resources such as, but not limited to, NAIP, National Agricultural Imaging Program; City/County GIS aerials; and field surveys.)

Stream Corridor: A strip of land 100 feet wide, of which the centerline shall be the centerline of a stream that is not an ephemeral stream: a stream where flow occurs for only a short time after extreme storms and does not have a well-defined channel, similar to a drainage way.

Base Density: The number of dwelling units that can be developed on a subject property, rather than the number of dwelling units that are permitted for the zoning district. Base density is the number of dwelling units that can be developed given the size of the parcel, the area required for street rights-of-way or infrastructure, the density and dimensional standards of Section 20-601(a), the environmental protection standards, as well as topographical or other features unique to the property.

Density Bonus: An incentive-based tool that permits property owners to increase the maximum allowable development on a property in exchange for helping the community achieve public policy goals, such as protection of environmentally sensitive areas.

Density Cap: Maximum density levels set by the Comprehensive Plan. Low-density (6 dwelling units per acre); medium density (15 dwelling units per acre) and high density (24 dwelling units per acre).
To: Lawrence/Douglas County Metropolitan Planning Commission Chair and Members  
From: Jayhawk Audubon Society  
Re: Item #5: Amendments to the Development Code related to Environmentally Sensitive Areas  

Dear Planning Commission Members:

Jayhawk Audubon Society has been working for more than 40 years to inform the public about the value of conserving the rich heritage of our local natural resources: our prairies, rivers and streams, forests, wetlands, agricultural lands and other natural features.

In reviewing the language of both the Draft Chapter Sixteen on Environment and the ECO² Open Space Preservation Plan, it is interesting to note that neither document refers to the regulatory floodway as needing special protection. This is true because floodways are protected by federal regulations. It would be foolish to try to build a habitable structure in a stream or river. These areas are not build-able and thus should not be included when making the calculation of the amount of “open space” in Cluster or Planned Developments. The same should be true for the 100-year regulatory floodway fringe, which is also governed by federal regulations. Therefore, although these regulations must be enforced, it seems most logical to include a “Whereas” type statement that spells out the intent to follow federal law in this regard rather than to include them as part of the Environmentally Sensitive Lands sections.

On the other hand, we totally agree that the riparian (vegetated stream side) areas, outside of the 100-year FEMA boundaries, should also be protected and included in those computations. And again, referring to the Draft Chapter Sixteen on Environment, which recognizes the many benefits of protecting riparian areas, we encourage you to adopt language that encourages the ultimate goal of a system of linked stream-side corridors throughout the city and county. Such a system provides protection for sensitive areas, affords recreational trails, enhances water quality and the aesthetics of a neighborhood and city. Furthermore such a system of linked trails closely matches and fulfills some of the Open Space goals of ECO².

Finally, although we have been following this issue for quite a while, Audubon conflicts have kept me from attending many of the hearings. We are surprised and astounded that native prairies no longer appear in the list of Environmentally Sensitive Lands to be protected. Douglas County once was more than 90% prairie according to early agricultural publications. Today, less than 5% of those prairies remain. A high-quality prairie may contain more than 200 different plant species. Once plowed, it is nearly impossible to restore it fully to its previous state.  
**Frankly, it seems with so few remnant prairies still in existence, all such areas should be totally protected from development.** Furthermore, other land should be in added to the requirement for open space in cluster and planned development.

To omit prairies as a defined sensitive land is a significant oversight at best. We believe that there may be an error in that omission: in section 20-1101(d) (2) (page 11-2) prairie areas are not listed; however, on page 11-6, section 20-1101 (1) Applicability subsection i states that *Native prairie remnants and/or slopes of 25% ... can be included....* This needs to be clarified with the inclusion of prairie areas and steep slopes as part of Environmentally Sensitive Lands to be
protected. Again in both documents previously referenced, prairies are mentioned as needing preservation. We believe that the policies in the Chapter on Environment need to be realized in “on the ground” development code regulation and implementation.

We appreciate this opportunity to provide comments on this document.

Sincerely,

Joyce A. Wolf,
Board Member of JAS
PLAT REVIEW
To determine if a ‘standard base density’ could be established for Lawrence, I reviewed several plats which have been submitted since 2005. A summary of the actual densities which were achieved for the various plats is in Table 1. Information and graphics for each plat follow. The 4th column in the table shows the actual density which was obtained with developments which would be the basis for the ‘base density’. In a few cases, the net area did not include drainage areas; therefore, the density was higher. The Development Code defines ‘net density’ as the number of dwelling units per area of land excluding the rights-of-way of publicly dedicated streets. The Plats that calculated density based on the area minus right-of-way and drainage area or open space are noted in bold print.

Planned Developments were not included in this review as they have additional common open space and peripheral boundary requirements that are not required with traditional plats.

DISCUSSION:
While the ‘standard base density’ seems the easiest and most predictable approach, it does not take into account the unique nature of each property. Using a ‘standard’ base density may result in a property that could only develop at a density of 3.2 dwelling units per acre to be granted a density bonus on the standard base density of 4.54 (RS7 property). Using the standard base density may result in inequitable bonuses.

Base Density for RS7 District range from 2.24 du/acre (Cypress Park) to 5.34 du/acre (Glenwood Addition). The average density for the RS7 District is 4.4 du/acre. This is approximately 73% of the maximum permitted density. We have not had many plats for RS3, RS5, or RS10 Zoning Districts, so it is not possible to determine the average density for these districts.
**Stone Meadows South**  
(SW corner of Inverness and Clinton Pkwy)  
Rights-of-way: 6.07  
Net Area: 15.92

**multi-dwelling**  4.12 acre  RM1—now RM12  
density permitted by RM1→now RM12—12 du/acre: 49 du  
# of dwelling units: based on site plans (sp-10-64-94 and sp-11-67-94) 32:  
**Actual density:**  7.77 du/acre

**single-dwelling**  11.8 acre  RS2—now RS7  
density permitted by RS2→now **RS7  6.22 du/acre**—73 lots (du)  
**Actual density:**  59 lots (du) 11.8 acre—density→**4.66 du/acre**
**Spring Hill No. 2:**

SW Corner Peterson Rd and Monterey Way
Zoned for RS-2 (now RS7) single-dwellings and PRD-1. (no info at this time on the PRD portion)

Gross Area: 19.3 acres
Gross Area: PRD: 11.33 acres—

**single-dwelling RS2—now RS7**
density permitted by RS2→now **RS7 6.22 du/acre**—39 lots (du)
Actual density: 23 lots (du) 6.38 acre—density→ **3.60 du/acre**

*(possible reason for lower density could be the larger lots required around a cul-de-sac.)*

If 40% of the site were protected, 20% over the required amount, 20% increase in density. 4 additional lots or 27 lots (27/4.56 acres=5.92 du/acre. **This would still be below the density cap of 6.22 du/acre.** Lot width and area could be revised to permit this increase in density.
**Lake View Addition No. 2**
N of Clinton Pkwy east of K10

**RM12: 12 du/acre**
RM12 Lot 1 Block 1 Net Area—16.20 acres
Permitted density= 194 current code
**Actual density** from site plan SP-04-25-04: Units= 108—density → **6.66 du/acre**

**RM24: 24 du/acre**
RM24 Lot 1 Block 2, Net Area=5.87 acres
Permitted density=128 du/acre (140 current code)
**Actual density**= (from site plan SP-1-8-06 for Lake Pointe Villas) 42 units → **7.1 du/acre**

Lower density for this portion explained by use of private streets and development in a more duplex nature rather than apt complex

RM12 Portion of Lake View Addition—4 plexes
Lakes Estates at Alvamar;
NE Corner 22 Terr and Lake Pointe Dr
Zoned for RS-1 and RS-2 (now RS 10 and RS7) single - dwellings
Gross Area: 12.59 acres – Right-of-way: 2.54 acres - **Net area 9.60 acres**

3.63 acres zoned to RS1 and 5.03 zoned to RS2 by CC on 3-15-05; the areas are not calculated for each zoning district on the plat. Using the zoning percentages, the density calculations are based on the following net areas (which may be incorrect)—RS1 = 42% of total; RS2 = 58% of total (8.66)
Net area for RS1= 42% of 9.60= 4 acres
Net area for RS2= 58% of 9.60= 5.6 acres

**single-dwelling**

density permitted by RS10= **4.36 du/ acre**—17 lots
Actual density: 11 RS10 lots (du) 4 acre---density → **2.75 du/acre** (63% of permitted)

density permitted by RS7= **6.22 du/ acre**—34 lots (du)
Actual density: 24 lots (du) 5.6 acre---density → **4.28 du/acre** (69% of permitted)
(possible reason for lower density could be the larger lots required around a cul-de-sac.)
Sherylville Estates
(1600-1800 Riverridge Road)
Zoned for single-dwellings. Gross Area: 5.71 acres
Rights-of-way: 1.15
Net Area: 4.56 (calculated by adding all lot areas on final plat)

**single-dwelling** 4.56 acre RS2—now RS7
density permitted by RS2→6.22 (now **RS7 6.22 du/acre**)—28 lots (du)

Actual density: 19 lots (du) 4.56 acre—density→**4.16 du/acre**
(dif in density accounted for by corner lots on exterior curve and 2 very large lots)
The Exchange at Lawrence
(31st and Ousdahl)
Zoned for multi-dwellings. Gross Area: 24.46 acres
Rights-of-way: 1.13 acres

Net Area: 23.33 acres

Zoning
RM-15
Permitted density = 15 du/acre = 350 du/acre
Actual density = 324 dwelling units / 23.33 acres = 13.89 du/acre
Glenwood Addition;
(SE corner of Wakarusa and Eisenhower Drives)
  Rights-of-way: 0
  Net Area: 12.623 acres

**multi-dwelling** 10.561 acres RM1—now RM12
density permitted by RM1 → **12.4 du/acre** (now RM12—12 du/acre) 130 (126 current code) du
density for multi-dwelling is not available

**single-dwelling** 2.06 acre  RS7
density permitted by RS7→6.22  —12 lots (du)
Actual density: 11 lots (du) 2.06 acre—density → **5.34 du/acre**
Remington Sq
South of Clinton Pkwy, to the west of Crossgate
Zoned for multi-dwellings RM15.
Net Area: 15 acres

Multi-Dwelling
Density permitted by code: 15 du/acre
224 Dwelling units per Site Plan SP-06-38-08
Actual Density: 14.93 du/acre
Green Tree Subdivision #3;
GWW & Harvard Rd
Zoned for single - dwellings. RS7
Gross Area: 6.266 acres
Rights-of-way: 0
Net Area: 6.266 acres
density permitted by RS7 → 6.22 du/acre: —38 lots (du)
Actual density: 28 lots (du) 6.266 acre---density → **4.46 du/acre**
(dif in density accounted for by corner lots on exterior curve and 2 very large lots)
**Doolittle Subdivision;**

515 Monterey Way  
Zoned for single - dwellings. RS7  
Gross Area: 10.281 acres  
Rights-of-way: 2.304 acres  
Tracts (drainage): .846 acres  
Net Area: 7.131 acres

Density permitted by RS7 → 6.22 du/acre: 44 lots (du)

Actual density: 41 lots (du) 7.131 acres---density → **5.74 du/acre**
(density slightly higher as drainage easements were not included in the net area. If they had not been removed the net area would have been 7.977 acres and density would have been: **5.13 du/acre**)
**Cypress Park Addition:**

1801 Learnard Avenue -
Zoned for single-dwellings. RS7
Gross Area: 2.23 acres
Rights-of-way: 0
Net Area: 2.23 acres
density permitted by RS7 → 6.22 -- 13 lots (du)
Actual density: 5 lots (du) 2.23 acre --- density → 2.24 du/acre

(Unique subdivision where very long lots were divided using flag lots. Not a typical sample)
**Langston Heights;**
- Zoned for multi- (RM12D) and single - dwellings (RS7).
- Gross Area: 27.57 acres
- Rights-of-way: 8.00 acres
- Net Area: 19.57 acres

**Multi-dwelling** RM12D—12 units per acre
- Gross Area—6.79 acre
- r-o-w 1.79 acre
- net area 5.00 acre
- number of dwelling units: 36
- density permitted by RM12-D 12 du/acre → 60 units
- **Actual density:** 36 dwelling units → **7.2 du/acre**

**single-dwelling**
- gross area 20.78 acre
- r-o-w 6.21 acre
- net area 14.57 acres
- density permitted by RS2 → 6.22 --90 lots (du)
- **Actual density:** 67 lots (du) 14.57 acre---density → **4.59 du/acre**

---
Not recorded---no image available
Langston Heights
Mary's Lake Addition;
Zoned for single-dwellings. RS7
Gross Area: 15.98 acres
Tract A (open space): 5.862 acre
Rights-of-way: 1.863
Net Area: 8.253

density permitted by RS7 $\rightarrow$ 6.22 du/acre—51 lots (du)
Actual density: 39 lots (du) 8.253 acres---density $\rightarrow$ **4.73 du/acre**

*Net area does not include the open space tract which results in a lower density*
**Mercato Addition 2nd Plat:**
NE corner of W 6th St and K-10 Bypass
Zoned for single-dwellings RS7; multi-dwellings RM12D and RM24

**Single-dwelling: RS7**
- Gross Area: 25.82 acres
- Tract (detention): 3.30 acre
- Rights-of-way: 6.01
- Net Area: 16.51

Density permitted by RS7 → 6.22 du/acre—102 lots (du)
Actual density: 75 lots (du) 16.51 acres—density → **4.54 du/acre**

**Multi-dwelling: RM12D**
- Gross Area: 7.63 acres
- Right-of-way: 2.06
- Net Area: 5.57 acres

Density permitted by RM12D—12 du/acre—66 du
Actual density: 36 du 5.57 acres—**6.46 cu/acre**

**Multi-dwelling: RM24**
Not site-planned, no density determined
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<th>Plat</th>
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<th>Area (acres)</th>
<th>‘Base Density’ (du/acredu)</th>
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<th># of DU—with 20% bonus (max.)</th>
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* Plats which may exceed the density cap

**Table 1.** Summary of density info from plat review
REVIEW OF OTHER COMMUNITIES DENSITY BONUS PROGRAMS

(My notes are in green)

Austin TX
1. Density bonus recommendations following review of peer cities
   http://www.ci.austin.tx.us/downtown/downloads/db_1_density_bonus_recs.pdf
2. Downtown density program

Recommendations 2007
Greater density in exchange for community benefits: affordable and workforce housing, child and elder care, open space, pedestrian connectivity, transit, green building, historic preservation, preservation of community features, area for non-profits, public art, cultural facilities.

Downtown density program (draft 2009)
Principles:
1. Density should be encouraged, not penalized
2. Existing zoning should be retained as the base for the program
3. High quality urban design should be required
4. There should be one, administrative and predictable pathway to a density bonus.
5. Additional density should be allowed only where appropriate and compatible
6. Community benefits derived from density bonuses should be focused on the most ‘at-risk’ elements.

The program set different density bonuses for each of the goals. This would not be applicable to our program where we have only the one goal (however, we may have subsets of the goal, such as protection of contiguous wooded areas, or protection of some env sensitive features more than others).

Develop a transparent and understandable system for awarding additional density, above that which is allowed by established zoning.

Definition of density: “A density bonus is an incentive-based tool, which permits developers to increase the maximum allowable floor area or height on a property in exchange for helping the community achieve public policy goals.” (page 5)

Density bonuses are effective when they result in clear benefits to both the property developer and the community.

The density bonuses proposed in Austin are expressed in FAR, which would not be applicable to our Code.
Community benefits (may be either –on or off site):

1. permanent easement (conservation easement): agricultural conservation, open space, scenic, ecological or other type of easement would be acceptable.

2. Permanent protection in fee simple. Executed purchase contractor transfer of ownership of title required

This incentive permits density increase up to 100% of the original base density----
For SF residential---1 unit density increase is permitted for each 3 acres protected.
For MF residential--- increase equal to the development potential for site that is set aside; for each 2 acres protected

Pre-application review.
Application shall include the following:
- requested incentive
- proposed amenity
- map showing constrained and unconstrained land
- the proposed unconstrained land which is the basis for the requested incentive must be specifically identified on the map
- Base density calculation must be provided

Must determine that City services are available to serve the additional density.

(Clifton requires PC review and recommendation to CC who approves or denies the request. This may be a deterrent to the incentive.)

Ashland OR

A. Base Densities: the density of the development shall not exceed the density established by this Section. The density shall be computed by dividing the total number of dwelling units by the acreage of the project (including land dedicated to the public) fractional portions of the final answer, after bonus point calculations shall not apply towards the total density.

They capped their density bonus at 60% and in no case could it exceed that recommended by the Comp Plan.
“A density bonus is an incentive-based tool that permits developers to increase the maximum allowable development on a property in exchange for helping the community achieve public policy goals. Increasing development density may allow for increases in developed square footage or increases in the number of developed units.”

A density bonus is commonly used to promote conservation or improvement of natural resources and open space. A community may allow a developer to build more units than is permitted in an area in exchange for permanently protecting green spaces---this technique can be used to protect land on the property being developed or on another property. I would recommend we tie it only to the land being developed. Using off-site lands, may result in incentives being provided for the protection of a site for which there are no plans to develop.

- Policy language should identify allowable density increases (i.e. total number of units or maximum square footage).
- If resources are to be protected, legal means---such as easements, must be included.

Pre-application meeting to see if the incentive qualifies for the bonus
Staff review the plan or plat to determine that the bonus does not adversely effect adjacent properties and that utilities are available to serve the additional density
Land set aside for protection must have restrictions or easements recorded on the deed before construction activity begins to insure they are not developed in the future
I. Relevant Facts

A. Background - History of Application

The application was noticed for the August 8, 2006 meeting, but the applicant postponed the review prior to the meeting. The applicant decided to make some adjustments to the alley location and building envelopes to preserve four trees on the site.

There are no other planning actions of record for this site.

B. Detailed Description of the Site and Proposal

The project site is situated on the west side of N. Mountain Ave., near the railroad tracks and right-of-way. The site is u-shaped, and is comprised of three parcels as well as the
westerly corner of 185 N. Mountain Ave., the Havurah Shir Haddash Jewish Temple. Two of the parcels are vacant, narrow, triangular shaped pieces of land adjacent to the north side of the railroad right-of-way. The bulk of the site is from the property located at 203 N. Mountain Ave. A single-family residence and an outbuilding are situated near Mountain Ave. on the property. The westerly two-thirds of the site is vacant.

