



## **PLANNING COMMISSION MEETING**

**April 21 & 23, 2014**

### **Meeting Minutes**

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April 21, 2014 – 6:30 p.m.

Commissioners present: Britton, Culver, Denney, Graham, Josserand, Kelly, Liese, Rasmussen, Struckhoff, von Achen

Staff present: McCullough, Stogsdill, Crick, Day, Guntert, Larkin, Miller, Ewert

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## **PLANNING COMMISSION MINUTES**

Receive and amend or approve the minutes from the Planning Commission meeting of March 24, 2014.

Motioned by Commissioner Rasmussen, seconded by Commissioner Struckhoff, to approve the March 24, 2014 Planning Commission minutes.

Unanimously approved 10-0.

## **COMMITTEE REPORTS**

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

Commissioner Rasmussen said the Horizon 2020 Steering Committee met a few times. He said staff were collecting input at public meetings and that the dates were posted on the web.

Commissioner Britton encouraged Planning Commissioners and the public to attend the Horizon 2020 meetings.

Commissioner Culver said the Metropolitan Planning Organization met on April 17 and had an amendment to the Transportation Improvement Plan (TIP), reconciling some of the money for the plan. He said they also discussed the pedestrian plan steering committee and different stakeholders that would be represented within that committee. He said they officially received and approved the resolution to accept I-70 corridor transit feasibility study by KDOT.

## **COMMUNICATIONS**

Mr. McCullough said a few communications came in after the 10:00am deadline. He said a DVD was received from Raintree Montessori for the Family Fun Center item and that the City had technical difficulty in getting it posted to the City's website so it may need to be played at Wednesday's meeting.

## **EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- No ex parte.
- No abstentions.

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**MISC NO. 1      VARIANCE FOR CERTIFICATE OF SURVEY; E 175 RD & US HWY 40  
(MKM)**

**CSR-13-00496:** Consider a variance associated with a Certificate of Survey requested from Section 20-806(d)(2)(i) of the Subdivision Regulations [Section 11-106(d)(2)(i) of the County Code] to allow the creation of a Residential Development Parcel with a minimum width less than required. Submitted by Howard Smith, for Howard and Fredonna Smith property owners of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

**APPLICANT PRESENTATION**

Mr. Howard Smith was present for questioning.

**PUBLIC COMMENT**

No public comment.

**ACTION TAKEN**

Motioned by Commissioner Liese, seconded by Commissioner Kelly, to approve the variance associated with the Certificate of Survey, CSR-13-00496.

Unanimously approved 10-0.

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**ITEM NO. 1      RSO TO CN1; .126 ACRE; 512-514 LOCUST ST (DRG)**

**Z-14-00056:** Consider a request to rezone approximately .126 acre from RSO (Single-Dwelling Residential-Office) District to CN1 (Inner Neighborhood Commercial) District, located at 512-514 Locust St. Submitted by Quentin Cole, property owner of record. *Initiated by City Commission on 3/25/14.*

**STAFF PRESENTATION**

Mr. David Guntert presented the item.

**APPLICANT PRESENTATION**

Mr. Nate Paradis, real estate agent representing Quentin Cole, agreed with staff report and was present for questioning.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Josserand asked if the applicant talked to the property owner to the east and if they had any objections.

Mr. Paradis said he contacted property owners within a 250' radius and did not hear back from anyone.

Commissioner Josserand asked if this was the original parcel as sold.

Mr. Guntert said these lots were part of a subdivision that dated back to 1869 that were platted as 25' wide and 110' depth with a 20' alley.

Commissioner von Achen asked if a non-profit community based market and café meant it would be a member owned market, similar to The Community Mercantile.

Mr. Paradis said there were several different business models being looked at and that it was still to be determined. He said some of the concepts would involve membership or cooperative work for credit.

**ACTION TAKEN**

Motioned by Commissioner von Achen, seconded by Commissioner Struckhoff, to approve the request to rezone approximately 5,500 SF, from RSO (Single-Dwelling Residential-Office) District to CN1 (Inner Neighborhood Commercial) District based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Commissioner Liese asked if the terminology non-profit community based market would restrict its use in the future.