The site is moderately sloped averaging approximately a four percent downhill slope to the north. A drainage, identified as Mountain Creek in the City of Ashland Stormwater and Drainage Master Plan June 2000, runs from south to north along the sites western edge. A wetland has been preliminarily delineated on the western side of the site, adjacent to Mountain Creek. The application includes a tree inventory which identifies six trees sized six inches diameter at breast height (dbh) and greater. The tree inventory does not include the trees located in the vicinity of the wetlands and Mountain Creek. The trees are located in the N. Mountain Ave. right-of-way, around the existing house and in the vicinity of the wetlands and Mountain Creek.

The subject parcel as well as the surrounding properties to the north and east are located in the R-1-5 Single-Family Residential zoning district. The area on the west side of Mountain Creek and north of the railroad tracks is located in the E-1 Employment zoning district. The area immediately west of the subject site is vacant.

1. Outline Plan for Performance Standards Options Subdivision

The applicant is requesting Outline Plan approval to subdivide the property for the development of 13 single-family homes. Four of the thirteen homes would be in an attached, duplex format, and the remaining nine units would be detached units. The existing home would be preserved in the current location on one of the 13 lots. A sample elevation is provided for the residential units.

The proposal is to provide access to the subdivision by constructing a new public street connecting to N. Mountain Ave. and running along the north side of the site. When the properties to the north and west eventually develop, the street would be extended to the northwest and north to serve those properties. The frontage of the property located at 203 N. Mountain Ave. will be improved with a parkrow and sidewalk to city standards.

An alley connecting to the new street would provide vehicular access to the 11 of the residential units. The existing home and adjacent lot would be served by a shared driveway near the easterly end of the new street. The application describes Lots 1 - 11 as having two off-street parking spaces, and lots 12 and 13 as having three parking spaces. On-street parking spaces are available on the new street.

The proposed open space area is an area 25,870 square feet in size (.59 Ac.), which is 23 percent of the total site area. The preliminary determination of the boundary of the wetlands is included in the application site plan, and identifies a wetland which is approximately 4,780 square feet in size. The proposal is to retain the wetland and include it in the open space area on the western end of the
site. Approximately half of the open space area is comprised of the wetland and creek. The remainder of the open space area is comprised of the long narrow area adjacent to the railroad right-of-way. The application says that the wetland and surrounding open space area will be left in a natural state. The application goes on to say that “the applicants’ intentions are to remove the invasive Blackberry overgrowth, retain all trees within the wetland area, and retain the wetland habitat as a natural open space corridor.”

a) Public Facilities

The existing and proposed public facilities are generally discussed in the application narrative. Utility lines are indicated on the site plan, but are not labeled or sized. The application states and the plan notes that all primary utilities will be extended in the new road, alley or public utility easement. The application also states that the lines in the new street will be “upsized, in cooperation with the City, in order to accommodate future capacity needs.” Existing and proposed upgrades include:

- Existing water and sanitary sewer facilities are not addressed in the application. Extensions and sizes of water and sanitary sewer utilities are not delineated on the plan.

- Three scenarios for storm drainage are described as being researched for Final Plan application. The first option is to install a pipe from the site and in N. Mountain Ave. to the existing storm drain system in Village Green Drive. The drainage from Village Green Drive is directed to Beach Creek. The second option is to drain storm water into Mountain Creek, possibly using a detention system. The third option is a combination of the previous two options.

- Existing electric utilities are not addressed in the application. Electric utilities and layout to serve the subdivision are not delineated on the plan.

- Paved access is provided by N. Mountain Ave., as well as by the proposed new street running through the site. The proposal is to build a “half-street” improvement. The easterly 70 feet of the street would include a two travel lanes and a parkrow and sidewalk on the south side of the street. The remaining 410 feet would include two travel lanes, parking on the south side of the street, and a parkrow and sidewalk on the south side of the street.

- The frontage of the property located at 203 N. Mountain Ave. will be improved with a parkrow and sidewalk to city standards.

3. Tree Removal Permit
One tree is identified for removal as part of the project being a 40-inch dbh Walnut in the N. Mountain Street right-of-way near the southeast corner of the property located at 203 N. Mountain Ave.

II. **Project Impact**

The project requires a subdivision approval since it involves the creation of residential lots. A Tree Removal Permit is required to remove trees which are 18 inches diameter at breast height and greater and located on lands under the control of the City of Ashland (i.e. street rights-of-way). In accordance with Chapter 18.108, applications for Outline Plan approval are required to be reviewed under the “Type II” process with a public hearing.

Staff has reviewed the application and applicable approval criteria. Several issues are identified that Staff believe needs further discussion or information before the Planning Commission makes a decision on the application. The issues of Staff concern are in the subsections (e.g. **a) Preliminary Utility Plan**). The issues are outlined according to the required planning approvals which are identified by capital letters and bold type (e.g. **A. Outline Plan for Performance Standards Options Subdivision**) and applicable approval criteria (e.g. **1. Public Facilities**).

A. **Outline Plan for Performance Standards Options Subdivision**

In Staff’s review of the proposal, the application appears to meet the approval criteria for Outline Plan approval. Chapter 18.88, Performance Standards Options, allows a flexible lot layout and design approach in an effort to preserve natural features as well as encourage creative and energy efficient site and building design. To this end, the base density of the project is based on the total site area. While perimeter and front yard setbacks must conform to the requirements of the zoning district, the lot sizes and interior site setbacks can vary in size.

1. **Development of Adjacent Land**

The Outline Plan approval criteria require “That the development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.”

The parcels to the north of the site are similar to 203 N. Mountain Ave. in that the zoning is Single-Family Residential (R-1-5), and the lots are configured as long narrow parcels with homes situated at the east end of the lots and fronting on N. Mountain Ave. There is developable area on these lots behind the homes at the rear of the parcels. As a result, the area between the subject site and the southern edge of the Mountain Creek Estates Subdivision (located at the southwest corner of the intersection of N. Mountain Ave. and Hersey St.) has development potential. Additionally, the property to the west of Mountain Creek has
development potential. The area west of Mountain Creek is zoned Employment (E-1), and the bulk of the area is a 19.53 acre parcel owned by Union Pacific Railroad Company. This site is commonly referred to as the railroad property. The lots across from the site on N. Mountain Ave., on the east side of the street, are zoned Single-Family Residential (R-1-5) and are largely developed except for a parcel directly north of the railroad right-of-way and tracks. The large parcel is approximately ten acres in size, is not in the city limits and has a residence with several accessory buildings located on the lot. Finally, the area to the south of the site and south of the railroad right-of-way and tracks is zoned High Density Multi-Family (R-2) and Employment (E-1). This area includes a mixture of multi-family developments, single-family homes and a public works yard operated by the City of Ashland.

In Staff’s opinion, the primary issue to consider in the development of the subject site is providing for the connection and coordination of the future street system and utilities to serve the developable areas to the north and west of the subject site. The City of Ashland Transportation Plan Map was updated in June 2002 to include the conceptual street locations and dedications for the railroad property area including the subject site (see attached map). The application has based the street layout and type on the adopted Transportation Plan Map. In addition, the application states that the “utility lines (water, sewer, storm, electric, etc.) will be up sized, in cooperation with the City, in order to accommodate future capacity needs.” In Staff’s opinion, the proposed subdivision will not prevent adjacent land from being developed in accordance with the R-1 zoning district, Ashland Land Use Ordinance and Ashland Comprehensive Plan.

2. Public Facilities and Street Standards

The Outline Plan approval criteria require “That adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.”

Transportation requirements are further addressed by the approval criteria which states that “The development complies with the Street Standards.”

a) Preliminary Utility Plan

In Staff’s opinion, it is very likely that public facilities and utilities are in place or can be extended to service the project. The existing and proposed facilities are generally discussed in the application narrative and some utilities are noted on the site plan. However, Staff believes the Planning Commission needs information about the size, location and capacity of existing utilities, and the location and size of proposed connections and extensions of public utilities to make a finding that adequate city facilities can be provided to the development.
b) Street Improvements

The City of Ashland Transportation Plan Map was updated in June 2002 to include the conceptual street locations and dedications for the railroad property area including the subject site. The plan identifies a collector street connecting N. Mountain Ave. to Oak St. The eastern end of the collector street is on the subject site. Going from east to west, the street would then cross over Mountain Creek, traverse the railroad property and connect to the existing end of Clear Creek Drive.

The location of the street conforms to the adopted Transportation Plan Map. In addition, the new street has been designed to a Neighborhood Commercial Collector standard. The Neighborhood Commercial Collector standard is consistent with the existing west end of the street, Clear Creek Drive.

In Staff’s opinion, the proposal largely meets the requirements of the Street Standards. The applicant has done an admirable job of balancing between the project needs and the long-range planning issues. For example, the street design needs to accommodate future development to the north and west. Initially at the pre-application stage, the subdivision design included individual driveways serving the eleven street facing lots. At that time, Staff raised the issue of the safety and traffic flow impacts of individual driveways on the new collector street. This is an important issue because in the future when the area is built out the new collector street will accommodate a higher level of vehicle trips per day. Subsequently, the applicant adjusted the site plan to include an alley. The alley reduces the number of access points on the street which reduces the potential vehicular conflicts, creates a better pedestrian environment and presents a more attractive home front façade to the street.

Additionally, the majority of the east end of the new collector street will be located on the subject site rather than being more equally split between the subject site and the property to the north. The applicant is building both travel lanes with parking, a parkrow and a sidewalk on one side. A typical residential Neighborhood Street is a total of 47 feet in width including sidewalks and parkrows on both sides of the street. The proposed “half street” improvement to a collector street standard is comparable being a total width of 44 feet in improvements. This construction of the “half street” improvement will allow the property to the north to simply finish off the parking, parkrow and sidewalk on the north side if the property is developed.

(1) Bicycle Facilities

Staff believes the provision of bicycle facilities needs further discussion before the Planning Commission approves the Outline Plan. The Street Standards require a bicycle lane on a Neighborhood Commercial Collector
street when there will be more than 3,000 vehicle trips per day or actual motor vehicle travel speeds in excess of 25 mph. Staff believes that when the areas to the north and west are fully developed, the trips per day on the new east-west collector connecting N. Mountain Ave. to Oak St. will be close to or exceed 3,000 vehicle trips per day. As a result, the new street included in the application should have bicycle lanes. However, when the west end of the street was developed as Clear Creek Drive, a decision was made to have a multi-use bicycle and pedestrian path on the north side of the railroad tracks instead of installing bicycle lanes on Clear Creek Drive. As a result, a ten-foot wide easement was established from the alley off of the south side of Clear Creek Drive along the full length of the railroad property. This existing multi-use path easement ends on the western boundary of the subject site. Staff believes the applicant is required to provide bicycle facilities as part of the street improvement, and recommends that in lieu of installation of a bicycle lane in the street, the Planning Commission require a ten to 12-feet wide public pedestrian easement along the sites southern boundary for a future multi-use path. Also, there should be a path connecting the subdivision to the future multi-use path.

3. Natural Features and Open Space

The Outline Plan approval criteria require “That the existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the open space, common areas and unbuildable areas.”

The maintenance of open space and common area is further addressed in the approval criteria which states “That there are adequate provisions for the maintenance of open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ration of amenities as proposed in the entire project.”

The subject site includes Mountain Creek, the associated wetlands and trees. Mountain Creek is identified as a Riparian Land Drainage on the adopted Comprehensive Plan maps. The tree inventory included in the application identifies five trees in the development area of the site that are larger than six inches diameter at breast height and greater (dbh) including. The proposal is to retain the five trees over six inches dbh on site.

In Staff’s opinion, the application has identified the natural features on the site, and has preserved the significant natural features in the open space for the subdivision. The development is required to provide five percent of the total site area in Open Space. The open space area at the western end of the property is approximately a third of an acre in size and 11.6 percent of the total site area.

Additionally, the open space area including Mountain Creek and the wetlands at
the west end of the site is consistent with the City of Ashland Open Space Plan and the draft Railroad Property Master Plan. The City of Ashland Open Space Program plan identifies the area along this section of Mountain Creek, from the railroad tracks to Williamson Way as an open space and future trail connection. The draft Railroad Property Master Plan also shows a park and trail in this area. Both plans show a corridor running along both sides of the creek corridor as open space with a trail parallel and west of the creek. In the location of this site, both plans identify an area approximately 150 feet wide with approximately 75 feet on each side of the creek, as open space. The proposed open space area at the west end of the site exceeds these dimensions as it is approximately 105 feet in width, and a third of an acre in size.

a) Impact of Storm Drain Changes

Currently, storm drainage from south of the site is collected at a point north of the railroad tracks, piped under the tracks and directed in an open ditch to the wetland/creek area. This is an old, existing condition that does not contain the necessary easements. Additionally, the situation is not created by the existing or proposed development on the site, but rather the site itself is impacted by the facilities and water flowing on the property and further on to properties to the north. The applicant is working with the Ashland Engineering Division to remedy the situation in conjunction with the development of the property. The option being evaluated at this time is rerouting the storm drainage into a pipe that would go into the public system in the street and away from the site, creek and wetlands. While there are numerous storm drainage control benefits to removing the water from the site, Staff believes the potential impact on the wetlands needs to be evaluated. Specifically, an assessment by the project biologist and engineer needs to be made evaluating the impact of rerouting the storm drainage on the wetlands, and whether the necessary soils, vegetation, etc. will continue to thrive without the water.

b) Side Yard Setback from Wetlands

The building envelope for the lot closest to the wetlands, Lot 11, shows the building footprint on the side (west) property line. The west property line of Lot 11 is shown at 17 feet from the closest point in the wetland. Since the envelopes are relatively small, Staff is assuming the actual building footprint may use up the entire building envelope.

Staff believes a western side yard setback should be provided on Lot 11 to create an additional buffer to the wetlands from the residence. Staff’s concern is twofold. First, construction activities tend to take place well outside the actual building footprint which could impact the wetland area. Second, in the long run, the owner of Lot 11 will need space to maintain the side of the home. Staff believes the lot configuration may lend itself to Lot 11 using the open space as de facto yard area. This opens the door to more possible infringement on the wetland area. Finally, since the wetland is a draft
delineation, there is a possibility that the wetland boundaries may change. A condition has been added requiring the Final Plan document to include a minimum of six feet for the west side yard for Lot 11 to provide a greater setback from the eastern edge of the wetland to the footprint of the residence.

4. Base and Bonus Density Standards

The Outline Plan approval criteria require “That the proposed density meets the base and bonus density standards established under this Chapter.”

The site has a base density of 11.565 units (2.57 acres x 4.5 units = 11.565). The proposal is to use the conservation density bonus to increase the number of units to 13 (11.565 x .15 conservation density bonus = 13.30). As a result, the proposal satisfies the density requirements of Chapter 18.88.

5. Other Applicable Ordinance Requirements

The Outline Plan approval criteria require “That the development meets all applicable ordinance requirements of the City of Ashland.” The remaining issues that are addressed under this criterion are the setback and parking requirements.

Chapter 18.88 requires that one space is provided per unit on the street for guest parking. A total of 13 spaces will be available on the project frontage with 10 proposed spaces on the new street and three spaces on the site frontage on N. Mountain Ave. The proposal meets the on-street parking requirement.

The site plan delineates the proposed lot lines, building envelopes, setbacks and solar setbacks. There are a few adjustments that need to be made to the proposal to meet the setback requirements of Chapter 18.88.

a) Street Frontages

The proposal describes lots 12 and 13 as flag lots. However, the site plan does not show the required flag pole connection to the street. As a result, the lot lines for 12 and 13 must be redrawn to provide a physical connection to the street.

c) Solar Setback

Chapter 18.70 requires that newly created lots with slopes less than 15 percent to be configured so that the future homes will meet Solar Setback A. Solar Setback A is the most stringent standard which requires that new structures cannot shade the property to the north more than a six foot fence would at the north property line. The application is requesting that a less demanding solar setback standard be applied to Lots 12 and 13. The solar setbacks for Lots 1 – 11 appear to be addressed in the application, but the final determination is made at the building permit submittal.
The application describes a “solar envelope” for Lots 12 and 13 which is delineated on the site plan. The proposed envelope would allow the shadowing of the garages, rear yards and residences on Lots 7 – 10. The request is based on the desire to locate the future homes away from the railroad right-of-way and tracks. Staff believes this is a reasonable request, but that approval of the solar envelope should be delayed until the Final Plan application so that more information be provide on the height of the shadow on the residences. Additionally, it appears the proposed solar envelope would allow shading of the back yards of Lots 8, 9 and 10. These rear yard areas are relatively small, and the only opportunity for private rear yard space for the lots. Staff recommends that the applicant explore the possibilities of shifting the garages and using partial solar envelopes to preserve the solar exposure to the rear yard areas. A condition has been added requiring further information on shadow height and rear yard areas to be submitted at the Final Plan with the exception for the solar envelope being processed at the Final Plan application.

B. Tree Removal Permit

Chapter 18.61 of the Ashland Land Use Ordinance (ALUO), Tree Preservation and Protection, requires a Tree Removal Permit for one tree adjacent to the site, a 40-inch dbh Walnut in the N. Mountain Ave. right-of-way near the southeast corner of the property. A Tree Removal Permit is required to remove trees which are 18 inches diameter at breast height and greater and located on lands under the control of the City of Ashland (i.e. street rights-of-way). The application states that the applicants are willing to retain the tree if it is deemed significant by the Tree Commission and Planning Commission. The Tree Commission had not reviewed the proposal at the time of writing.

The arborist report identifies the tree as in poor condition and describes the species as having a poor tolerance to construction. The application goes on further to say that the poor condition of the walnut tree is most likely due to continuous topping for overhead electric lines. The written findings identify the walnut tree as a future hazard tree due to is poor condition and proximity to the street and sidewalk.

Walnut trees are identified as prohibited street trees in the Recommended Street Tree Guide prepared by the Ashland Tree Commission. While the list is intended as a guide for the planting of new trees, it provides useful information in evaluating potential problems of existing species that are problematic in street and sidewalk areas. The guide states “The following species are normally prohibited for one or several of the following reasons: 1) their roots cause injury to sewers or pavements; 2) they are particularly subject to insects or diseases; 3) they cause safety and visibility problems along streets at intersections; 4) they create messy sidewalks and pavements.” The proposal is to mitigate the removal of the walnut tree with an appropriate tree from the Recommended Street Tree Guide.
1. **Tree Protection Plan**

The tree information included in the application is missing some of the items required in the Tree Protection Plan requirements of 18.61.200. In discussions with the applicant, Staff understands that this was due to the that the original application included the removal of the four trees to the south of Lots 1, 2 and 3. The applicant has indicated that they are working on revising the Tree Protection Plan to include the required information. Specifically, the trees within 15 feet of the site, the drip lines of each tree, the location of tree protection fencing and utility information is required on the Tree Protection Plan. Staff recommends that this information is provided and reviewed prior to the Planning Commission making a decision on the application.