Mr. Guntert said it was what the applicant had stated as their intention for their property. He said it would be zoned CN1 which would limit it to the uses permitted in that zoning category.

Mr. McCullough said there would be no PD overlay or conditional zoning.

Commissioner Rasmussen asked if the residential uses could continue.

Mr. Guntert said that was correct.

Unanimously approved 10-0.

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**ITEM NO. 2      CONDITIONAL USE PERMIT; METEOROLOGICAL TOWER; BETWEEN E  
400 & E 450 ROADS, N OF N 300 RD (SLD)**

**CUP-14-00002:** Consider a Conditional Use Permit for a 60 meter (196') meteorological tower to monitor and collect wind data located between E 400 and E 450 Roads and north of N 300 Road. Submitted by Tower Associates LLC on behalf of Charles and Doris Fawl, property owners of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

**APPLICANT PRESENTATION**

No applicant present.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Josserand asked if approval would give legal right to hang cellular antennas on the tower.

Ms. Day said it was not structurally capable.

Commissioner Liese inquired about the height at which lighting was required.

Ms. Day said 200'.

Commissioner Denney inquired about the moratorium by County Commission.

Mr. McCullough said this item went through a process with the County Commission to make a determination. He said at first the County Commission felt this type of tower should be included in the moratorium but after a study session, to introduce aspects of wind farms, they gave way for this to move forward. He said wind turbines still had a moratorium.

Commissioner Rasmussen asked if the anemometer was wireless.

Ms. Day said she was not certain.

Commissioner Denney said the documentation he read indicated that it was wireless.

Commissioner Rasmussen asked if there was any concern about the wireless signal violating the recommended condition 2.(b) "Use of this tower shall be limited to meteorological equipment only and will not be allowed for use by telecommunication providers."

Ms. Day said no, it would not violate that term.

Commissioner Culver asked if the moratorium was extended if there would potentially be further applications of this nature.

Mr. McCullough said this applicant indicated this is what they need to complete their study in Douglas County.

Commissioner Rasmussen said in his job he saw a number of renewable energy projects, including wind projects, so he could foresee other requests by other applicants.

Commissioner von Achen inquired about the moratorium tasking Planning staff and Planning Commission to do a study.

Mr. McCullough said there were multiple parts with the overall plan. He said attorneys and other staff were working on potential model ordinances that would be brought to Planning Commission and recommended to County Commission for the wind turbine farm standards.

### **ACTION TAKEN**

Motioned by Commissioner Liese, seconded by Commissioner Struckhoff, to approve the Conditional Use Permit for the meteorological tower and forwarding it to the County Commission subject to the following conditions:

- 1) Approval of the Conditional Use Permit shall be limited to 6 years from the date of the County Commission approval. Any extension of the time limit shall be allowed only per written request from the applicant and approval for extension by the County Commission following public notice.
- 2) The provision of a revised site plan that adds the following notes to the face of the drawing:
  - a) "A sign shall be posted on the tower or the exterior fence around the base of the tower with the name and telephone number of the tower owner/operator."
  - b) "Use of this tower shall be limited to meteorological equipment only and will not be allowed for use by telecommunication providers."
  - c) "This tower will be removed at the end of the Conditional Use Permit approval period."
  - d) "A change of ownership of the tower shall require a new Conditional Use Permit and public hearing by the Planning Commission." This will allow review of the intended use of the tower and public notice of the proposed change.

Commissioner Rasmussen asked if the land owner of record was responsible for removal of the meteorological tower.

Ms. Day said ultimately, yes.

Unanimously approved 10-0.

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**ITEM NO. 3      CONDITIONAL USE PERMIT; METEOROLOGICAL TOWER; N 400 RD & E 1000 RD (SLD)**

**CUP-13-00480:** Consider a Conditional Use Permit for a 60 meter (196') meteorological tower to monitor and collect wind data located east of the corner of N 400 Rd & E 1000 Rd and on the south side of N 400 Rd. Submitted by Tower Associates, for Donald & Jane Schwartz, property owners of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

**APPLICANT PRESENTATION**

No applicant present.

**PUBLIC HEARING**

No public comment.