III. **Procedural - Required Burden of Proof**

The criteria for Outline Plan approval are described in 18.88.030.A as follows:

a. That the development meets all applicable ordinance requirements of the City of Ashland.

b. That adequate key City facilities can be provided including water, sewer, paved access to and through the development, electricity, urban storm drainage, police and fire protection and adequate transportation; and that the development will not cause a City facility to operate beyond capacity.

c. That the existing and natural features of the land; such as wetlands, floodplain corridors, ponds, large trees, rock outcroppings, etc., have been identified in the plan of the development and significant features have been included in the open space, common areas, and unbuildable areas.

d. That the development of the land will not prevent adjacent land from being developed for the uses shown in the Comprehensive Plan.

e. That there are adequate provisions for the maintenance of open space and common areas, if required or provided, and that if developments are done in phases that the early phases have the same or higher ratio of amenities as proposed in the entire project.

f. That the proposed density meets the base and bonus density standards established under this Chapter.

g. The development complies with the Street Standards.

The criteria for Issuance of Tree Removal are described in 18.61.080 as follows:

An applicant for a Tree Removal-Staff Permit shall demonstrate that the following criteria are satisfied. The Staff Advisor may require an arborist's report to substantiate the criteria for a permit.

A. Hazard Tree: The Staff Advisor shall issue a tree removal permit for a hazard tree if the applicant demonstrates that a tree is a hazard and warrants removal.
1. A hazard tree is a tree that is physically damaged to the degree that it is clear that it is likely to fall and injure persons or property. A hazard tree may also include a tree that is located within public rights of way and is causing damage to existing public or private facilities or services and such facilities or services cannot be relocated or the damage alleviated. The applicant must demonstrate that the condition or location of the tree presents a clear public safety hazard or a foreseeable danger of property damage to an existing structure and such hazard or danger cannot reasonably be alleviated by treatment or pruning.

2. The City may require the applicant to mitigate for the removal of each hazard tree pursuant to AMC 18.61.084. Such mitigation requirements shall be a condition of approval of the permit.

B. Tree that is Not a Hazard: The City shall issue a tree removal permit for a tree that is not a hazard if the applicant demonstrates all of the following:

1. The tree is proposed for removal in order to permit the application to be consistent with other applicable Ashland Land Use Ordinance requirements and standards. (e.g. other applicable Site Design and Use Standards). The Staff Advisor may require the building footprint of the development to be staked to allow for accurate verification of the permit application; and

2. Removal of the tree will not have a significant negative impact on erosion, soil stability, flow of surface waters, protection of adjacent trees, or existing windbreaks; and

3. Removal of the tree will not have a significant negative impact on the tree densities, sizes, canopies, and species diversity within 200 feet of the subject property.

The City shall grant an exception to this criterion when alternatives to the tree removal have been considered and no reasonable alternative exists to allow the property to be used as permitted in the zone. Nothing in this section shall require that the residential density be reduced below the permitted density allowed by the zone. In making this determination, the City may consider alternative site plans or placement of structures or alternate landscaping designs that would lessen the impact on trees, so long as the alternatives continue to comply with other provisions of the Ashland Land Use Ordinance.

4. The City shall require the applicant to mitigate for the removal of each tree granted approval pursuant to AMC 18.61.084. Such mitigation requirements shall be a condition of approval of the permit.

IV. Conclusions and Recommendations

Staff believes the applicant has taken an admirable approach by designing a development that balances project needs with long-range planning items. The proposal has several positive components that will benefit the residents of the development as well as the future railroad property neighborhood including the use of alleys to reduce potential conflict points on the future commercial collector street, a traditional streetscape by orienting the building façade to the street and car facilities at the back of the lots, an oversized open space that is consistent with the open space program and the draft Railroad Property Plan, and potentially providing the last link for a multi-use path
In Staff’s opinion, the proposal is consistent with the approval criteria for a Performance Standards Options subdivision and Tree Removal Permit. However, Staff believes the Planning Commission needs more information on the utilities, bicycle facilities, lot configurations and tree protection plan before the Commission can make findings that the application meets the approval criteria for a Performance Standards Options Subdivisions. While all of the information can be provided and items can be resolved, the issues are significant enough that they should not be deferred through conditions to the Final Plan application. Staff recommends the application be continued so that the applicant can address the following items. The issues are discussed in the body of this report and summarized below.

- **Preliminary Utility Plan**

  Staff believes the Planning Commission needs information about the size, location and capacity of existing utilities, and the location and size of proposed connections and extensions of public utilities to make a finding that adequate city facilities can be provided to the development.

- **Bicycle Facilities**

  Staff believes the applicant is required to provide bicycle facilities as part of the street improvement, and recommends that in lieu of installation of a bicycle lane in the street, the Planning Commission require a ten to 12-feet wide public pedestrian easement along the sites southern boundary for a future multi-use path. Also, there should be a path connecting the subdivision and the new street to the future multi-use path.

- **Impact of Storm Drain Changes**

  The applicant is working with the Ashland Engineering Division to redirect storm drainage that has historically been directed under the railroad tracks and across the subject property to Mountain Creek. The option being evaluated at this time is rerouting the storm drainage into a pipe that would go into the public system in the street and away from the site, creek and wetlands. While there are numerous storm drainage control benefits to removing the water from the site, Staff believes the potential impact on the wetlands needs to be evaluated. Specifically, if the total volume of water is rerouted and does not go into the wetland area, a determination as to whether the necessary soils, vegetation, etc. will continue to thrive without the water.

- **Street Frontages for Lots 12 and 13**

  The proposal describes lots 12 and 13 as flag lots. However, the site plan does not show the required flag pole connection to the street. As a result, the lot lines for 12 and 13 must be redrawn to provide a physical connection to
the street.

- **Tree Protection Plan**

  The tree information included in the application is missing some of the items required in the Tree Protection Plan requirements of 18.61.200. In discussions with the applicant, Staff understands that this was due to the fact that the original application included the removal of the four trees to the south of Lots 1, 2 and 3. The applicant has indicated that they are working on revising the Tree Protection Plan to include the required information. Specifically, the trees within 15 feet of the site, the drip lines of each tree, the location of tree protection fencing and utility information is required on the Tree Protection Plan. Staff recommends that this information is provided and reviewed prior to the Planning Commission making a decision on the application.

Should the Planning Commission approve the application, Staff recommends approval of the application with the following conditions attached.

1) That all proposals of the applicant are conditions of approval unless otherwise modified here.

2) That all easements for sewer, water, electric and streets shall be indicated on the final survey plat as required by the City of Ashland.

3) That a drainage way easement shall be indicated on the final survey plat for the width and length of the western open space area including Mountain Creek and the associated wetlands.

4) That the boundaries of the wetland and the western property line of Lot 11 shall be delineated on site, and inspected by the Ashland Planning Division prior to the Final Plan approval.

5) That the street right-of-way for the undeveloped western end of the street shall be dedicated as public right-of-way and if determined necessary by Ashland Engineering Division, a street plug shall be established at the western boundary of the street right-of-way.

6) That a public pedestrian and bicycle easement, a minimum of ten feet in width, shall be indicated on the final survey plat for future development as a multi-use path parallel to the railroad right-of-way and along the length of the southern boundary of the site, connecting the western site boundary to N. Mountain Ave. In addition, a public pedestrian and bicycle easement shall be provided linking the subject development to the future multi-use path.

7) That engineering for the utility plan including but not limited to the water, sewer, storm drainage and electric facilities shall be submitted with the Final Plan application. The utility plan shall include the location of connections to all public
facilities in and adjacent to the development, including the locations of water lines and meter sizes, fire hydrants, sewer mains and services, manholes and clean-outs, storm drainage pipes and catch basins, and locations of all primary and secondary electric services including line locations, transformers (to scale), cabinets, meters and all other necessary equipment. Transformers and cabinets shall be located in areas least visible from streets, while considering the access needs of the Electric Department. Any required private or public utility easements shall be delineated on the utility plan.

8) That the Electric Distribution Plan shall be coordinated with the Ashland Electric Department, and shall be included in the utility plan with the Final Plan application.

9) That the Tree Protection Plan shall be revised to be coordinated with the final utility plan, and shall be submitted with the Final Plan application.

10) That if the storm drainage plan includes on-site storm water detention systems and/or off-site storm drain system improvements, the engineering shall be submitted with the Final Plan application. The permanent maintenance of on-site storm water detention systems must be addressed through the obligations of the Homeowners’ Association and approved by the Public Works Department and Building Division.

11) That the Final Plan application shall include an analysis by the project biologist and engineer on the impact of rerouting storm drainage away from the wetland into the public system.

12) That a grading plan addressing general areas of cut and fill shall be submitted with the Final Plan application.

13) That the required pedestrian-scaled streetlight shall consist of the City of Ashland’s residential streetlight standard, and shall be included in the utility plan and engineered construction drawings for the street improvements.

14) The engineering for proposed street improvements shall be provided at Final Plan application. The engineering drawings shall address the treatment of the northern edge of the street and direction of storm drainage, and address the necessary curb radius and travel lane width for truck traffic use.

15) That the Final Plan application shall delineate vision clearance areas at the intersections of streets and alleys throughout the project in accordance with 18.92.070.D. Structures, signs and vegetation in excess of two and one-half feet in height shall be placed in the vision clearance areas.

16) Subdivision infrastructure improvements, including but not limited to utilities, public streets, street trees and irrigation and open space landscaping and irrigation shall be installed or an irrevocable letter of credit posted for the full cost of construction prior to signature of the final survey plat. If an irrevocable letter of credit is posted for common area and open space improvements, the Final Plan application shall
include a phasing plan for the common area and open space improvements including but not limited to landscaping, irrigation and pathway improvements. The project landscape architect shall inspect the common area and open space improvements for conformance with the approved plan, and shall submit a final report on the inspection and items addressed to the Ashland Planning Division. The phasing plan shall include a schedule for a final inspection including the project landscape architect with the Ashland Planning Division of the common areas and open spaces prior to issuance of the ninth building permit.

17) That the street name shall be reviewed and approved by Ashland Engineering for compliance with the City’s resolution for street naming.

18) That the final wetland determination/delineation report shall be prepared and submitted with the Final Plan application, and the necessary state and federal permits received prior to the Final Plan application. If the final wetland determination/delineation report submitted for state and federal review differs significantly from the preliminary determination (i.e. larger area or numerous wetland areas), the Outline Plan shall be modified prior to an application for Final Plan approval.

19) That the recommendations of the Ashland Tree Commission, with final approval by the Staff Advisor, shall be incorporated into the Tree Protection and Removal Plan.

20) That one tree shall be planted in the parkrow in the N. Mountain Ave. right-of-way in accordance with 18.61.084 as mitigation for the removal of the 40-inch walnut. The landscaping plan provided at the time of the Final Plan application shall include and identify the mitigation trees.

21) That a Verification Permit in accordance with 18.61.042.B shall be applied for and approved by the Ashland Planning Division prior to removal of the walnut tree and prior to site work, storage of materials and/or the issuance of an excavation or building permit. The Verification Permit is to inspect the tree to be removed and the installation of the tree protection fencing. The tree protection for the trees to be preserved shall be installed according to the approved Tree Protection Plan prior to site work or storage of materials. Tree protection fencing shall be chain link fencing a minimum of six feet tall and installed in accordance with 18.61.200.B.

22) That a size and species specific landscaping plan for the parkrows and open spaces shall be provided at the time of the Final Plan application. The western open space shall include a north-south path connecting the future multi-use path parallel to the railroad right-of-way and the new street and improved with asphalt, concrete or a comparable all weather surface.

23) That street trees, located one per 30 feet of street frontage, shall be installed in the parkrow along street frontages as part of the subdivision infrastructure
improvements. Street trees shall be chosen from the Recommended Street Tree List and shall be installed in accordance with the specifications noted in the Recommended Street Tree List. The street trees shall be irrigated.

24) Fence heights within side and rear yard areas adjoining the open space shall not exceed four feet. Stipulations with regards to fencing shall be described in the project CC&R’s.

25) That a draft copy of the CC&R’s for the Homeowners Association is provided at the time of Final Plan application. CC&R’s shall describe responsibility for the maintenance of all common area and open space improvements, parkrows and street trees. CC&R’s shall note that any deviation from the Tree Protection Plan must receive written approval from the City of Ashland Planning Department.

26) That the Final Plan application shall demonstrate compliance with a maximum lot coverage of 50 percent by either using a total site area calculation or including lot coverage calculations in square footage and percentage for each lot.

27) That the Final Plan application shall include a minimum of six feet for the west side yard for Lot 11.

28) The setback requirements of 18.88.070 shall be met and identified on the building permit submittals including but not limited to the required width between buildings as described in 18.88.070.D. The structures on Lots 2, 3 5, 6, 7, 9 and 10 shall be limited to a maximum of 18 feet in height for the purposes of distance between buildings in accordance with 18.88.070.D as stipulated the application, and Lots 10 and 11 shall be limited to a maximum of 16 feet for the purposes of distance between buildings.

29) That for Lot 12 and 13, the Final Plan application shall include detail on the proposed shadow height on the residences to the north, and shall preserve as much un-shadowed rear yard space in the lots to the north as possible. The solar envelope as included in the Outline Plan is not approved, and the Final Plan application shall include a application for a variance to the Solar Setback Standard in accordance with 18.70.060 for Lot 12 and 13.

30) That all new structures on Lots 1 – 11 shall meet Solar Setback A in accordance with Chapter 18.70 of the Ashland Land Use Ordinance. Solar setback calculations shall be submitted with each building permit and include the required setback with the formula calculations and an elevation or cross-section clearly identifying the height of the solar producing point from natural grade.

31) Individual lot coverage calculations including all impervious surfaces shall be submitted with the building permits. Impervious driveway and parking areas shall be counted as pervious surfaces for the purpose of lot coverage calculations.
League of Women Voters of Lawrence-Douglas County  
P.O. Box 1072, Lawrence, Kansas 66044  
April 25, 2010

Mr. Greg Moore, Chairman  
Members  
Lawrence-Douglas County Planning Commission  
City Hall  
Lawrence, Kansas 66044  

RE: ITEM 6; DENSITY BONUS FOR THE PROTECTION OF ENVIRONMENTALLY SENSITIVE AREAS

Dear Chairman Moore and Planning Commissioners:

Comments on calculating bonus densities  
As you know, we have sent several letters on the issue of the text amendment to Section 20-1101(d). Regarding the staff suggestions to providing a bonus for voluntarily preserving additional sensitive land in residential districts beyond that required, we have one primary objection: the multiple family residential districts are proposed to be treated in the same manner as are the single family residential districts. We believe that a different standard should be used in multiple family districts.

Our reason is that conventional multiple family districts are currently based on “large lot development.” This type of development is almost identical to that intended for the Planned Development Overlay District and the Planned Development Districts, in that the design of each development is based on placement of multiple residential buildings on a single lot and site planning rather than on the yard, lot, block, and street system that normally separates buildings and provides access to individual residential buildings in conventional districts as required by the Lawrence Land Development Code. The Land Development Code has no standards for placement of many residential buildings on an individual lot other than those applicable to the Planned Development Overlay District. For example, the only standard for distances between buildings on the same lot in conventional multiple family districts is the fire code of 3 feet (according to one developer).

In multiple family conventional districts the actual requirement that may or may not separate buildings and requires access are the parking requirements, which apply to individual buildings and number of dwellings in each building. Parking lot access is to driveways, not streets. Individual buildings on a large lot multiple family development, as currently interpreted, do not require yards or any space between buildings (other than that of the fire code), but rather, yards are required only at the periphery of the lot. Therefore, the larger the lot, the greater is the allowable density up to the theoretical gross density of the tract. Private driveways are substitutes for public streets and don’t count as subtracting from the theoretically allowable base density.

Our point is that because of the manner in which multiple family developments are currently being built, the net density and thus base density of a multiple family development can approach the maximum gross density possible for its district. Therefore, the conventional multiple family districts can’t really benefit to the same extent as a single family district by allowing an increase in density as a bonus, at least not in the same proportion as a single family development. Increasing the density caps doesn’t remove the disparity or inequity.
We suggest that these two types of development be treated differently. We suggest that the base density for multiple family districts be calculated on the basis of what it would be if each residential building had its own lot and yard and fronted on a dedicated public street, and that the bonus density then be calculated on that basis.

Continued issues on preserving sensitive land
We also refer you to our previous letters regarding the preservation of sensitive lands. We continue to ask that you include features not included in the current version of this Section 20-1101(d) as features required for preservation: steep slopes, prairies and potential but not currently registered historical and archeological sites. We also ask that you adopt a method to prevent grading and land disturbance by developers prior to applications for approval. One method would be requirement of a development permit similar to that in floodplain areas.

We hope that you will seriously consider these issues. Thank you.

Sincerely yours,

Milton Scott, Vice-president

Alan Black, Chairman
Land Use Committee
June 3, 2010

David Holroyd  
1224 Louisiana  
Lawrence, KS 66044

Dear Mr. Holroyd,

This letter responds to your request for records of June 2, 2010. The Planning Commission initiated the text amendment related to boarding houses at their May 20, 2009 regular meeting. The agenda packet for that item and an excerpt of the minutes of that meeting are attached. The boarding house text amendment was added to the list of potential text amendments based, in part, by a letter submitted by the Oread Neighborhood association to the City on May 7, 2009 (also attached).

You have requested the members of the Oread Neighborhood Association as of May, 2009. Attached is the list provided to the city for the year 2009. More specific information will need to be requested of the Oread Association.

You have requested the members of the then-sitting City Commission and Planning Commission. They are as follows.

- City Commission – Chestnut, Amyx, Dever, Cromwell, and Johnson
- Planning Commission – Moore, Carter, Blaser, Chaney, Dominguez, Finkeldei, Harris, Hird, Rasmussen, and Singleton

Please contact me at (785) 832-3154 or by email at smccullough@ci.lawrence.ks.us if you have additional questions.

Sincerely,

Scott McCullough  
Director

C: City Commission; Planning Commission  
City Manager  
Toni Wheeler
May 28, 2010

Mr. Scott McCullough, Director
Planning and Development
City of Lawrence
6 E 6th
Lawrence, KS 66044

Dear Mr. McCullough,

This correspondence is follow up on my request at the Planning Commission meeting on Wednesday, May 26, 2010.