**ACTION TAKEN**

Motioned by Commissioner Liese, seconded by Commissioner Struckhoff, to approve the Conditional Use Permit for the meteorological tower and forwarding it to the County Commission subject to the following conditions:

- 1) Approval of the Conditional Use Permit shall be limited to 6 years from the date of the County Commission approval. Any extension of the time limit shall be allowed only per written request from the applicant and approval for extension by the County Commission following public notice.
- 2) The provision of a revised site plan that adds the following notes to the face of the drawing:
  - a) "A sign shall be posted on the tower or the exterior fence around the base of the tower with the name and telephone number of the tower owner/operator."
  - b) "Use of this tower shall be limited to meteorological equipment only and will not be allowed for use by telecommunication providers."
  - c) "This tower will be removed at the end of the Conditional Use Permit approval period."
  - d) "A change of ownership of the tower shall require a new Conditional Use Permit and public hearing at the Planning Commission." This will allow review of the intended use of the tower and public notice of the proposed change.

Unanimously approved 10-0.

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**ITEM NO. 4 SPECIAL USE PERMIT; RUNAWAY PONY BED & BREAKFAST; 603  
TENNESSEE ST (JSC)**

**SUP-14-00049:** Consider a Special Use Permit to continue the bed and breakfast use of the property as Runaway Pony Bed & Breakfast, located at 603 Tennessee St. Submitted by Rainbow Works LLC, property owner of record.

**STAFF PRESENTATION**

Mr. Jeff Crick presented the item.

**APPLICANT PRESENTATION**

Ms. Serina Hearn, Rainbow Works LLC, said when she applied for a Special Use Permit years ago she had to install a fire sprinkler system and handicap accessibility. She read positive TripAdvisor comment reviews from guests who stayed at Runaway Pony. She said she was grateful for having the opportunity for the Special Use Permit because having guests allowed her to regain 1/3 of the cost of the mortgage and utilities for 603 Tennessee Street. She said regarding the photographs of the yard that Ms. Patty Clark took she had already taken care of some of the yard debris left over from a hard winter.

**PUBLIC HEARING**

Mr. Jim O'Malley, 626 Ohio, said the issue was not whether the bed and breakfast was nice, the issue was if the use was in compliance with the Code and conditions granted with the Special Use Permit in 2009. He said there were questions raised by Ms. Patty Clark that 603 Tennessee may not be owner occupied. He read a TripAdvisor review that said the owner was not a resident of the facility. He felt a renewed Special Use Permit should not relax the conditions. He felt owner occupancy was crucial with this kind of limited commercial use in a single-family residential zoning district.

Mr. John Nitcher, 608 Louisiana, echoed the comments made by Mr. O'Malley. He did not feel the conditions of the Special Use Permit were being complied with and should not be renewed.

Ms. Vicki Hester said she lived at 1941 Massachusetts with Ms. Hearn and helped with the bed and breakfast. She spoke in favor of Runaway Pony.

Ms. Patty Ogle said that Ms. Hearn approached her father, Mr. David Clark, several months ago about purchasing his property to the west for her to live in. She said parking had been an issue.

Ms. Tresa Hill, 705 Tennessee, said RS5 was the last true single-family zoning district. She said the owner's primary residence was elsewhere and the request was equivalent to a commercial use. She asked that the request be denied.

Ms. Karin Kressin said the bed and breakfast was not accessory to a single-family home but rather a business. She expressed concern about setting a precedent.

**APPLICANT CLOSING COMMENT**

Ms. Hearn said regarding the TripAdvisor comment about her not living there she did not know what to make of it because the guest only stayed one night. She said she had another home at 1941 Massachusetts that she got back after a divorce. She said she did not have employees but that she had people help her clean sometimes. She said 603 Tennessee was her residence and she was allowed to have three unrelated people live there.



## **COMMISSION DISCUSSION**

Commissioner Liese asked what address was on Ms. Hearn's driver's license.

Ms. Hearn said 1941 Massachusetts.

Commissioner Liese asked what address was on her voter registration.

Ms. Hearn said she did not vote because she was not a US resident.