I had inquired about the date the initiation began regarding Boarding House amendments and who brought forward a request to change requirements.

You stated it was in May of 2009 and it was initiated by the Oread Neighborhood Association.

My request is as follows:

1. Copies of any correspondence that the ONA at that time sent.

2. A list of the membership of the ONA at that time and to include the names of their officers and all board members.

3. A list of the members of the City Commission at that time as well.

In addition, would you provide a list of the then members of the Douglas County Planning Commission at the time the ONA made such request regarding the Boarding House amendments

Thank you for your time in this matter and this letter fulfills your request that I submit such.
Sincerely,

David Holroyd

David Holroyd

Cc: Ms. Toni Wheeler, Director of Legal Services, City of Lawrence
Commissioner Mike Amyx
Commissioner Aaron Cromwell
Commissioner Lance Johnson
Commissioner Michael Dever
Commissioner Robert Chestnut
Douglas County Planning Commission
Mr. David Corliss, City Manager

David Holroyd
1224 Louisiana
Lawrence, KS 66044
Memorandum
City of Lawrence / Douglas County
Planning & Development Services

TO: Planning Commission
FROM: Scott McCullough, Director
Date: May 7, 2009
RE: Prioritization and Initiation of Text Amendments

Attached is a list of potential Lawrence Development Code and Joint Subdivision Regulation amendments that staff has been compiling for several months based upon internal review and observations and also based upon comments received from neighborhood associations, the development community, and other users and stakeholders.

The 2006 Development Code will have been in use for three years this June and staff has processed many amendments to date. During the first two years of implementing the 2006 code, the amendments were processed in an urgent and somewhat inefficient fashion as code issues were brought to staff’s attention. As we move forward, we anticipate having the resources to process only a limited number of amendments that will be processed in groups so that the process is more efficient. The Director and Assistant Director have assumed greater roles in processing text amendments since the Current Planning Division has been reduced, thus creating the need to limit the amendments and be more deliberate about which ones are initiated.

Staff recognizes that even with all of the amendments to date, there remains a need that outstrips staff’s ability to process all of the currently recognized amendments. The amendments in the attached list are organized by code section and include staff’s recommended priorities (highlighted in yellow and with an asterisk). We have prioritized the amendments based on staff’s opinion of the need for the amendment, the complexity of the amendment, and the resources required to process the amendment. Several of the amendments could be considered “housekeeping” issues and do not rise to the level of initiation at this time in staff’s opinion. Others, such as revisions to address energy related development or revisions that support infill housing, will have community wide impacts once implemented and are recognized as being needed sooner rather than later.

Staff requests that the Planning Commission review the list and initiate those amendments that are appropriate.
<table>
<thead>
<tr>
<th>Article or Section</th>
<th>Potential Amendment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Articles 4, 9 and 17</td>
<td>Amendments for use terminology consistency. <strong>Staff</strong></td>
</tr>
<tr>
<td>402 403*</td>
<td>Add Non-Ground Floor Dwelling and Work/Live Unit as uses permitted in the CS District (consider other districts as well). <strong>Staff</strong></td>
</tr>
<tr>
<td>402 403 510 1744</td>
<td>Separate payday loans from other FIRE office uses in use table, and definitions and use standards, if applicable. <strong>PC discussion</strong></td>
</tr>
<tr>
<td>403</td>
<td>Amend the Nonresidential District Use Table to make &quot;Explosive Storage&quot; uses permitted only with an SUP in the IG Districts. <strong>Requested by League of Women Voters</strong></td>
</tr>
<tr>
<td>517*</td>
<td>Review ratio of dwelling units to commercial space in the CS and other commercial districts to encourage more residential living units (mixed use). <strong>Requested by local design professionals.</strong></td>
</tr>
<tr>
<td>Article 5 or 6*</td>
<td>Include comprehensive standards for energy related site elements such as wind turbines, solar panels, and other alternative forms of energy generators. <strong>Product of Mayor’s Climate Protection Task Force and several public inquiries</strong></td>
</tr>
<tr>
<td>601(a)*</td>
<td>(1) Revise Density and Dimensional standards as they relate to RM12D to review alignment between Min. Lot Area and Max. Dwelling Units per acre standards, and (2) consider revising standards to recognize more practical and realistic dimensions for a duplex lot (may be more reasonable to retile district to RM7D since developing 7 units per acre is more practical than developing to 12 units per acre.). <strong>Requested by local design professionals and Staff</strong></td>
</tr>
<tr>
<td>601(b)</td>
<td>Add Max. Dwelling Units per acre standards in the nonresidential district density and dimensional (D&amp;D) standards table. Residential uses are permitted in CN1, CN2, CD, CC, CS, IL, IG, GPJ and H Districts, but the D&amp;D table that contains these districts does not speak to permitted residential densities. <strong>Staff</strong></td>
</tr>
<tr>
<td>701(j)</td>
<td>Definition of ‘Immediately adjacent’ is used, but not defined. Definitions of ‘adjacent’ and ‘immediately adjacent’ should be included. The term adjoining property is defined in the public notice section for site plans (20-1305(g)) for the purpose of that section only. <strong>Staff</strong></td>
</tr>
<tr>
<td>702(c)&amp;(e)</td>
<td>(c) states that cluster development is permitted in all residential districts and the CN1 District but (e) limits housing type to detached dwelling units on individual lots. This seems to be inconsistent with the types of dwellings that are permitted in these districts. This is a consistency issue. If clusters are permitted in RM, then why are only detached dwellings permitted in clusters? <strong>Staff</strong></td>
</tr>
<tr>
<td>Article 8</td>
<td></td>
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<tr>
<td>---------------------------------------------</td>
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</tr>
<tr>
<td>Comprehensive revisions to when dedications are made during the plat process. (1) Consider requiring dedications with final plat instead preliminary plat. (2) Consider providing administrative authority to permit minor adjustments in the number of lots or lot layout after preliminary plat approval.</td>
<td></td>
</tr>
</tbody>
</table>

**Requested by local design professionals**

<table>
<thead>
<tr>
<th>801(e)(1) 806 813(d)(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Language currently states that a division created in conformance with this article retains its right to a building permit. This should be clarified to exclude 806 Certificates of Survey, property in the original tract but not included in a RDP. It is important to make it clear that the property owner will lose his right to a building permit to the property and any existing residence if he does a C of S on his property and does not include the existing house in a RDP. 20-813(d)(2) should also be considered as it states an existing residence would still be eligible for a Building permit if it was built prior to these regulations and is located on a parcel which meets sanitary code area requirements.</td>
</tr>
</tbody>
</table>

**Staff**

<table>
<thead>
<tr>
<th>804(f)(1)&amp;(2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>804(f) states that future divisions cannot occur until after annexation and that they must then be made in accordance with 810 (the standards?) Was this supposed to be 809-major subdivision?</td>
</tr>
</tbody>
</table>

**Staff**

<table>
<thead>
<tr>
<th>802</th>
</tr>
</thead>
<tbody>
<tr>
<td>Add language which clarifies that to be an acceptable application submittal for a property division (minor sub., plat, or certificate of survey) the lots or parcels created by the division must be contiguous and the legal description of the survey, minor subdivision or plat must have the same point of beginning.</td>
</tr>
</tbody>
</table>

**Staff**

<table>
<thead>
<tr>
<th>804(b) 805(b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Why are cluster developments limited to properties that are between 20 and 40 acres? There are cases where a 40 acre property contains mostly floodplain and a cluster would be the best way to develop (to allow the clustering of rdp's). What is accomplished by permitting cluster development only on small properties? (They only have to survey the property and register deeds for properties between 20 and 40 acres, then they can develop as several clusters). May need to discuss with others to find the reasoning behind the acreage limitations.</td>
</tr>
</tbody>
</table>

**Staff**

<table>
<thead>
<tr>
<th>807(e)(vii)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consider removing the requirement to have a vertical benchmark on the C of S. Speak with County Surveyor.</td>
</tr>
</tbody>
</table>

**Requested by local design professionals**

<table>
<thead>
<tr>
<th>808</th>
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<tbody>
<tr>
<td>Add language clarifying that minor subdivisions should be tied to a block corner from the previous plat (Major Subdivision) or street centerline by providing dimensions or bearings from that point.</td>
</tr>
</tbody>
</table>

**Requested by City GIS Coordinator**

<table>
<thead>
<tr>
<th>810(a)(2)(iv)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Should this be revised to say that corner lots shall be 20% wider than the required minimum lot width of the zoning district instead of what it currently says?</td>
</tr>
</tbody>
</table>

**Staff**

<table>
<thead>
<tr>
<th>810(a)(2)(vi)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clarify the requirements for the design of residential lots in the City.</td>
</tr>
</tbody>
</table>

**Staff**

<table>
<thead>
<tr>
<th>813 814 815</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amend to prohibit construction over easements.</td>
</tr>
</tbody>
</table>

**Staff**
<p>| | |</p>
<table>
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<tr>
<th></th>
<th></th>
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</table>
| 815 | RDP is defined as a land division created from a Parent Parcel, but the cluster and large parcel divisions (804 and 805) create RDPs without parent parcels. The definition should be revised to state what a RDP is, not how it is created.  

**Staff** |
| 815(b) | Amend SR if necessary to ensure the definition of "Lot" and/or "Setback Line" is correct and is consistent with the definition of "Lot" and "Setback line" in the Development Code.  

**Staff** |
| Article 9 * | Comprehensive revisions to parking and access standards.  

**Staff and local design professionals** |
| 1001(d)(7)* | Eliminate requirement that landscape plans be prepared by landscape architect (eliminating the requirement only from 'small' projects?)  

**Requested by local design professionals** |
| 1303 1306 * | Consider charging the applicant a publication fee for the zoning and SUP ordinances. May require a text amendment.  

**Staff** |
| 1602? | After discussing the possibility of building over lot lines, or developing one project over several lots; staff suggested drafting a TA to prohibit building over lot lines. Maybe we could add language that requires re-platting when a single development contains several lots and subst. redevelopment is proposed. (maybe a simpler 'land combination' process similar to the county's would be better than requiring re-platting)  

**Staff** |
| 1701 | Review definition of "Boarding House" and its impacts to neighborhoods to determine if it contradicts goals related to limiting occupancy in RM districts.  

**Requested by individuals in Oread Neighborhood and other neighborhood associations.** |
| 1722 | Ensure definition for Dwelling, Attached is consistent with that found in Section 20-1734(1) and 20-1734(2) and consider eliminating 20-1722 (we don't need a definition for Attached Dwelling located in two different places).  

**Staff** |
| 1723 | Ensure definition for Dwelling, Detached is consistent with that found in Section 20-1734(2) (tip – it isn't) and consider eliminating 20-1722 (we don't need a definition for Detached Dwelling located in two different places).  

**Staff** |
| 1734(5) | Consider amending definition for Multi-Dwelling Structure to clarify what is meant by "...three (3) or more dwelling units that share common walls or floors/ceilings with one (1) or more units." And to include triplexes and four-plexes as common *for example* uses, if appropriate. It appears that attached units that are not on separate lots (i.e. those that are not defined as Attached Dwellings) such as townhouses, triplexes and four-plexes should fit within the definition of Multi-Dwelling Structure, but the for example uses listed give the reader the impression that Multi-Dwelling Structure simply means an apartment building. It's really a broader term than that.  

**Staff** |
1734 Ensure definitions for Dwelling, Attached and Dwelling, Detached are consistent with that found in Section 20-1722 and 20-1723 and/or consider eliminating 20-1722/1723 (we don’t need definitions in both places).

Staff

1734 Move all defined Household Dwelling terms (as shown in the Use Tables) so that they are all defined under this section for clarity. Some Household Dwelling terms are defined in two different places.

Staff

Text Amendments in Process

<table>
<thead>
<tr>
<th>Various Articles</th>
<th>Revise code to permit limited shelters as accessory uses in religious institutions.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Various Articles</td>
<td>Revise current standards for Environmentally Sensitive Lands to provide clarity on protected lands and provide flexibility on how lands shall be set aside via the development process.</td>
</tr>
<tr>
<td>Article 5</td>
<td>Revise code to allow the keeping of chickens and ducks.</td>
</tr>
<tr>
<td>Article 9</td>
<td>Revise how parking is calculated to reduce conflict between the current code and former code.</td>
</tr>
<tr>
<td>Article 9</td>
<td>Reduce interior parking lot landscaping requirements to be more practical.</td>
</tr>
<tr>
<td>Article 13</td>
<td>Revise time frames to gain consistency amongst SUPs, Site Plans, development plans, plats, etc and established longer timeframes for approvals.</td>
</tr>
<tr>
<td>Article 13</td>
<td>Revise the methods required to request or receive extensions of approval for the various types of development applications to delete the standard of permitting only one administrative extension.</td>
</tr>
<tr>
<td>Article 13</td>
<td>(1) Revise the Notice Letter for site plans to read more accurately as it relates to the appeal process. (2) Consider expanding the notice buffer for site plans to capture a greater number of affected property owners.</td>
</tr>
<tr>
<td>County Zoning Code</td>
<td>Drafting comprehensive revisions to the County Zoning Code.</td>
</tr>
</tbody>
</table>
PC Minutes 5/20/09 DRAFT
ITEM NO. 10 DISCUSS TEXT AMENDMENTS FOR INITIATION (SDM)

Discuss and prioritize a list of text amendments compiled by staff for eventual initiation by the Planning Commission.

STAFF PRESENTATION
Mr. Scott McCullough presented the item.

COMMISSION DISCUSSION
Commissioner Carter said he would not mind more time to look over the prioritization. He suggested maybe they review them at a Planning Commission Mid-Month meeting.

Mr. McCullough said he is not looking necessarily looking for a 1-10 prioritization but rather if the packet of amendments highlighted is appropriate. If those are initiated they can be worked on as resources allow. He said for example the energy related standards is one that might want to be processed first to address public requests for windmills and solar power.

Commissioner Rasmussen asked what 'C of S' stood for that was in the document.

Mr. McCullough said Certificate of Survey.

Commissioner Hird said focusing on the energy text amendment was good. He said that staff does a good job of discovering in the Code what needs to be corrected. He said that Planning Commission, as a pointed body, should be sensitive to text amendment requests from the public and that he would tend to look at those first if he were to prioritize importance.

Mr. McCullough said he did not disagree but that the energy text amendment is one that staff hears about quite a bit. Staff also hears about RM12D text amendment quite a bit.

Commissioner Singleton agreed with Commissioner Hird. She said the three text amendments she was interested in was payday loans, explosive storage uses, and boarding houses. She felt those issues were prevalent even if Planning staff was not receiving calls.

Mr. McCullough said regarding the boarding house matter, City Commission accepted a letter last night from the Oread Neighborhood and directed staff to give them a report on the moratorium issue. He went on to say that next week staff will release a draft of the Oread Neighborhood Plan update which has elements on how to treat boarding houses. There is some movement on boarding houses that may be worth while to see before initiating a text amendment.

Commissioner Harris also recommended text amendments for boarding houses. She said another text amendment of interest would be to define ‘immediately adjacent.’

Commissioner Rasmussen inquired about potential text amendment 808 to ‘Add language clarifying that minor subdivisions should be tied to a block corner from the previous plat (Major Subdivision) or street centerline by providing dimensions or bearings from that point.’ He asked if that text amendment would take very long.

Commissioner Carter inquired about timeframes.
Mr. McCullough said probably toward the end of the year. He said that some of the text amendments are not necessarily difficult to do but staff would prefer to have the time to do good quality work. He stated that some of the text amendments in process today are the result of stakeholders.

Commissioner Finkeldei suggested that maybe at the end of each agenda or at mid-month they could be updated on the status of the text amendments.

Commissioner Hird asked about the text amendments initiation process.

Mr. McCullough said the Code has a section that says a text amendment can be initiated. He stated that if a private party wants to initiate a text amendment they typically go through City Commission by writing a letter and the request then goes on the City Commission agenda.

Commissioner Hird asked if a text amendment request could come from County Commission.

Mr. McCullough replied yes, for County Zoning Regulations and Subdivision Regulations.

Commissioner Finkeldei asked if the Code says that text amendments have to be initiated.

Mr. McCullough replied yes.

Ms. Stogsdill said they are often initiated by governing bodies more as a way to expedite since Planning Commission only meets once a month and City Commission meets every week.

Commissioner Harris agreed with Mr. McCullough in general about having a first priority group and second priority group but she would like the boarding house text amendment to be at the top of the list. She felt it was an urgent issue.

Mr. McCullough said there is movement on the boarding house issue and direction might be given from City Commission soon.

**ACTION TAKEN**

Motioned by Commissioner Harris, seconded by Commissioner Singleton, to initiate highlighted text amendments in the staff report plus the text amendment having to do with boarding houses.

Unanimously approved 8-0, with Student Commissioner Shelton voting in the affirmative.
Dear City Manager, City Commissioners, Planning Commissioners, and Planning Department,

I am writing on behalf of the Oread Neighborhood Association. For several years we have been dealing with problems presented by the boarding house/congregate living code that allows houses to be converted into boarding houses/congregate living units that allow for larger numbers of tenants to live in a house. A house (not a boarding house) in high density areas is not to have more than 4 unrelated individuals. A boarding house can theoretically house up to 20 plus people if landlords provide the required parking. Parking requirements for boarding houses are less stringent than standard rentals. We believe that there is a place for boarding houses but only if the size is reasonable and if there is adequate parking. This problem has been regularly discussed with City staff over the years.

Financial incentives have resulted in landlords and developers turning houses in mixed-use neighborhoods into boarding houses/congregate living units. These houses now typically have eight tenants. This has resulted in many “party houses” that have caused more disruption and more illegal activities than usual in college neighborhoods. It is also creating more stress on off-street parking. As you can imagine, tenants have many visitors with cars. It is feared that large boarding houses/congregate living units will likely drive the few remaining homeowners out of mixed-use neighborhoods. We believe that some owner occupants living in neighborhoods are essential to avoid blight and insure stability.

City-wide neighborhood associations are presently working with the City and Planning Department to address problems with the boarding house/congregate living code. David Corliss, City Manager, suggested that each neighborhood association and LAN (Lawrence Association of Neighborhoods) ask the City Commission, Planning Commission and Planning Department to consider a moratorium on boarding-house/congregate living home conversions and additions while the code changes are under study and consideration. ONA fully supports such a moratorium as a means to protect our neighborhood as well as other neighborhoods from abuse of the existing codes. We believe that serious action is needed to stabilize this unfair, opportunistic practice.