Commissioner Liese asked if Ms. Hearn had any identification other than a driver's license.

Ms. Hearn said no.

Commissioner Liese asked how many nights a week Ms. Hearn stays at 603 Tennessee.

Ms. Hearn said 4-7 nights a week.

Commissioner Britton asked staff about enforcement of the Special Use Permit conditions.

Mr. McCullough said the enforcement was through the duration of the Special Use Permit and complaints received. He said there had not been complaints received since the bed and breakfast obtained a Special Use Permit. He said there were complaints about the use before the sprinklers were installed. He said the interior had not been inspected to address the allegations of the number of guest bedrooms.

Commissioner Britton asked what happened if conditions were not being complied with.

Mr. McCullough said it would be a progressive enforcement. He said staff would start by contacting the owner operator and if found to be out of compliance staff would work to get the owner operator into compliance. He said if compliance was not met there were revocation proceedings that would be initiated.

Commissioner Rasmussen asked if the bed and breakfast needed to be owner occupied even when there were no guests staying there.

Mr. McCullough said the intent of the Code and the actual conditions of this particular Special Use Permit were as a three bedroom bed and breakfast that was owner occupied. He said owner occupancy was when a person resided at the property a majority of the time.

Commissioner Rasmussen asked if it had to be considered a principal residence.

Mr. McCullough said yes.

Commissioner Rasmussen said there were several TripAdvisor reports that suggested Runaway Pony was not owner occupied. He read several of the TripAdvisor reviews out loud. He asked Ms. Hearn to respond.

Ms. Hearn said the comments on TripAdvisor were personal opinions. She said an owner occupied house has to have the care and commitment of an owner and she had the commitment of ownership of 603 Tennessee.

Commissioner Rasmussen asked about the trailer that was submitted in the pictures from neighbor.

Ms. Hearn said the trailer was to remove debris, which had been removed. She showed pictures on the overhead of the site.

Commissioner Josserand asked Ms. Hearn about the number of bedrooms at 603 Tennessee.

Ms. Hearn said there were 7 bedrooms and that all had beds in them.

Commissioner Josserand asked Ms. Hearn what kind of car she drove.

Ms. Hearn said a Jeep Cherokee.

Commissioner Josserand asked what address her car was registered at.

Ms. Hearn said 1941 Massachusetts. She said her office was located at 1941 Massachusetts.

Commissioner Culver asked staff how Planning Commission was to determine owner occupancy and number of bedrooms.

Mr. McCullough said Planning Commission could direct staff to check the house for the number of bedrooms. He said the owner occupancy factor was a little murkier and tougher to get to. He said according to the complaint history there had not been issues with the use. He said the number of bedrooms and exterior aesthetics could be resolved pretty quickly. He said the Special Use Permit would expire in July. He said Planning Commission could recommend City Commission approve it and direct an interior inspection of the house before being heard by City Commission. He said Planning Commission could also defer the item and have it brought back after an inspection.

Commissioner Rasmussen said a ten bedroom house could have only three guest rooms.

Mr. McCullough said staff had an approved floor plan that labeled each room and that was the expectation of the layout of the house.

Ms. Hearn said she thought she could use four bedrooms for herself and rent out three for guests.

Commissioner Liese read the definition of an employee according to the Bureau of Labor Statistics. He said if anything was being provided to Ms. Hester that she could be considered an employee. He felt the conditions of a Special Use Permit protected the community from misuse of property. He said even if the residency use was not provable there was evidence that the applicant had been representing herself as living elsewhere. He said the parking, relationship with neighbors, and aesthetics led him to believe the Special Use Permit was not working.

Commissioner Denney asked Ms. Hearn if Rainbow Works LLC was the property owner of 603 Tennessee and if her other rental properties were also owned by Rainbow Works LLC.

Ms. Hearn said yes.

Commissioner Denney asked if Rainbow Works LLC was the owner of record for 1941 Massachusetts.

Ms. Hearn said no, Serina Hearn was listed as the property owner of 1941 Massachusetts.

Commissioner von Achen asked staff how owner occupancy was determine in other situations.

Mr. McCullough said it was a bit of a challenge. He said it typically started with the testimony of neighbors, interviews with willing tenants, and the gathering of evidence to put the puzzle together.

Commissioner Culver said they had heard conflicting testimony this evening so he would prefer that staff conduct an inspection and then bring it back to Planning Commission.

Mr. McCullough displayed the approved floor plan on the overhead.

Commissioner Britton felt like this was becoming an enforcement hearing. He said he was uncomfortable and struggling how to ignore some of the stuff that maybe should be ignored. He said maybe the applicant could work out some of the issues. He said he was not sure whether doing an inspection would make it easier for him or not. He said Ms. Hearn was running a business that brings people to Lawrence. He said he did not know how he would vote.

Commissioner Liese said he has always been a little nervous about approving Special Use Permits because of an applicant not following thru with conditions.

Mr. McCullough said City Commission would be the deciding body. He said staff was not representing to Planning Commission that there was non-compliance. He said these were recent allegations that staff had not looked into yet. He recommended that staff gather more facts regarding compliance issues.

Commissioner Josserand said owner occupancy was a material issue.

Commissioner Kelly said he was not comfortable with a code enforcement proceeding with the evidence being TripAdvisor reviews. He said he was concerned about the lack of compliance with the floor plan not meeting life safety issues.

Commissioner Graham said she would like to have more information.

### **ACTION TAKEN**

Motioned by Commissioner Denney, seconded by Commissioner von Achen, to defer indefinitely to allow staff to investigate allegations of non-compliance (owner-occupancy, number of guest bedrooms, use of employee, and exterior yard conditions).

Commissioner Struckhoff felt it would be inappropriate to deny from one day of letters after five years with no complaints. He said he would like more information from a staff inspection.

Commissioner Liese asked how the community would provide information to staff.

Mr. McCullough said it was an active case and comment could be accepted by people willing to provide information. He said sometimes staff receives evidence submitted via photos, videos, website reviews, etc.

Commissioner von Achen said the applicant had made substantial investment in the property. She said Lawrence deserves a more thorough investigation.

Commissioner Rasmussen felt they should not turn something down based on what they heard tonight. He said they needed to remember they were being asked to approve a Special Use Permit for a bed and breakfast and there were certain criteria and standards in the Land Development Code. He said they heard testimony that those standards were not being met. He felt they were making the right move by deferring the item.

Motion carried 10-0.

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**ITEM NO. 5      COMPREHENSIVE PLAN AMENDMENT TO HORIZON 2020 CHAPTERS 6 & 14; REVISE MAXIMUM RETAIL CAP (JSC/AAM)**

**CPA-14-00059:** Consider a Comprehensive Plan Amendment to Horizon 2020, Chapters 6 and 14 to revise the maximum retail cap from 72,000 SF to 122,000 square feet to permit a proposed grocery development in Bauer Farm, located at 4700 Overland Drive.

**ITEM NO. 6A      PCD TO PCD; 8 ACRES; 4700 OVERLAND DR (SLD)**

**Z-14-00057:** Consider a request to rezone approximately 8 acres from PCD-[Bauer Farm] to PCD-[Bauer Farm Northwest], located at 4700 Overland Drive. The zoning application proposes modifying the uses in the PD (Planned Development) from a mix of residential, office, with 14,440 SF of retail space to 45,048 SF retail space, 6,150 SF office space, and no residential use. Submitted by Treanor Architects, for Free State Group, LLC and Bauer Farms Residential, LLC, property owners of record.

**ITEM NO. 6B      PRELIMINARY DEVELOPMENT PLAN FOR BAUER FARM; 4700 OVERLAND DR (SLD)**

**PDP-14-00055:** Consider a Revised Preliminary Development Plan for Bauer Farm and Bauer Farm Northwest, and Bauer Farm Residential to include the addition of a 108 room hotel and two retail stores and one mixed use building in Bauer Farm Northwest, located at 4700 Overland Drive. The plan proposes 45,048 SF of retail uses where 14,440 SF was previously approved. Changes to Bauer Farm Residential include a revision to the number of residential dwelling units from 272 to 342, removing a street connection to Overland Drive, and revising the building form from row houses to apartments along W. 6<sup>th</sup> Street and Overland Drive. Submitted by Treanor Architects, for Free State Group, LLC and Bauer Farms Residential, LLC, property owners of record.