Sincerely, Candice Davis, ONA Vice President, LAN Representative
Preachly owned house next door.
This likewise Boardly home addition.
Patte is no longer private.

New Boardly house addition on Ohio Street. Truck sits on 908 site. Plans are similar at the 908 site. Is this really reasonable?
### Oread Neighborhood Association
#### Board of Directors

<table>
<thead>
<tr>
<th>Office / District</th>
<th>Name</th>
<th>Principal Occupation</th>
</tr>
</thead>
<tbody>
<tr>
<td>President / District 3</td>
<td>Kyle Thompson</td>
<td>Newspaper Distribution</td>
</tr>
<tr>
<td>Vice President / District 2</td>
<td>Candy Davis</td>
<td>Counselor</td>
</tr>
<tr>
<td>Secretary / District 4</td>
<td>Beth Reiber</td>
<td>Editor</td>
</tr>
<tr>
<td>Treasurer / District 3</td>
<td>James Dunn</td>
<td>Landlord</td>
</tr>
<tr>
<td>District 1 Representative</td>
<td>Linda Haskins</td>
<td>Owner, Take Ten, Inc. Lawrence-Based Production Company</td>
</tr>
<tr>
<td>District 2 Representative</td>
<td>Rene Diaz</td>
<td>University of Kansas Professor, Architecture and Urban Planning</td>
</tr>
<tr>
<td>District 3 Representative</td>
<td>Ellie Lecompte</td>
<td>Psychologist / Oread Property and Business Owner</td>
</tr>
<tr>
<td>District 4 Representative</td>
<td>Carol von Tersch</td>
<td>Retired</td>
</tr>
<tr>
<td>District 5 Representative</td>
<td>Marci Francisco</td>
<td>University of Kansas Senior Analyst, Office of Space Management / Kansas Senator</td>
</tr>
<tr>
<td>District 6 Representative</td>
<td>Christy Kennedy</td>
<td>Self-employed Typesetter and Editor</td>
</tr>
<tr>
<td><strong>At Large Members</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>District 2</td>
<td>Jerry Stubbs</td>
<td>Support Technician, Information Technology</td>
</tr>
<tr>
<td>District 4</td>
<td>Charity Grace</td>
<td>Retired, Vermont Towers Resident</td>
</tr>
</tbody>
</table>
establishing major drainage facilities, building levees or flood-retarding structures, providing water for irrigation, removing stones, or large-scale grading of gullied land. (Minor dams, terraces, or field conservation measures subject to change in their effectiveness in a short time are not included.)

10.Capability groupings are subject to change as new information about the behavior and responses of the soils becomes available.

11. Distance to market, kinds of roads, size and shape of the soil areas, locations within fields, skill or resources of individual operators, and other characteristics of land-ownership patterns are not criteria for capability groupings.

12. Soils with such physical limitations that common field crops can be cultivated and harvested only by hand are not placed in classes I, II, III, and IV. Some of these soils need drainage or stone removal, or both, before some kinds of machinery can be used. This does not imply that mechanical equipment cannot be used on some soils in capability classes V, VI, and VII.

13. Soils suited to cultivation are also suited to other uses such as pasture, range, forest, and wildlife. Some not suited to cultivation are suited to pasture, range, forest, or wildlife; others are suited only to pasture or range and wildlife; others only to forest and wildlife; and a few suited only to wildlife, recreation, and water-yielding uses. Groupings of soils for pasture, range, wildlife, or woodland may include soils from more than one capability class. Thus, to interpret soils for these uses, a grouping different from the capability classification is often necessary.

14. Research data, recorded observations, and experience are used as the bases for placing soils in capability units, subclasses, and classes. In areas where data on response of soils to management are lacking, soils are placed in capability groups by interpretation of soil characteristics and qualities in accord with the general principles about use and management developed for similar soils elsewhere.

CAPABILITY CLASSES

Land Suited to Cultivation and Other Uses

**Class I -- Soils in class I have few limitations that restrict their use.**

Soils in this class are suited to a wide range of plants and may be used safely for cultivated crops, pasture, range, woodland, and wildlife. The soils are nearly level, erosion hazard (wind or water) is low. They are deep, generally well drained, and easily worked. They hold water well and are either fairly well supplied with plant nutrients or highly responsive to inputs of fertilizer.

The soils in class I are not subject to damaging overflow. They are productive and suited to intensive cropping. The local climate must be favorable for growing many of the common field crops.

In irrigated areas, soils may be placed in class I if the limitation of the arid climate has been removed by relatively permanent irrigation works. Such irrigated soils (or soils potentially useful under irrigation) are nearly level, have deep rooting zones, have favorable permeability and water-holding capacity, and are easily maintained in good tilth. Some of the soils may require initial conditioning including leveling to the desired grade, leaching of a slight accumulation of soluble salts, or lowering of the seasonal water table. Where limitations due to salts, water table, overflow, or erosion are likely to recur, the soils are regarded as subject to permanent natural limitations and are not included in class I.

Soils that are wet and have slowly permeable subsoils are not placed in class I. Some kinds of soil in
class I may be drained as an improvement measure for increased production and ease of operation.

Soils in class I that are used for crops need ordinary management practices to maintain productivity -- both soil fertility and soil structure. Such practices may include the use of one or more of the following: fertilizers and lime, cover and green-manure crops, conservation of crop residues and animal manures, and sequences of adapted crops.

**Class II -- Soils in class II have some limitations that reduce the choice of plants or require moderate conservation practices.**

Soils in class II require careful soil management, including conservation practices, to prevent deterioration or to improve air and water relations when the soils are cultivated. The limitations are few and the practices are easy to apply. The soils may be used for cultivated crops, pasture, range, woodland, or wildlife food and cover.

Limitations of soils in class II may include singly or in combination the effects of (1) gentle slopes, (2) moderate susceptibility to wind or water erosion or moderate adverse effects of past erosion, (3) less than ideal soil depth, (4) somewhat unfavorable soil structure and workability, (5) slight to moderate salinity or sodium easily corrected but likely to recur, (6) occasional damaging overflow, (7) wetness correctable by drainage but existing permanently as a moderate limitation, and (8) slight climatic limitations on soil use and management.

The soils in this class provide the farm operator less latitude in the choice of either crops or management practices than soils in class I. They may also require special soil-conserving cropping systems, soil conservation practices, water-control devices, or tillage methods when used for cultivated crops. For example, deep soils of this class with gentle slopes subject to moderate erosion when cultivated may need one of the following practices or some combination of two or more: terracing, stripcropping, contour tillage, crop rotations that include grasses and legumes, vegetated water disposal areas, cover or green-manure crops, stubble mulching, fertilizers, manure, and lime. The exact combinations of practices vary from place to place, depending on the characteristics of the soil, the local climate, and the farming system.

**Class III -- Soils in class III have severe limitations that reduce the choice of plants or require special conservation practices, or both.**

Soils in class III have more restrictions than those in class II and, when used for cultivated crops, the conservation practices are usually more difficult to apply and to maintain. They may be used for cultivated crops, pasture, woodland, range, or wildlife food and cover.

Limitations of soils in class III restrict the amount of clean cultivation; timing of planting, tillage, and harvesting; choice of crops; or some combination of these limitations. The limitations may result from the effects of one or more of the following: (1) moderately steep slopes; (2) high susceptibility to water or wind erosion or severe adverse effects of past erosion; (3) frequent overflow accompanied by some crop damage; (4) very slow permeability of the subsoil; (5) wetness or some continuing waterlogging after drainage; (6) shallow depths to bedrock, hardpan, fragipan, or claypan that limit the rooting zone and the water storage; (7) low moisture-holding capacity; (8) low fertility not easily corrected; (9) moderate salinity or sodium; or (10) moderate climatic limitations.

When cultivated, many of the wet, slowly permeable but nearly level soils in class III require drainage and a cropping system that maintains or improves the structure and tilth of the soil. To prevent puddling and to improve permeability, it is commonly necessary to supply organic material to such soils and to avoid working them when they are wet. In some irrigated areas, part of the soils in class III have limited use because of high water table, slow permeability, and the hazard of salt or sodic accumulation. Each distinctive kind of soil in class III has one or more alternative combination of use and practices required for safe use, but the number of practical alternatives for average farmers is less than that for soils in class II.

**Class IV -- Soils in class IV have very severe limitations that restrict the choice of plants,**
require very careful management, or both.

The restrictions in use for soils in class IV are greater than those in class III and the choice of plants is more limited. When these soils are cultivated, more careful management is required and conservation practices are more difficult to apply and maintain. Soils in class IV may be used for crops, pasture, woodland, range, or wildlife food and cover.

Soils in class IV may be well suited to only two or three of the common crops or the harvest produced may be low in relation to inputs over a long period of time. Use for cultivated crops is limited as a result of the effects of one or more permanent features such as (1) steep slopes, (2) severe susceptibility to water or wind erosion, (3) severe effects of past erosion, (4) shallow soils, (5) low moisture-holding capacity, (6) frequent overflows accompanied by severe crop damage, (7) excessive wetness with continuing hazard of waterlogging after drainage, (8) severe salinity or sodium, or (9) moderately adverse climate.

Many sloping soils in class IV in humid areas are suited to occasional but not regular cultivation. Some of the poorly drained, nearly level soils placed in class IV are not subject to erosion but are poorly suited to inter-tilled crops because of the time required for the soil to dry out in the spring and because of low productivity for cultivated crops. Some soils in class IV are well suited to one or more of the special crops, such as fruits and ornamental trees and shrubs, but this suitability itself is not sufficient to place a soil in class IV.

In subhumid and semiarid areas, soils in class IV may produce good yields of adapted cultivated crops during years of above average rainfall; low yields during years of average rainfall; and failures during years of below average rainfall. During the low rainfall years the soil must be protected even though there can be little or no expectancy of a marketable crop. Special treatments and practices to prevent soil blowing, conserve moisture, and maintain soil productivity are required. Sometimes crops must be planted or emergency tillage used for the primary purpose of maintaining the soil during years of low rainfall. These treatments must be applied more frequently or more intensively than on soils in class III.

Land Limited in Use -- Generally Not Suited to Cultivation

Class V -- Soils in class V have little or no erosion hazard but have other limitations impractical to remove that limit their use largely to pasture, range, woodland, or wildlife food and cover.

Soils in class V have limitations that restrict the kind of plants that can be grown and that prevent normal tillage of cultivated crops. They are nearly level but some are wet, are frequently overflowed by streams, are stony, have climatic limitations, or have some combination of these limitations. Examples of class V are: (1) soils of the bottom lands subject to frequent overflow that prevents the normal production of cultivated crops, (2) nearly level soils with a growing season that prevents the normal production of cultivated crops, (3) level or nearly level stony or rocky soils, and (4) ponded areas where drainage for cultivated crops is not feasible but where soils are suitable for grasses or trees. Because of these limitations, cultivation of the common crops is not feasible but pastures can be improved and benefits from proper management can be expected.

Class VI -- Soils in class VI have severe limitations that make them generally unsuited to cultivation and limit their use largely to pasture or range, woodland, or wildlife food and cover.

Physical conditions of soils placed in class VI are such that it is practical to apply range or pasture improvements, if needed, such as seeding, liming, fertilizing, and water control with contour furrows, drainage ditches, diversions, or water spreaders. Soils in class VI have continuing limitations that cannot be corrected, such as (1) steep slope, (2) severe erosion hazard, (3) effects of past erosion, (4) stoniness, (5) shallow rooting zone, (6) excessive wetness or overflow, (7) low moisture capacity, (8) salinity or sodium, or (9) severe climate. Because of one or more of these limitations, these soils are not generally suited to cultivated crops. But they may be used for pasture, range, woodland, or wildlife cover or for some combination of these.
Some soils in class VI can be safely used for the common crops provided unusually intensive management is used. Some of the soils in this class are also adapted to special crops such as sodded orchards, blueberries, or the like, requiring soil conditions unlike those demanded by the common crops. Depending upon soil features and local climate, the soils may be well or poorly suited to woodlands.

Class VII -- Soils in class VII have very severe limitations that make them unsuited to cultivation and that restrict their use largely to grazing, woodland, or wildlife.

Physical conditions of soils in class VII are such that it is impractical to apply such pasture or range improvements as seeding, liming, fertilizing, and water control with contour furrows, ditches, diversions, or water spreaders. Soil restrictions are more severe than those in class VI because of one or more continuing limitations that cannot be corrected, such as (1) very steep slopes, (2) erosion, (3) shallow soil, (4) stones, (5) wet soil, (6) salts or sodium, (7) unfavorable climate, or (8) other limitations that make them unsuited to common cultivated crops. They can be used safely for grazing or woodland or wildlife food and cover or for some combination of these under proper management.

Depending upon the soil characteristics and local climate, soils in this class may be well or poorly suited to woodland. They are not suited to any of the common cultivated crops; in unusual instances, some soils in this class may be used for special crops under unusual management practices. Some areas of class VII may need seeding or planting to protect the soil and to prevent damage to adjoining areas.

Class VIII -- Soils and landforms in class VIII have limitations that preclude their use for commercial plant production and restrict their use to recreation, wildlife, or water supply or to esthetic purposes.

Soils and landforms in class VIII cannot be expected to return significant on-site benefits from management for crops, grasses, or trees, although benefits from wildlife use, watershed protection, or recreation may be possible.

Limitations that cannot be corrected may result from the effects of one or more of the following: (1) erosion or erosion hazard, (2) severe climate, (3) wet soil, (4) stones, (5) low moisture capacity, and (6) salinity or sodium.

Badlands, rock outcrop, sandy beaches, river wash, mine tailings, and other nearly barren lands are included in class VIII. It may be necessary to give protection and management for plant growth to soils and landforms in class VIII in order to protect other more valuable soils, to control water, or for wildlife or esthetic reasons.

CAPABILITY SUBCLASSES

Subclasses are groups of capability units within classes that have the same kinds of dominant limitations for agricultural use as a result of soil and climate. Some soils are subject to erosion if they are not protected, while others are naturally wet and must be drained if crops are to be grown. Some soils are shallow or droughty or have other soil deficiencies. Still other soils occur in areas where climate limits their use. The four kinds of limitations recognized at the subclass level are: risks of erosion, designated by the symbol (e); wetness, drainage, or overflow (w); rooting-zone limitations (s); and climatic limitations (c). The subclass provides the map user information about both the degree and kind of limitation. Capability class I has no subclasses.

Subclass (e) erosion is made up of soils where the susceptibility to erosion is the dominant problem or hazard in their use. Erosion susceptibility and past erosion damage are the major soil factors for placing soils in this subclass.

Subclass (w) excess water is made up of soils where excess water is the dominant hazard or limitation in their use. Poor soil drainage, wetness, high water table, and overflow are the criteria for determining which soils belong in this subclass.
To: File
From: Planning Staff
Date: June 16, 2010
Re: Parking for Duplex or Detached Dwelling when off of an alley
Document: Lawrence Development Code
Section: 20-908

This interpretation clarifies the permitted configuration for Duplex and Detached Dwelling parking when such parking is accessed from an alley. This interpretation is in response to a letter from Dan Hermreck, with Residential Design, dated May 19, 2010 and received by the Planning and Development Services department on May 21, 2010. This interpretation does not address parking for any land uses other than Duplex and Detached Dwelling.

The primary code section that must be reviewed is 20-908:

20-908 LOCATION

(a) General
Except as otherwise expressly provided in this section, required off-street parking and loading spaces shall be located on the same Lot as the Principal Use (See Section 20-909 for possible exceptions).

(b) Residential Districts
No part of a Parking Area, other than a Driveway, may be located within 25 feet of a Street right-of-way in any residential Zoning District.

(1) No more than 4 vehicles may be parked on Driveways or turnarounds within the required Front or Side Setback of any Lot in a residential Zoning District. Single or double Driveways and turnarounds may not be used to provide required off-street parking within the required Front or Exterior Side Setback with the exception of when they are serving a Duplex or Detached House.

(2) Driveway widths may not exceed 26 feet in residential Districts. All Driveway cuts into the Street require a permit and must be approved by the City Engineer in conformance with the standards outlined in Chapter 16, Article 3 of the City Code.

(3) In RS3 and RS5 Districts, residential Driveways may be constructed a maximum of 12' wide to reduce pavement width and maintain the character of the neighborhood.
The code does not specifically lend direction on how to treat parking when taken directly off of an alley and the standards included in section 20-908 appear to be intended for lots that are accessed from streets and not alleys. However, the same site planning principles can be extended to alley configurations. Principles of appropriate parking design - maintaining appropriate setbacks and open areas on the lot, maintaining a residential character and user efficiency, reducing the “parking lot” effect, etc. - are valuable whether in the front, side, or rear of a lot.

The question before us is whether a parking configuration can be established that permits “end-to-end (or tandem) vehicle stacking” in a “Driveway”, a code defined term, as well as “side-to-side vehicle stacking” in a parking area directly off of the alley. Under the 2006 Development Code, and in practice, the department has permitted one or the other, but not both, in order to maintain the site planning principles noted above.

The code limits driveways to 26 feet wide for RS districts other than RS3 and RS5, where the width is limited to 12’ wide, which Chapter 16, Article 3 of the City Code designates as a double driveway. In the example provided for this interpretation request, parking is shown in a side-to-side configuration with one, two-car garage accessed from the row of parking along the alley. A conventional design for lots that are accessed from the front or side off of a street would not permit this configuration. Any additional side-to-side vehicle stacking would need to be located farther onto the lot so that the driveway at the curb cut is not greater than 26 feet wide.

However, parking off of alleys does differ from conventional street access for Detached Dwelling and Duplex developments. Alleys are recognized for their utilitarian function and side-to-side stacking is permitted by practice for single rows of parking when accessed from an alley. Driveways not greater than 26’ wide are permitted for end-to-end parking when accessed from an alley. The subject question is whether a single row of side-to-side parking that is wider than 26’ can then have a garage, of any stall width, accessed by the parking area as depicted in the subject request.

Staff is of the opinion that the intent and values of the code standards are met if a garage is permitted to be constructed adjacent to either a single row of off-alley, side-to-side vehicle parking as shown below, or at the terminus of a driveway that is no wider than 26’ in an end-to-end configuration. Driveways in the RS3 and RS5 districts should enjoy the benefit of the 26’ width when placed off of an alley as an incentive to reduce driveways along the streets.