**STAFF PRESENTATION**

Mr. Jeff Crick presented item 5 and Ms. Sandra Day presented items 6A and 6B.

**APPLICANT PRESENTATION**

Mr. Matt Murphy, Treanor Architects, said he agreed with the staff report.

Mr. Bill Fleming, Treanor Architects, said the project retained new urbanism elements with the buildings being pushed to the street. He said internal streets were built to reduce curb cuts on the periphery and that land was donated for Theatre Lawrence. He said there was limited demand for office uses and that the change was in response to the market.

**PUBLIC HEARING**

Mr. Jonathan Becker, Briarwood Community Association, said Bauer Farm was too big. He said the original Horizon 2020 proposal was for a regional node for 350,000-450,000 sq ft in the area and unfortunately the south side of 6<sup>th</sup> Street was immediately developed and 300,000 sq ft went in. He agreed with the new urbanism design from 2005 because it would buffer from the intensity of 6<sup>th</sup> and Wakarusa. He said there would be a 70% increase in the square footage allowed. He said the regional node was surrounded by apartment complexes. He felt it was unfortunate that the promises made in 2005 would not be kept.

**APPLICANT CLOSING COMMENTS**

Mr. Fleming said 40,000 square feet was only 10% of the total amount of commercial at the node now. He said some of the residential counts included Meadowlark Estates with approximately 120 beds.

### **COMMISSION DISCUSSION**

Commissioner von Achen asked staff to respond to the change in the philosophy of design.

Ms. Day said to be able to have the previous kind of design would be great but the change was due to the reality of the market today. She said so much of commercial development was based on a known interest in a particular piece of property. She said the change was trying to be responsive to market conditions.

Commissioner Josserand inquired about the previous history and asked about the need for increased residential density to the east.

Mr. Fleming said he was trying to meet the existing allowed density under PCD2, which was about 25 units per acre.

Commissioner Josserand inquired about the area next to 6<sup>th</sup> Street on the south end that used to be RO zoning.

Ms. Day said the Code had changed. She said under the old Code residential districts never got filled and that filling the office space had been a challenge.

Mr. Fleming said the plan had always contemplated higher density along 6<sup>th</sup> Street in the nature of apartments. He said the PCD zoning on the property was initiated by City Commission over their objection. He said it was part of the Wal Mart development.

Commissioner Kelly asked if an allowable use for the retail portion was sale of liquor, beer, and alcohol across from a school.

Ms. Day said that was allowed today.

Commissioner Kelly asked if the Comprehensive Plan was being changed because the market didn't deliver or if conditions had changed.

Mr. McCullough said the Comprehensive Plan was one reasonable scenario in a development area. He said this was a unique node. He said times had changed and Commission members had changed since the genesis of developing the north side of 6<sup>th</sup> and Wakarusa, with Wal Mart on the west and Bauer Farm on the east. He said that was pre-recession and had there not been a recession the Bauer Farm development could have had the opportunity to represent new urbanism development. He said there were still nuggets of what the new urbanism elements called for with Theatre Lawrence and the senior housing. He said the commercial veered from smaller scale.

Mr. Fleming said Horizon 2020 did not match up with the market place demand. He said the limitation of 62,000 sq ft on retail did not make it successful for true urbanism. He said he did not think after this was over that the size of the node would expand because it had reached its natural limit.

Commissioner von Achen asked staff to respond to Mr. Kirk McClure's letter regarding Planning Commissions responsibility about deciding whether the community could handle more retail.

Mr. McCullough said the retail market study showed there were not steep trends in blight or vacancy rates. He said there were no policies about studying individual sectors of retail and providing recommendations regarding the hotel industry or burger industry, for example.

Commissioner Culver asked if rezoning condition 2 would not exceed 50,000 sq ft maximum and that no single retail or commercial building would be larger than 50,000 sq ft. He also asked if that would protect the area from having a big-box type of development.

Ms. Day said that was correct.

Commissioner Britton said it was hard to balance holding out for planning aspirations or responding to the market. He said the overall increase of commercial in the node was just 10%. He said there may be character change of the corner but not so much of the node because there were buildings with parking lots out front. He said if they were not careful it could start looking like 23<sup>rd</sup> Street from Iowa to Louisiana Street.

Commissioner Josserand said he had heartburn about increased residential density. He said previous Commissioners had spent a lot of time on this topic. He said he was reluctant to support a motion of approval.

Commissioner Kelly said he had high aspirations for this property and he was disappointed with the development so far. He said the entire node had struggled with the amount of retail that was going in. He said he struggled with the idea of a hotel and liquor and beer sales across from the high school. He said the Comprehensive Plan had a more suitable use to translate from the commercial on the other three corners into the high school. He said he was not ready to let the north side look just like the south side of the street.

Mr. Mike Treanor said mixed use projects had struggled all over the country. He said the project had been financed for 12 years. He said there was a retailer that had come forward that would be good for the area. He said mixed use projects were being developed in the downtown area.

Commissioner Culver said the reality they were facing was a changing market. He felt it would be detrimental to wait 10 more years and have the parcels still vacant.

Commissioner von Achen said she was not sure how she felt about this overall but said increasing density in the same footprint would reduce sprawl.

Commissioner Rasmussen said he would support the staff recommendations for approval. He said since this project had span for 12 years he trusted staff and their professional recommendation. He said he liked the denser development and liked having agriculture land surrounding the city.

Commissioner Struckhoff said he was inclined to support the staff recommendation. He said he would like the area to be conducive to pedestrian and bicycle traffic. He said he was inclined to support a motion for approval due to the market change.

Commissioner Rasmussen asked the applicant about excluding liquor, wine, and beer sales from the motion.

Mr. Fleming said it was already permitted and that the language was just being clarified. He said it was not a new request it was just clarifying the use already permitted.

Mr. Murphy said Bauer Farm was the most walkable corner in that node and that there were sidewalks within the development.

Commissioner Liese inquired about liquor stores in proximity to schools.

Mr. McCullough said he thought the distance requirement was 400' from door to door.

Commissioner Leise said he feared stagnation more than abandoning aspirations.

Commissioner Britton felt if they were going to depart from the plan it should be for a good reason and he thought this may be a good reason. He said density versus capacity for the community were two different things. He thanked staff for their work on the report. He said he would support a motion to approve.

Commissioner Josserand said he did not see the need for increased residential density just to approve increased commercial.

#### **ACTION TAKEN on Item 5**

Motioned by Commissioner Rasmussen, seconded by Commissioner Liese, to approve the Comprehensive Plan Amendment (CPA-14-00059) to *Horizon 2020 Chapter 6: Commercial Land Use, Chapter 14: Specific Plans*, and the *Area Plan for the Intersection Area of West 6<sup>th</sup> Street & Wakarusa Drive* to revise the retail/commercial gross square-footage cap from 72,000 gross square feet to 122,000 gross square feet, and recommends forwarding this Comprehensive Plan Amendment to the Lawrence City Commission with a recommendation for approval.

Motion carried 8-2, with Commissioners Josserand and Kelly voting in opposition.

#### **ACTION TAKEN on Item 6A**

Motioned by Commissioner Rasmussen, seconded by Commissioner Struckhoff, to approve rezoning approximately 8 acres from PCD-[Bauer Farm] to PCD-[Bauer Farm Northwest] based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval subject to the following conditions:

1. The maximum retail area for the entire PCD-[Bauer Farm Northwest] shall not exceed 50,000 gross square feet.
2. No single retail or commercial building shall be larger than 50,000 gross square feet of space.
3. All residential uses are prohibited.
4. The permitted list of uses shall be included as part of the rezoning ordinance to specifically include:
  - a. Licensed Premises; and Liquor, wine and beer sales for consumption off the premises.
  - b. Hotel and Motel
5. The permitted uses include uses listed on the approved Final Development Plan for Bauer Farm in the following Use Groups, except as specifically prohibited here:
  - a. USE GROUP 7 – COMMUNITY FACILITIES – PUBLIC UTILITIES, are permitted except the following uses are **prohibited**: Halfway house or service-oriented rehabilitation center or residence; Hospital, general, not including animal; Rehabilitation center for persons with disabilities; and Sewage disposal plant, private;
  - b. USE GROUP 9 – PROFESSIONAL OFFICES; are permitted
  - c. USE GROUP 9A – LIMITED SERVICES; are permitted