Employing both end-to-end and side-to-side parking, however, does not meet the spirit of the code standards and is not permitted as noted below. Permitting multiple rows of side-to-side and end-to-end parking, or mixing the configurations, would create a large parking lot in the rear of the structure and would, in its cumulative effect, diminish the residential character of the area in staff’s opinion.

A distinction must be made for carports. In staff’s opinion, an enclosed garage structure affords the highest ability to maintain the residential character for the subject uses; however, carports are an allowed structure and so this interpretation includes carports.

**Interpretation**

The diagrams below depict the **permitted** configurations for Detached Dwelling and Duplex development where parking is accessed from an alley. All setbacks and other code standards must also be met:
Figure 1 - permitted

Figure 2 - permitted
Figure 3 - permitted

Figure 4 - permitted
Figure 5 - permitted
Configurations **not permitted**, whether or not a garage is constructed adjacent to the open parking area:

![Diagram 1: No Garage or Carport](image1)

Figure 6 - not permitted

![Diagram 2: Garage or Carport 1 or more bays deep](image2)

Figure 7 - not permitted
Garage or Carport
2-bays deep

Figure 8 - not permitted
May 19, 2010

Scott McCullough
Planning Director
City of Lawrence

Dear Mr. McCullough

I am writing in reference to a project we are working on at 903 Alabama. I have been in contact with Lynne Braddock-Zollner from your office and she suggested I request a code interpretation from you.

The code portion in question is Article 9, Section 20-909 (b) (1).

I have attached a site plan sketch of what the owner wishes to do re: the parking and a copy of the code excerpt.

The question is if we have 2 spaces in the garage and 2 spaces stacked behind the garage adjacent to the alley, can we also have 2 spaces designated to the north adjacent to the alley?

Lynne was unsure how the code notation: "....with the exemption of when they are serving a Duplex or Detached House" would apply to this situation.

Your consideration would be appreciated.

If I can answer any questions, please don’t hesitate to call. Lynne is familiar with this as well.

Sincerely,

Dan Hermreck
(b) **Residential Districts**

No part of a Parking Area, other than a Driveway, may be located within 25 feet of a Street right-of-way in any residential Zoning District.

(1) No more than 4 vehicles may be parked on Driveways or turnarounds within the required Front or Side Setback of any Lot in a residential Zoning District. Single or double Driveways and turnarounds may not be used to provide required off-Street Parking within the required Front or Exterior Side Setback with the exception of when they are serving a Duplex or Detached House.

(2) Driveway widths may not exceed 26 feet in residential Districts. All Driveway cuts into the Street require a permit and must be approved by the City Engineer in conformance with the standards outlined in Chapter 16, Article 3 of the City Code.

(3) In RS3 and RS5 Districts, residential driveways may be constructed a maximum of 12’ wide to reduce pavement width and maintain the character of the neighborhood.

(c) **Nonresidential Districts**

The location of off-Street Parking Areas in Commercial and Industrial Zoning Districts shall comply with the adopted city design standards and the following standards: (Ord. 8098)

<table>
<thead>
<tr>
<th>District</th>
<th>Allowed Location</th>
<th>Minimum Setback from Right-of-Way (feet)</th>
<th>Minimum Setback from Residential Lot Lines (feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>CN1</td>
<td>Not allowed between the Facade of the Building with the main entrance and the Street.</td>
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<tr>
<td>CO</td>
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<tr>
<td>CN2</td>
<td>Prohibited between a Building and any Street</td>
<td>15</td>
<td>10</td>
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<td>CD</td>
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</tbody>
</table>

20-909 **Shared and Off-Site Parking**

(a) **Purpose**

The shared and off-site off-Street Parking provisions of this section are intended to encourage efficient use of land and resources by allowing users to share off-Street Parking facilities in situations where a mix of uses creates staggered peak periods of Parking demand and to locate off-Street Parking facilities on a different site than the uses served by the Parking.

(b) **Approval Procedure**

Shared or off-site off-Street Parking arrangements require review and approval in accordance with the Site Plan Review procedures of Sec. 20-1305.
SITE PLAN

2/26/10 REV. 4/1/10
903 ALABAMA ST.
PLANNING COMMISSION REPORT
Regular Agenda -- Public Hearing Item

PC Staff Report
6/23/10

ITEM NO. 6  TEXT AMENDMENT; LAND DEVELOPMENT CODE; IBP DISTRICT (MJL)

TA-4-4-10: Consider Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Section 20-403 of the Code of the City of Lawrence, KS to permit the Hotel, Motel, Extended Stay use in the IBP (Industrial/Business Park) District. Initiated by Planning Commission on 4/26/10.

RECOMMENDATION: Staff recommends that the Planning Commission forward a recommendation for approval to the City Commission for TA-4-4-10 to amend the Land Development Code to permit the Hotel, Motel, Extended Stay use in the IBP District.

Reason for Request: To permit the Hotel/Motel/Extended Stay use in the IBP District.

RELEVANT GOLDEN FACTOR:
• This request is generally in conformance with the comprehensive plan.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING
• No public comment received prior to printing

OVERVIEW OF PROPOSED AMENDMENT
Proposed amendment to Section 20-403, the Nonresidential District Use Table to permit the Hotel, Motel, Extended Stay use in the IBP District.

CONFORMANCE WITH THE COMPREHENSIVE PLAN
Chapter 7, Goal 3 of Horizon 2020 supports the use of transitions between more intensive and lesser intensive uses for Industrial and Employment Related Land Uses. Additionally Goal 3.2 discusses low-intensity commercial or office uses as a transitional method.

CRITERIA FOR REVIEW AND DECISION-MAKING
Section 20-1302(f) provides review and decision-making criteria on proposed text amendments. It states that review bodies shall consider at least the following factors:

1) Whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition; and

There is a general change in condition that recognizes the positive benefits of mixed use development and less need to segregate uses. A hotel, motel, extended stay use could be a use that supports other industrial, office, and research uses in industrial districts.

2) Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of this Development Code (Sec. 20-104).

Staff believes the text amendment is consistent with Horizon 2020 because the Hotel, Motel, Extended Stay use could provides an opportunity to transition uses. Additionally the text amendment is consistent with the stated purpose to protect the health, safety and general welfare of the citizens.
3 Existing IBP Districts
### Draft Code Changes

**20-403 NONRESIDENTIAL DISTRICT USE TABLE**

<table>
<thead>
<tr>
<th>Key:</th>
<th>A = Accessory</th>
<th>P = Permitted</th>
<th>S = Special Use</th>
<th>* = Standard Applies</th>
<th>- = Use not allowed</th>
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#### RESIDENTIAL USE GROUP

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<tr>
<th>Use Description</th>
<th>CN1</th>
<th>CN2</th>
<th>MU</th>
<th>CO</th>
<th>CD</th>
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<th>CR</th>
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<th>IL</th>
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<th>GPI</th>
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#### PUBLIC AND CIVIC USE GROUP

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### COMMERCIAL USE GROUP

#### Animal Services
- Kennel: - - - - - P P P - - - - -
- Livestock Sale: - - - - S S S - P P - - -
- Sales and Grooming: P P P P P P P P - P P - - -
- Veterinary: - P P P P P P P P - - - -

#### Eating & Drinking Establishments
- Accessory Restaurant: - - - - - - - - - - - - A - - -
- Bar Or Lounge: - P* S* - P* P* P* P* - - - - -
- Brewpub: - - - - - - - - - - - - -
- Fast Order Food: P* P* P* P* P* P* P* P* - P* - - - A* 511 & 509
- Fast Order Food, With Drive-In: - S - - - P P P - - - -
- Nightclub: - - - - P* - P* P* - - - - - - -
- Private Dining Establishments: P* P* - P* P* P* P* P* P* - - - - - - 539
- Restaurant, Quality: P* P* P* P* P* P* P* P* P* - - - - - - 524

#### Office
- Administrative and Professional: P* P* P* P* P* P* P* P* P* P* P* - P* A*
- Financial, Insurance & Real Estate: P* P* P* P* P* P* P* P* P* P* - - - A*
- Other: P* P* P* P* P* P* P* P* P* P* P* P* - - - - - - 537

#### Parking Facilities
- Commercial: - S S S S P P P P P P P P - P A

#### Retail Sales & Service
- Building Maintenance: - P S - P P P P - P - - A A
- Business Equipment: - P P - P P P P P P - - - -
- Business Support: - P P P P P P P P P P P P P - - - - A
- Construction Sales and Service: - - - - P P P P - P P - - A
- Food and Beverage: P* P* P* P* P* P* P* P* P* - P* - - - A* 511
- Mixed Media Store: P* P* P* P* P* P* P* P* P* - P* - - - 516 528
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### Base Zoning Districts

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### Base Zoning Districts

| Use-Specific Standards (Sec. 20-)
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#### Mining
- **Mining**
- **Use-Specific Standards (Sec. 20-): 515**

#### Recycling Facilities
- **Large Collection**
- **Use-Specific Standards (Sec. 20-): 540**
- **Small Collection**
- **Use-Specific Standards (Sec. 20-): 540**
- **Processing Center**
- **Use-Specific Standards (Sec. 20-): 540**
Agenda Item 6

Text Amendment to the Land Development Code; IBP District
Existing IBP Districts
Permitted Uses

- Health care offices
- Accessory Bar or Restaurant (to an eating or drinking establishment)
- Quality Restaurant
- Private Dining Establishment
- Office (admin, professional, real estate, ins)
- Commercial Parking Facilities
- Business Equipment Sales & Service (office equipment & supply firms, business machine repair)
- Business Support (secretarial services, telephone answering services, trade schools with no outdoor storage or manufacturing)
- Limited Manufacturing & Production (caterers, bottling and beverage manufacturing, electronic assembly, arts & craft or small-scale manufacturing)
- Technical Manufacturing & Production (production, assembly, processing or packaging of products relying on research and tech. innovations)
- Research Services (research labs)
- Light Wholesale, Storage & Distribution (wholesale distributors, storage warehouses, moving and storage)
- Telecommunication Tower
- Small Collection Recycling Facilities (500 sf max)
Hotel, Motel & Extended Stay Accessory Use

- Bar, restaurant or nightclub permitted as accessory uses
- **20-509(1) Accessory Uses to Hotels**
  - A hotel with 50 or more rooms may have a restaurant as an Accessory Use; a restaurant may be permitted as a second Principal Use on the same property as a smaller hotel, subject to all of the other conditions applicable to the use and the district in which it is located, including separate Parking requirements.
  - A hotel with 100 or more rooms may have a Bar as an Accessory Use, subject to all of the other conditions applicable to the use and the district in which it is located, including separate Parking requirements.
  - A hotel with 150 or more rooms may have a Nightclub or other live entertainment as an Accessory Use.
Adjacent Property Protections

- **Setbacks**
  - 40’ adjacent to R Districts
  - 15’ adjacent to non R Districts
- **Commercial Design Standards**
  - Only apply to uses in the Commercial Use Group
- **Buffer Yards**
  - Type 3 adjacent to all R Districts
  - 50% of trees and shrubs must be evergreens
<table>
<thead>
<tr>
<th>Minimum Buffer Width</th>
<th>100 Linear Feet</th>
<th>Landscape Requirements</th>
<th>Material Requirements</th>
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Key Points

- Potential of development of supporting uses
- Generally in conformance with the comprehensive plan regarding transition of uses
- Existing code offers setback and buffer yard protections to adjacent R Districts
Staff Recommendation

- Staff recommends approval of TA-4-4-10, a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Section 20-403 of the Code of the City of Lawrence, KS to permit the Hotel, Motel, Extended Stay use in the IBP District.
Please consider this email as my official notice of OPPOSITION to the proposed text amendment changes for the area abutting Research Park Drive.

This area is a family neighborhood and the proposed text changes would be devastating to the property owners ability to safely enjoy their property if retail or related uses were permitted.

David Schauner
5002 Jeffries Ct
Lawrence, Ks 66047
Mr. Greg Moore, Chairman
Members
Lawrence-Douglas County Planning Commission
City Hall
Lawrence, Kansas 66044

RE: ITEM NO. 6, TEXT AMENDMENT; LAND DEVELOPMENT CODE; IBP DISTRICT

Dear Chairman Moore and Planning Commissioners:

This letter concerns the addition of the hotels, motels, and extended stay uses to the list of permitted uses in the Industrial Business Park (IBP) District. We share the misgivings of some of the residents of the surrounding neighborhood of the IBP District adjacent to Wakarusa and Bob Billings Parkway about the possible incompatibilities and traffic increase on neighboring streets with the addition of such uses to this zoning district.

However, beyond the neighborhood issue is the consideration of changing an industrial area in a way that would allow non-industrial uses to monopolize an existing industrial district. Industrial districts tend to be reduced over time because this use may take more capitalization and a longer time span to utilize the land than other uses. If this text amendment is going to be seriously considered there should be limits on such non-industrial uses. For example, an IBP District should be large enough to make a hotel or motel use a needed functional addition to the industrial and business uses for out-of-town clients and personnel utilizing the primary uses in the IBP District.

Because of the importance of protecting our industrial and employment related land uses, such as the IBP District, for the economic health of the city, we believe that adding disparate, possibly conflicting uses to these districts must be done with special care. We believe that only those uses that are complementary to the original intended use of these IBP districts should be considered as additional permitted uses. By "complementary" we mean that the use assists or strengthens the originally intended use. Therefore we believe that any complementary use added to an industrial and employment related district such as the IBP District should be auxiliary to the predominant industrial/employment related uses.

In order to achieve these objectives we suggest that hotels, motels, and extended stay uses not be permitted by right, but rather must require a Special Use Permit, with the added condition that these auxiliary uses must be a small fraction of the area devoted to the industrial/business park use and only approved after a portion of the district area is occupied by the industrial/business park use.

Thank you for considering our letter on this issue.

Sincerely yours,

Milton Scott
Vice President

Alan Black, Chairman
Land Use Committee
PLANNING COMMISSION REPORT
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PC Staff Report
6/23/10

ITEM NO. 7: COMPREHENSIVE PLAN AMENDMENT TO UPDATE CHAPTER 14; SPECIFIC PLANS (MJL)

CPA-4-2-10: Update Chapter 14 - Specific Plans to correct references made to the previous Chapter 13 - Implementation regarding the adoption process for plans. The reference needs to be updated to refer to Chapter 17 – Implementation. This was an oversight when the chapter was renumbered and was identified as a work item in the annual review of the Comprehensive Plan. Initiated by Planning Commission on 4/26/10.

STAFF RECOMMENDATION: Staff recommends updating Chapter 14 (Specific Plans) to change references to the previous Chapter 13 (Implementation) to reference Chapter 17.

SUMMARY

As part of the annual review of the comprehensive plan, staff determined that Chapter 13 - Implementation should be moved to the last chapter of the plan, Chapter 17. Chapter 13 is now reserved for a future chapter, if necessary, so that the Implementation chapter will not have to be moved again. However, there are still references to the former Chapter 13 in Chapter 14 - Specific Plans that needs to be updated to refer to Chapter 17. The only incorrect references appear on the first page of Chapter 14 (14-1).

STAFF REVIEW

References to Chapter 13 were an oversight when the Implementation chapter was moved to Chapter 17. Staff did not find any other incorrect references to Chapter 13 throughout the plan.

COMPREHENSIVE PLAN AMENDMENT REVIEW

A. Does the proposed amendment result from changed circumstances or unforeseen conditions not understood or addressed at the time the plan was adopted?

The proposed amendment is intended to correct a previously overlooked error and does not represent a material change in the plan.

B. Does the proposed amendment advance a clear public purpose and is it consistent with the long-range goals and policies of the plan?

The proposed change helps to keep a logical flow of the plan and does not affect the goals and policies.
C. **Is the proposed amendment a result of a clear change in public policy?**

The change is to ensure that the Implementation chapter is properly referenced in preceding chapters of the plan and does not change policy.

**PROFESSIONAL STAFF RECOMMENDATION**

Staff recommends updating Chapter 14 (Specific Plans) to change references to the previous Chapter 13 (Implementation) to reference Chapter 17.
CHAPTER FOURTEEN – SPECIFIC PLANS

Purpose
Long-range planning in an area specific manner is an important aspect of the overall community planning process. Specific plans provide the focused guidance necessary for proper decision making regarding an area’s future. Chapter 14 references adopted specific plans and provides guidance, through the Hierarchy of Plans, for completing the proper type of plan for an area.

The plans referenced below have been adopted through a Comprehensive Plan process, as described on pages 13-7 and 13-9. As such, these plans are considered Comprehensive Plan policy and are an element of Horizon 2020. The plans are separate documents from Horizon 2020 and can be accessed online at http://www.lawrenceplanning.org or copies can be obtained by contacting the Lawrence-Douglas County Planning Department.

Plans prepared for specific areas, whether they are areas within the City of Lawrence or areas within unincorporated Douglas County contain detailed policy guidance for those areas. The plans, when adopted through a Comprehensive Plan process, and referenced in this chapter, become the official Comprehensive Plan policy for the respective areas. The policy contained in the plans take precedence over other policy found in Horizon 2020, unless specifically stated otherwise in the Plans.

Plan Review
Plans can eventually lose their relevance to a specific area. Additionally, some plans will require review to confirm if policies are being followed, goals are being met, and implementation is occurring.

Therefore, it is necessary to ensure plans are reviewed on a regular basis to update them or to rotate them out of the Comprehensive Plan if they have lost their relevance. Each plan listed below has a date which will trigger a review of that plan. Planning Staff will review the plan to determine if it meets one of the following criteria and needs the required action:

1. Plan remains relevant - no action necessary.

2. Plan has been superseded by another plan - remove from Chapter 14.

3. Plan is out of date and no longer relevant - remove from Chapter 14.

4. Plan requires updating - staff will update and forward recommendations for Commission consideration.

Staff will report on the review of a specific plan to the Planning Commission along with a recommendation for action, if necessary. If an update is required, staff will provide the Planning Commission a plan to complete the update. A Comprehensive Plan Amendment will be required to remove a specific plan from Chapter 14 or to update a specific plan.
PLANNING COMMISSION REPORT
Regular Agenda -- Public Hearing Item

PC Staff Report
06/23/10
ITEM NO. 9

TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE;
CHAPTER 20, ARTICLE 12; FLOODPLAIN OVERLAY DISTRICT (AMB)

TA-4-6-10: Consider Text Amendments to the City of Lawrence Land Development Code, Chapter 20, Article 12 to reference 2010 effective dates for new Floodplain Overlay District Maps and related regulation changes. Initiated by Planning Commission on 4/28/10.

RECOMMENDATION: Staff recommends approval of the revised text for Sections 20-1201(a)(3)(i), 20-1201(b)(1), 20-1201(c)(1) and forwarding of the proposed text amendments to Chapter 20, Article 12 to the City Commission for approval and adoption.

Reason for Request: The Planning Commission initiated this amendment on April 28, 2010 as a result of the Flood Map Modernization project undertaken by the Federal Emergency Management Administration (FEMA) by which new floodplain maps will be produced for Douglas County. The effective date for those maps needs to be reflected in the Development Code in order to comply with the State of Kansas model floodplain ordinance.

RELEVANT GOLDEN FACTOR:

• Conformance with the Comprehensive Land Use Plan is the relevant factor that applies to this request. Adoption of new regulatory tools, one of which is zoning regulations, is an implementation step in Chapter 13 of HORIZON 2020, the City/County Comprehensive Land Use Plan.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

• No written comments received to date.
• Staff has conferred with State Division of Water Resources floodplain program administrators regarding the proposed changes.

OVERVIEW OF PROPOSED AMENDMENT

The Federal Emergency Management Agency (FEMA) recently completed a re-evaluation of flood hazards for Douglas County. Staff has received the preliminary maps and has been in the process of reviewing them. As part of the issuance of new Flood Insurance Rate Maps (FIRMs), staff has set up an informational website with information about the new maps, and conducted outreach activities within the community to raise awareness about the new flood hazard maps. FEMA requires each community to amend their floodplain regulations to include the new effective date of the FIRM maps, which will be August 5, 2010. Sections 1201(a)(3)(i), 20-1201(b)(1), and 20-1201(c)(1) need to be changed to reflect the new effective date.

Prior to adoption, this proposed language will need to be officially reviewed by the Kansas Department of Agriculture, Division of Water Resources (DWR) to ensure compliance with the City’s participation in the National Flood Insurance Program (NFIP), including alignment with the current
State Model Floodplain Ordinance.

CRITERIA FOR REVIEW & DECISION-MAKING

Section 20-1302(f) provides review and decision-making criteria on proposed text amendments. It states that review bodies shall consider at least the following factors:

1) **Whether the proposed text amendment corrects an error or inconsistency in the Development Code or meets the challenge of a changing condition.**

**Staff Response:** The proposed amendment addresses an change to reflect the issuance of new Federal Insurance Rate Maps by FEMA for Douglas County. Changing the effective date of the maps addresses an inconsistency that is a result of the issuance of those new maps.

2) **Whether the proposed text amendment is consistent with the Comprehensive Plan and the stated purpose of this Development Code (Sec. 20-104).**

**Staff Response:** The comprehensive plan does not specifically address the amendment. The amendment helps to carry out the plan’s goal of using zoning standards to create compatible neighborhoods and efficient development processes.

PROPOSED LANGUAGE:

FEMA requires each community to amend their floodplain regulations to include the new effective date of the FIRM maps, which will be August 5, 2010. Sections 1201(a)(3)(i), 20-1201(b)(1), and 20-1201(c)(1) have been changed to reflect the new effective date.

Text to be deleted is shown with strikeout and proposed text is shown in **bold italic underline** font.

20-1201 GENERAL

(a) Findings of Fact

(1) The **Areas of Special Flood Hazard** of Lawrence, Kansas, are subject to inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for Flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety, and general welfare.

(2) **These Flood losses are caused by:**

(i) the cumulative effect of **Development** in any delineated **Floodplain** causing increases in **Flood** Heights and velocities;

(ii) urbanization of upstream areas, resulting in increased Impervious Surface and increased stormwater runoff;
(iii) the occupancy of Flood hazard areas by uses vulnerable to Floods, hazardous to others, inadequately elevated, or otherwise unprotected from Flood damages; and

(iv) the modification of the Floodplain by grading or filling.

(3) The Flood Insurance Study (FIS) that is the basis of the National Flood Insurance Program uses a standard engineering method of analyzing Flood hazards, which consists of a series of interrelated steps:

(i) Selection of a Base Flood that is based upon engineering calculations, which permit a consideration of such Flood factors at its expected frequency of occurrence, the area inundated, and the depth of inundation. The Base Flood selected for this Article is representative of large Floods, which are characteristic of what can be expected to occur on the particular streams subject to this Article. It is in the general order of a Flood which could be expected to have a one percent (1%) chance of occurrence in any one year as delineated in the Federal Insurance Administrator’s FIS, and illustrative materials dated November 7, 2001, as amended, and any future revisions thereto;

(ii) Calculation of water surface profiles are based on a standard hydraulic engineering analysis of the capacity of the stream channel and overbank areas to convey the Regulatory Flood;

(iii) Computation of a Floodway required to convey this Flood without increasing Flood Heights more than one (1) foot at any point;

(iv) Delineation of Floodway Encroachment Lines within which no Development is permitted that would cause any increase in Flood Height; and

(v) Delineation of Floodway Fringe, i.e., that area outside the Floodway Encroachment Lines, but still subject to inundation by the Base Flood.

(b) Floodplain Overlay District – Property within the City Limits on 03/01/03

(1) The Floodplain Overlay District boundaries for properties within the city’s corporate limits as of March 1, 2003 shall be consistent with the Base Flood Elevations and Floodplain widths identified by the FIS and Flood Insurance Rate Map (FIRM) for “Douglas County Kansas and Incorporated Areas dated November 7, 2001, August 5, 2010,”

(c) Floodplain Overlay District – Property Annexed into the City after 03/01/03

(1) The Base Flood Elevations and Floodplain widths identified by the FIS and Flood Insurance Rate Map (FIRM) for “Douglas County, Kansas, and Incorporated Areas dated November 7, 2001, August 5, 2010,” may increase over time as a result of additional watershed Development; therefore the City has identified the Floodplain (FP) Overlay District for property annexed into the city’s corporate limits after March 1, 2003, as the area that includes:
(i) All Zones A on the current FIRM;

(ii) All Zones AE and AH on the current FIRM and all adjacent areas inundated by a Flood having an elevation of the FIS Base Flood Elevation plus an additional two feet of Freeboard. If an approved Hydrologic and Hydraulic Study has been completed, the boundary information provided in that study will be utilized to amend the Floodplain Overlay District boundaries;

(iii) All Zones AO on the current FIRM and all adjacent areas inundated by a Flood having an elevation of the FIS average depth of Flooding plus an additional two feet of Freeboard. If an approved Hydrologic and Hydraulic Study has been completed, the boundary information provided in that study will be utilized to amend the Floodplain Overlay District boundaries; and

(iv) All stream tributaries having a drainage area of 240 acres or more regardless of the limits of the FIS. Upstream of the limits of the FIS, the width of the Floodplain Overlay District shall be determined by the City using recognized engineering practices.

(2) The Floodplain Overlay District will be shown and identified on the Official Zoning Map of the City of Lawrence.
PLANNING COMMISSION REPORT
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PC Staff Report
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ITEM NO. 10 TEXT AMENDMENT TO DOUGLAS COUNTY ZONING REGULATIONS;
CHAPTER 12, ARTICLE 28; FLOODPLAIN OVERLAY DISTRICT (AMB)

TA-4-7-10: Consider Text Amendments to the Zoning Regulations, Chapter 12, Article 28 of
the Code of the County of Douglas, Kansas to reference 2010 effective dates for new
Floodplain Overlay District Maps and related regulation changes. Initiated by the Planning
Commission on 4/28/10.

RECOMMENDATION: Staff recommends that the Planning Commission forward the
proposed text amendment [TA-4-7-10] regarding changes to the Zoning Regulations, Chapter
12, Article 28 of the Code of the County of Douglas, Kansas on to the Board of County
Commissioners with a recommendation for approval.

ATTACHMENTS
• Attachment A -- Proposed language for Section 12-328

Reason for Request: The Planning Commission initiated this amendment on April 28, 2010
as a result of the Flood Map Modernization project undertaken by the Federal Emergency
Management Administration (FEMA) by which new floodplain maps will be produced for Douglas
County. The effective date for those maps needs to be reflected in the Zoning Regulations, as
well as other minor sections of the code changed in order to comply with the State of Kansas
model floodplain ordinance.

RELEVANT GOLDEN FACTOR:
• Conformance with the Comprehensive Land use Plan is the relevant factor that applies to
this request. Amending regulatory tools, one of which is this amendment to the County
Zoning Regulations, is an implementation step in Chapter 17 of Horizon 2020, the
City/County Comprehensive Land Use Plan.

PUBLIC COMMENT RECEIVED PRIOR TO PRINTING
No public comment was received.

Staff has conferred with State Division of Water Resources floodplain program administrators
regarding the proposed changes.

OVERVIEW OF PROPOSED AMENDMENT
The Federal Emergency Management Agency (FEMA) recently completed a re-evaluation of
flood hazards for Douglas County. Staff has received the preliminary maps and has been in the
process of reviewing them. As part of the issuance of new Flood Insurance Rate Maps (FIRMs),
staff has set up an informational website with information about the new maps, and conducted
outreach activities within the community to raise awareness about the new flood hazard maps.
FEMA requires each community to amend their floodplain regulations to include the new
effective date of the FIRM maps, which will be August 5, 2010. Section 12-328-3 needs to be
changed to reflect the new effective date.
In response to a preliminary review by the Kansas Department of Agriculture, Division of Water Resources (DWR), Staff has been directed to make two additional changes that are necessary for compliance with the County’s participation in the National Flood Insurance Program (NFIP), including alignment with the current State Model Floodplain Ordinance.

Previously, language in 12-328-6.02 (b) stated that non-residential structures could be floodproofed below base flood elevation (BFE). The Model Code now changes that standard and it has been included in this amendment. If floodproofing is the method utilized to meet the requirements of this section, non-residential structures must be floodproofed one foot above BFE.

Sections 12-328-6.02 (e), 12-328-8.03 (f), and 12-328-9, needs to be changed to reflect that a licensed professional engineer can certify elevation information in addition to a licensed land surveyor.

In addition, a minor typographical error has been corrected in Section 12-328-6.03.

Text to be deleted is shown with strikeout and proposed text is shown in **bold italic underlined font** in the Attachment A—Proposed language for Section 12-328.

Prior to adoption, this proposed language will need to be officially reviewed by the Kansas Department of Agriculture, Division of Water Resources (DWR) to ensure compliance with the County’s participation in the National Flood Insurance Program (NFIP), including alignment with the current State Model Floodplain Ordinance.
12-328 FLOODPLAIN MANAGEMENT REGULATIONS

12-328-1. STATEMENT OF PURPOSE AND INTENT
12-328-1.01. Statement of Purpose.
The management regulations set forth in this Section are the floodplain management regulations for the unincorporated portions of Douglas County. The purpose of these regulations is to protect individuals and property from flood hazards or flooding by providing for the orderly and safe development of the floodplain for the most advantageous uses which are consistent with the health, safety, and welfare of the general public and which are also consistent with sound practices for utilizing those areas required for the conveyance of specified stream flows in the regulatory floodway.

12-328-1.02. Intent.
a. The intent of these regulations is to avoid additional costs for home owners upon annexation and to minimize losses due to floods or flood waters by provisions designed to:
   1) Prohibit the placement of fill, materials, and structures which would obstruct flood flows and decrease the storage capacity of the regulatory floodway unless it can be demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
   2) Require structures in the floodplain and public utilities vulnerable to floods be provided with flood protection at the initial construction stage.
   3) Protect individuals from the purchase of lands rendered unsuitable for intended uses by their proximity to floodplain.
   4) Minimize public expenditures for flood control projects and damage to public improvements within the floodplain.
   5) Maintain property values adjacent to the floodplain and minimize flood blight areas.
   6) Assure eligibility for property owners in the Federal Flood Insurance Program.

b. These regulations are designed and intended to be administered in a manner which will:
   1) Restrict or prohibit uses dangerous because of water and erosion hazards or which will result in undue increases in erosion, flood heights, or velocities.
   2) Control grading (fill or excavation), dredging, and development which may unduly increase the potential for flood damage.
   3) Require that uses protect private and public investments by requiring floodproofing.
   4) Control alteration of floodplains, stream channels and natural barriers which accommodate or channel floodwaters.
   5) Prevent or regulate construction of barriers that unnaturally divert flood waters or cause increased flood hazards. Construction in floodplains should be directed to the outer limits of the Floodway Fringe before it is allowed to encroach further into the regulatory floodplain.

12-328-2. FLOODPLAIN OVERLAY DISTRICTS
The floodplain overlay districts shall include only those areas designated as floodplain by the Federal Insurance Study or by an approved Hydrologic and Hydraulic Study.
The floodplain overlay districts consist of: the "F-W" floodway overlay district; and, the "F-F" floodway fringe overlay districts.

12-328-3. FLOODPLAIN OVERLAY DISTRICTS MAP
The official floodplain overlay districts map shall be used in conjunction with the official zoning districts map. The official floodplain overlay districts map shall show the boundaries of the "F-W" floodway and the "F-F" floodway fringe overlay districts. These boundaries shall be consistent with the Floodway and Floodway Fringe as identified by the Federal Emergency Management Agency (FEMA) through a scientific and engineering report entitled, "The Flood Insurance Study for the County of Douglas, Kansas, and Incorporated Areas August 5, 2010 November 7, 2001", with the accompanying Flood Insurance Rate Maps and revisions thereto.

12-328-4. FLOOD INSURANCE
No part of this Section or any regulation therein shall be construed as affecting the eligibility for flood insurance of any structure existing at the time of publication of the Flood Insurance Rate Maps.

12-328-5. FLOODPLAIN DEVELOPMENT WITHIN THE CITY OF LAWRENCE URBAN GROWTH AREA (UGA)
12-328-5.01. Development of Property in the Floodplain Overlay District. Development of land or subdivision of property (including lot splits) within the City of Lawrence Urban Growth Area (UGA) and a 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.
   a. Property platted prior to June 1, 2005, may develop and/or re-plat 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.
   b. Development of undeveloped property that was platted prior to June 1, 2005 may occur without conducting a hydrologic and hydraulic study until January 1, 2007. Such development is still subject to the remaining sections of this Article. After January 1, 2007 development of the property is subject to all sections contained within this Section.

12-328-5.02. Floodway Restrictions. Any encroachment, including fill, new construction, substantial improvements, or other development is prohibited within the F-W Overlay District, except for the following structures:
   a. Flood control and stormwater management structures;
   b. Road improvements and repair;
   c. Utility easements/Right-of-Way; and,
   d. Public improvements or public structures for bridging the Floodway.

12-328-5.03. Hydrologic and Hydraulic Study
   a. Hydrologic and hydraulic studies shall comply with the following standards:
      1) The study shall be signed and sealed by a professional engineer, licensed in the State of Kansas;
      2) The study shall be submitted for approval by the Douglas County Director of Public Works concurrent with the initial submittal of a floodplain development permit application, preliminary plat, development plan or site plan;
      3) Hydrologic and hydraulic methods of analysis shall be consistent with those used
in the current Flood Insurance Study for Douglas County;

4) The study shall extend an adequate distance upstream and downstream of the proposed development to encompass the hydraulic effects of the proposed development;

5) The study shall determine the water surface elevations of the base flood for the existing stream and for any proposed development. Based on the assumption of full watershed development and other factors, the findings of the hydrologic and hydraulic study may differ from the Flood Insurance Study. At a given location, the higher water surface elevation shall be the base flood elevation for compliance with the provisions of this section;

6) The study shall identify the velocities of the base flood for the existing stream and for any proposed development;

7) The study shall determine the areas of inundation of the base flood for the existing stream and for any proposed development. The area of inundation shall be dimensioned to the property corners for use in revising the floodplain overlay districts on all property within the extent of the study; and,

8) In areas outside Zone AE, the study shall also identify the Floodway for the proposed development.

b. For a hydrologic and hydraulic study that proposes an alteration of FEMA’s designated floodplain or Floodway, a letter of map revision (LOMR) must be obtained before a building permit will be used for any lot containing a Zone A, AE, AH or AO of the current FIRM.

12-328-5.04. **Land Disturbance.** Land disturbance or removal of vegetation within the floodplain overlay districts shall be minimized to the extent possible. When excavation, grading, removal of vegetation or other modifications to the cross-sectional geometry of the floodplain are proposed in order to meet the requirements set forth in section 12-328-5.01, those modifications shall comply with the following:

a. Construction plans shall be prepared for the proposed modifications and shall be submitted for review and approval by the Douglas County Director of Public Works.

b. As approved by the Douglas County Director of Public Works:

   1) Channel lining materials shall be limited to native vegetation, stabilized as necessary to prevent erosion. The use of concrete lining, pipe or other structural materials shall be minimized;

   2) Within the area of inundation, all disturbed areas above the channel lining shall be restored with native vegetation, including trees, to promote wildlife habitat; and,

   3) Channel designs shall preserve existing low-flow channels to the extent possible.

12-328-6 **DEVELOPMENT STANDARDS AND CRITERIA**

12-328-6.01. **General Standards.** Development in areas that are included in the floodplain overlay districts shall be required to meet the following general standards:

a. No structure, fill, or other uses within the floodway overlay district shall be permitted which will increase the base flood elevation.

b. Public improvements shall be waterproofed to the base flood elevation. Any space below the base flood elevation shall be watertight with walls substantially impermeable to the passage of water with structural components having the capabilities of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. The interior and content of the structures shall remain substantially dry.

   3) Water lines shall be designed to eliminate infiltration of flood waters into systems.
d. Sewer lines shall be designed to eliminate infiltration of flood waters into systems and discharge from the systems into the floodwaters.

e. Residential Construction: New construction or substantial improvements of a residential structure shall be elevated, anchored to prevent flotation, collapse, or lateral movement of the structure and shall be constructed to resist and minimize flood damage. Construction shall be with materials resistant to flood damages, utilizing methods and practices that minimize flood damages, and with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

f. Non-Residential Construction: All new construction and substantial improvements that fully enclose areas below the lowest floor which are usable solely for parking of vehicles, building access or storage in an area other than a basement; and, which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria; 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. 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.

g. Storage of materials or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent floatation or if readily removable from the area within the time available after the flood warning. Storage of materials that are buoyant, flammable, explosive or potentially injurious to human life at times of flooding shall not be permitted.

h. On site waste disposal systems shall be designed to avoid impairment due to flooding.

i. All new construction and substantial improvements that fully enclose areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: 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. 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.

j. Until a Floodway is designated, no new construction, substantial improvements, or other development, including fill, shall be permitted within any unnumbered or numbered A zones, or AE zones on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

12-328-6.02. Specific Standards. In addition to these general standards, development shall be required to meet the following specific standards:

a. Residential Construction. New construction and substantial improvement of residential structures shall have the lowest floor, including basement, elevated: a) a minimum of two feet above the base flood elevation when located within the Urban Growth Area
(UGA) of Lawrence, or, b) a minimum of one foot above the base flood elevation when located outside the Urban Growth Area of Lawrence but within the unincorporated area of Douglas County.

b. Non-Residential Construction. All new construction and substantial improvements of non-residential structures shall have a) (a) either (i) the lowest floor (including basement) elevated a minimum of one foot above the base flood elevation; or, b) (ii) together with attendant utility and sanitary facilities, be designed so that below one foot above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and e) (b) a registered professional engineer or architect develop and/or review the structural design, specifications and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting applicable provisions of the Federal Emergency Management Regulations [44FR311177, the Section 60.3 (c)(3)(i) & Section 60.3 (c)(8)(ii), and amendments thereto.]

c. Existing Manufactured (Mobile) Home Park – All manufactured homes to be placed in an existing park located in a floodplain overlay district are required to be firmly secured to an adequately anchored foundation system to resist floatation, collapse, or lateral movement, which may include, but is not limited to, the use of over-the-top or fame ties to ground anchors. (This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.)

d. Manufactured (mobile) homes to be placed or substantially improved in an expansion to an existing manufactured (mobile) home park where the repair, reconstruction, or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement has commenced are required to have the manufactured home chassis elevated by reinforced piers or other foundation elements of at least equivalent strength that are no less than thirty-six inches in height above grade and be securely attached to an adequately anchored foundation such that the lowest floor of the manufactured home is elevated at least two feet above the base flood elevation.

e. A licensed land surveyor or professional engineer shall certify that the elevation of a proposed structure is above the specified base flood elevation.

f. In areas where a base flood elevation has not been provided by the FIS, the county shall obtain, review and reasonably utilize any base flood elevation and Floodway data available from federal, state or other sources until such other data has been provided by FEMA for use and enforcement of this chapter.

g. Require that recreational vehicles placed on sites within the identified floodplain on the community’s FIRM either 1) be on the site for fewer than 180 consecutive days, 2) be fully licensed and ready for highway use, or 3) meet the permit requirements and the elevation and anchoring requirements for manufactured homes in this ordinance. A recreation vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

h. All proposals for development must include base flood elevation data.

i. In Zone AO and AH, adequate drainage paths shall be required around structures on slopes, in order to guide floodwaters around and away from proposed structures.

12-328-6.03. **Letter of Map Revision (LOR).** Structures placed on property that has been removed from the floodplain by a LOR shall have the lowest floor, including basement,
elevated above the base flood elevation in compliance with section 12-328-6-02.

12-328-7. **ADMINISTRATION AND RECORDS**

12-328-7.01. **Administration.** The Director of Zoning and Codes shall be vested with the administration of these regulations. It shall be his responsibility to review all requests for floodplain development permits and to enforce the regulations in this Section. Each permit shall be reviewed in consideration with the following:

a. Satisfying all the requirements of this Section.

b. Obtaining all the necessary permits from federal, state, or local government agencies prior to approval of the development permit.

c. The location of the proposed development in relation to the Floodway and the assurance that any encroachment meet the standards in this Section, and K.S.A. 12-766.

12-328-7.02. **Records.** The Director of Zoning and Codes, as administrator of these regulations, shall record and maintain a record of all development permits issued. Documentation of these permits shall include:

a. The proposed use, residential or non-residential;

b. The elevation of the regulatory floodway for the area developed; and,

c. Certification that the elevation of the lowest floor is above the base flood elevation by the required; one foot in the unincorporated area of the County outside the Lawrence Urban Growth Area or, two feet within the Urban Growth Area of Lawrence.

The Director of Zoning and Codes shall submit a biennial report on the appropriate federal annual report form to the Administrator concerning the community's participation in the Federal Insurance Program.

12-328-8. **DEVELOPMENT PERMIT**

12-328-8.01. No development shall be made in, on, or over any land designated by this Section and shown on the official floodplain overlay district map as being within the floodway overlay districts without obtaining approval from the Director of Zoning and Codes.

12-328-8.02. Application for a development permit shall be made by the property owner or his certified agent to the Director of Zoning and Codes upon appropriate forms. Such application shall be made at least ten days prior to the approval of a development permit. The application shall be accompanied by a fee of Fifty Dollars; no part shall be returnable to the applicant after review of the permit request has begun. The application fee shall be made payable to the Director of Zoning and Codes.

12-328-8.03. **Information required.** An application for a development permit shall be accompanied by the following information:

a. Identification and description of proposed use or development;

b. Legal description of the property;

c. Plan of the proposed development or use at a scale of one inch equals fifty feet or larger showing the Floodway and Floodway Fringe as designated by the Federal Insurance Administrator;

d. Use and type of structures proposed;

e. The elevation (in relation to mean sea level) of the lowest floor, including basements, of all structures or proposed fill;

f. A statement of the elevation flood proofed by a licensed land surveyor or professional engineer;

g. Proposed developments which include alteration of watercourses must:
1) In river or tributary situations, the Director of Zoning and Codes will notify any adjacent community, state coordinating agency for the National Flood Insurance Program, and the Federal Insurance Administration prior to any alteration or relocation of a watercourse.

2) Evidence submitted by the applicant's engineer or architect showing that no adverse impacts will result from the alteration and the flood carrying capacity within the altered or relocated portion of the watercourse is not diminished.

h. Any additional data which the Director of Zoning and Codes or County Engineer requests which is pertinent to the issuance of a development permit.

12-328-9. CERTIFICATION OF ELEVATION
Within sixty days after a building permit has been issued, a certification of elevation must be received, approved and recorded at the Director of Zoning & Codes’ Office.

The development permit must include certification from a land surveyor or professional engineer (licensed to do business in the State of Kansas) that the lowest floor, including basement, is a minimum of one foot above the base floodplain elevation. The building permit is null and void after said sixty day period if such certification is not provided. Occupancy of the structure shall be illegal prior to the approval of a development permit.

12-328-10. NON-CONFORMING USES AND STRUCTURES IN THE FLOODPLAIN
All non-conforming uses and structures within a floodway or regulatory floodway fringe overlay districts shall be subject to the following requirements in addition to other provisions of the County's Zoning Resolution.

12-328-10.01. No non-conforming use or structure shall be altered, repaired or modified unless a permit is issued under this Section.

12-328-10.02. No permit for the alteration, repair or modification of a non-conforming use in the Floodway Fringe shall be issued unless such alteration, repair or modification includes flood proofing by elevation to or above the base flood elevation. No permits shall be issued for alteration, repair or modification in the Floodway that will obstruct flow or increase the height of the base flood.

12-328-10.03. Uses or adjuncts thereof, which are or become nuisances shall not be entitled to continue as non-conforming uses.

12-328-10.04. The Director of Zoning and Codes, before issuing a development permit for the alteration, repair or modification of a non-conforming use or structure, shall request a decision from the Board of Zoning Appeals in determining the adequacy of the proposed flood proofing measures for the proposed alteration, repair or modification of the non-conforming use or structure. The Board of Zoning Appeals shall make this determination in accordance with the following specific criteria:

a. The susceptibility of the structure or use to flood damage.

b. The availability and expense of alternate floodproofing techniques.

c. The safety of the flood proofing measures.

12-328-11. AREAS OF SHALLOW FLOODING (ZONE AO AND ZONE AH)
The following provisions apply to areas designated as Zone AO and Zone AH:

12-328-11.01. Zone AO.

a. All development and substantial-improvements of residential structures, including mobile
homes or manufactured homes, shall have the lowest floor, including basement, elevated
above the highest adjacent grade at least as high as the depth number specified in feet
on the community’s FIRM (at least two feet if no depth number is specified);

b. All development and substantial-improvements of any commercial, industrial, or other
non-residential structures shall have the lowest floor, including basement, elevated
above the highest adjacent grade as least as high as the depth number specified in feet
on the community FIRM (at least two feet if no depth number is specified) or together
with attendant utilities and sanitary facilities be completely floodproofed to that so that
the structure is 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; and

c. Drainage paths must be provided adequately to guide floodwaters around structures.

12-328-11.02. **Zone AH**.  
a. The development standards for all areas of special flood hazard where base flood
elevation has been provided shall be required as set forth in section 12-328-6 et al; and,

b. Drainage paths must be provided adequately to guide floodwaters around structures.

12-328-12. **AMENDMENTS**
The regulations, restrictions, and boundaries set forth in this section may from time to time be
amended, supplemented, changed, or repealed to reflect any and all changes in the National
Flood Disaster Protection Act of 1973, provided, that prior to the adoption thereof, the Board of
County Commissioners shall submit to the chief engineer of the Division of Water Resources of
the State Board of Agriculture any ordinance, resolution, regulation or plan that proposes to
create or to effect any change in a floodplain zone or district, or that proposes to regulate or
restrict the location and use of structures, encroachments, and uses of land within such an
area.

The chief engineer may require, pursuant to rules and regulations, each submission hereunder
to be accompanied by complete maps, plans, profiles, specifications and textual matter. The
chief engineer shall approve or disapprove any such ordinance, resolution, regulation or plan or changes thereof within 90 days of the date of receipt of all such data required by the chief
engineer as specified in rules and regulations adopted thereby.

If the chief engineer fails to approve or disapprove within the 90 day period required by this
section, such ordinance, resolution, regulation or plan or change thereof shall be deemed
approved. The chief engineer shall provide, in writing, specific reasons for any disapproval.

12-328-13. **DEFINITIONS**
The following definitions are applicable to only the terms found in this section.


12-328-13.02. **Areas of Special Flood Hazard.** The land in the floodplain within a
community subject to a one percent or greater chance of flooding in any given year.

12-328-13.03. **Base Flood.** The flood having a one percent chance of being equaled or
exceeded in any given year.

12-328-13.04. **Base Flood Elevation.** The water surface elevation of the base flood as
determined by the Flood Insurance Study or by an approved Hydrologic and Hydraulic Study, whichever is higher.

12-328-13.05. **Community.** Any State or area or political subdivision thereof, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

12-328-13.06. **Development.** Any man-made change to improved or unimproved real estate, including but not limited to, building or other structure, mining, fill, dredging, grading, paving, excavation or drilling operations (excluding wells for potable water), or storage of equipment or materials.

12-328-13.07. **“Eligible Community”.** A community for which the Administrator has authorized the sale of flood insurance under the National Flood Insurance Program (NFIP).

12-328-13.08. **Existing Construction.** For the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “existing construction” may also be referred to as “existing structures”.

12-328-13.09. **Existing Manufactured Home, Park or Subdivision.** A manufactured home, park or subdivision for which the construction of facilities for servicing the lot(s) on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) are completed before March 2, 1981, the effective date of the adoption of the first County floodplain management regulations.

12-328-13.10. **Existing Structures.** (See “Existing Construction”)

12-328-13.11. **Expansion to an Existing Manufactured Home Park or Subdivision.** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets.)

12-328-13.12. **Flood.** A general and temporary condition of partial or complete inundation of normally dry land areas from: 1) the overflow of inland waters; 2) the unusual and rapid accumulation or runoff of surface waters from any source; and 3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood, or by some similarly unusual and unforeseeable event which results in flooding as defined above in item 1).

12-328-13.13. **Flooding.** [See “Flood”].

12-328-13.14. **Flood Insurance Rate Map (FIRM).** The official map of a community on which both the special flood hazard areas and the risk premium zones have been delineated.

12-328-13.15. **Flood Insurance Study (FIS).** An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.
12-328-13.16. **Floodplain.** The land area inundated by a flood of a given magnitude as determined by the Flood Insurance Study or by an approved Hydrologic and Hydraulic Study.

12-328-13.17. **Floodplain Management.** The operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness flood control works, and floodplain management regulations.

12-328-13.18. **Floodplain Management Regulations.** Zoning ordinances, subdivision regulations, building codes, health regulations, special purposes (such as floodplain and grading ordinances) and other applications of police power. The term describes such state or local regulations, in any combination thereof that provide standards for the purpose of flood damage prevention and reduction.

12-328-13.19. **Floodproofing.** Any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, or structures and their contents.

12-328-13.20. **Floodway.** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

12-328-13.21. **Floodway Encroachment Lines.** The lines marking the limits of Floodways on Federal, State and local floodplain maps.

12-328-13.22. **Floodway Fringe.** The area outside the Floodway encroachment lines, but still subject to inundation by the regulatory flood.

12-328-13.23. **Freeboard.** A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and Floodway conditions, such as bridge openings and the hydrological effect of urbanization of the watershed.

12-328-13.24. **Habitable Floor.** Any floor usable for living purposes, which include working, sleeping, eating, cooking or recreation, or a combination thereof.

12-328-13.25. **Highest Adjacent.** The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

12-328-13.26. **Historic Structure.** Any structure that is: a) Listed individually in the National Register of Historic places (a listing maintained by the Department of Interior) or preliminary determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; b) certified or preliminary determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminary determined by the Secretary to qualify as a registered historic district; c) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or d) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: 1) by an approved state program as determined by the Secretary of the Interior or 2) directly by the Secretary of the Interior in states without approved programs.
12-328-13.27. **Hydrologic and Hydraulic Study.** An engineering study that is done in accordance with section 12-328-5.03 et al.

12-328-13.28. **Lowest Floor.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor, provided that such enclosure is not built so as to render to structure in violation of the applicable non-elevation design requirements of this ordinance.

12-328-13.29. **Manufactured Homes [See “Mobile Home”]**

12-328-13.30. **Market Value.** An estimate of what is fair, economic, just and equitable value under normal local market conditions. If market value cannot be determined, the construction estimate can be used.

12-328-13.31. **Mean Sea Level.** For purposes of the National Flood Insurance Program (NFIP), the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map (FIRM) are reference.

12-328-13.32. **Mobile or Manufactured Home.** A structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The terms “mobile home” or “manufactured home” does not include a “recreational vehicle”.

12-328-13.33. **New Construction.** For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of the floodplain management regulations adopted by a community and includes any subsequent improvements to such structure.

12-328-13.34. **Overlay District.** A special zoning district that has been “overlaid” on a base zoning classification to add to or alter some or all of the base district zoning regulations.

12-328-13.35. **Participating Community.** [See “Eligible Community”]

12-328-13.36. **Person.** Includes any individual or group of individuals, corporation, partnership, association, or any other entity, including Federal, State, and local governments and agencies.

12-328-13.37. **Principally Above Ground.** When at least 51 percent of the actual cash value of the structure, less land value, is above ground.

12-328-13.38. **Recreational Vehicle.** A vehicle which is a) built on a single chassis; b) 400 square feet or less when measured at the largest horizontal projections; c) designed to be self-propelled or permanently able to be towed by a light-duty truck; and d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security
devices, and has no permanently attached additions.

12-328-13.39. **Special Flood Hazard Area (SFHA).** See ["Area of Special Flood Hazard"].

12-328-13.40. **Start of Construction.** This includes substantial improvements, and means
the date the building permit was issued, provided the actual start of construction, repair
reconstruction, placement, or other improvement was within 180 days of the permit date. The
actual start means the first placement of permanent construction of a structure on a site, such
as the pouring of slab or footings, the installation of piles, the construction of columns, or any
work beyond the state of excavation or placement of a manufactured home on a foundation.
Permanent construction does not include land preparation, such as clearing, grading, and filling;
nor does it include the installation of streets and/or walkways; nor does it include excavation for
a basement, footing, piers, or foundations or the erection of temporary forms; nor does it
include the installation on the property of accessory buildings, such as garages or sheds not
occupied as dwelling units or not part of the main structure.

12-328-13.41. **State Coordinating Agency.** The Division of Water Resources, Kansas
Department of Agriculture, or other office designated by the governor of the state or by state
statute at the request of the Administrator to assist in the implementation of the National Flood
Insurance Program (NFIP) in that state.

12-328-13.42. **Structure.** For the purpose of this section the definition of structure shall
mean, for floodplain management purposes, a walled and roofed building, including a gas or
liquid storage tank that is principally above ground, as well as a manufactured home.
“Structure” for insurance purposes, means a walled and roofed building, other than a gas or
liquid storage tank that is principal above ground and affixed to a permanent site, as well as a
manufactured home on a permanent foundation. For the latter purpose, the term includes a
building while in the course of construction, alteration or repair, but does not include building
materials or supplies intended for use in such construction, alteration or repair, unless such
materials or supplies are within an enclosed building on the premises.

12-328-13.43. **Substantial Damage.** Damage of any origin sustained by a structure
whereby the cost of restoring the structure to it’s before damage condition would equal or
exceed 50% of the market value of the structure before the damage occurred.

12-328-13.44. **Substantial Improvement.** Any repair, reconstruction, or improvement of
a structure, the cost of which equals or exceed 50 percent of the market value of the structure;
either 1) before the improvement or repair is started or 2) if the structure has been damaged
and is being restored, before the damage occurred. For the purposes of this definition,
“substantial improvement” is considered to occur when the first alteration of any wall, ceiling,
floor, or other structural part of the building commences, whether or not that alteration affects
the external dimensions of the structure. The term does not, however, include either 1) any
project for improvement of a structure to comply with existing state or local health, sanitary, or
safety code specifications which are solely necessary to assure safe living conditions, or 2) any
alteration of a structure listed on the National Register of Historic Places or a State Inventory of
Historic Places.

12-328-13.45. **Urban Growth Area.** The area that is defined in the City and County
Comprehensive Land Use Plan as the Urban Growth Area (UGA) surrounding the City of
Lawrence.
12-328-13.46. **Variance.** A grant of relief by the community from the terms of floodplain management regulation. Flood insurance requirements remain in place for any varied use or structure and cannot be varied the community.

12-328-13.47. **Violation.** The failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required by this ordinance is presumed to be in violation until such time as that documentation is provided.

12-328-13.48. **Water Surface Elevation.** The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum where specified) of floods of various magnitudes and frequencies in the floodplain.

12-328-13.49. **Zone A.** The special flood hazard area inundated by 100-year flood where no base flood elevations have been determined.

12-328-13.50. **Zone AE.** The special flood hazard area inundated by 100-year flood where the base flood elevations have been determined.

12-328-13.51. **Zone AH.** The special flood hazard area inundated by 100-year flood depths of 1 to 3 feet (usually areas of ponding); where base flood elevations have been determined.

12-328-13.52. **Zone AO.** The special flood hazard area inundated by 100-year flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); where average depths have been determined. For areas of alluvial fan flooding velocities have also been determined.