- d. USE GROUP 11 – INNER NEIGHBORHOOD COMMERCIAL USES; are permitted
- e. USE GROUP 12 – RETAIL STORES – PERSONAL SERVICES, are permitted except the following uses are **prohibited**: Automobile service stations; Department store; Food convenience store, including gasoline sales and single bay auto wash; Furrier shop, including the storage of furs; Hat blocking and repair; Pawnshop; Reading room; Surgical and dental supply sales; Similar Uses; and Accessory Uses;
- f. USE GROUP 13 – AUTOMOTIVE SERVICES; RETAIL SALES; OTHER, are permitted except the following uses are **prohibited**: Aircraft sales, rental, service; Ambulance service; Auction room auctioneer; Automobile service station; Baseball park, commercial; Boat and marine sales, rental and repair; Carnival or circus; Carting, crating, express hauling, moving and storage; Eating establishment, providing only drive up service or no seating facilities; Exterminator, pest; Food convenience store, including gasoline sales; Food locker plant, for consumer use; Funeral home, mortuary, or undertaking establishment; Garage or parking for common or public utility vehicles; Glass sales and cutting shop; Linen supply, diaper service, uniform supply; Liquids, flammable, underground storage of; Lumber, limited sales; Media Store (Ord. 7226); Mobile homes, sales and service; Motorcycle sales, service and rental; Photostatting; Sex Shop (Ord. 7226); Sexually Oriented Media Store (Ord. 7226); Taxidermist; Telephone answering service; Theatre, drive-in; Trailer sales and rental; Transit vehicle storage and servicing; Truck rental and sales; Similar Uses; and Accessory Uses; AND
- g. USE GROUP 15 – AMUSEMENT, RECREATIONAL AND CULTURAL FACILITIES, are permitted except the following use is **prohibited**: Race Track.

Motion carried 9-1, with Commissioner Josserand voting in opposition.

#### **ACTION TAKEN on Item 6B**

Motioned by Commissioner Rasmussen, seconded by Commissioner Liese, to approve the revised Preliminary Development Plan for Bauer Farm Planned Development based upon the findings of fact presented in the body of the staff report and subject to the following conditions:

- 1. Provision of a revised plan that includes the following notes and changes:
  - a. Revise General Note 39 to correctly reflect the variances and waivers granted with this revised Preliminary Development Plan.
  - b. Show the extension of the Access and Utility Easement in Block 1 north to Overland Drive.
  - c. Label the water line on the north side of Bauer Farm Drive as existing or proposed, as applicable.
  - d. Show and label all proposed easements such that all proposed water lines are located within right-of-way or in a utility easement.
  - e. Provide additional easement along the south side of Overland Drive to complete a total of 15' wide utility easement for the sanitary sewer.
  - f. Show and label the sanitary sewer service line for the proposed hotel use.
  - g. Revise the sanitary sewer alignment extension to Block 9, Lot 5 so that it is not located within the Bauer Farm Drive right-of-way.
  - h. Show and label all sanitary sewer easements.
  - i. Revise General Notes on page 4 as they related to the proposed duplex uses.
  - j. Show and note the correct off-street parking summary for the residential uses.
  - k. Revise General Note 43 on page 4 to indicate that the maintenance agreement shall be reviewed, modified and re-executed as applicable to each Final Development Plan for Bauer Farm.
- 2. Provision of an exhibit to show the location and amount of open space in the commercial and residential portions of the development

Motion carried 9-1, with Commissioner Josserand voting in opposition.

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**Recess at 10:37pm until 6:30pm on April 23, 2014**

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Reconvene April 23, 2014 – 6:30 p.m.

Commissioners present: Britton, Culver, Denney, Graham, Kelly, Josserand, Liese, Rasmussen, Struckhoff, von Achen

Staff present: McCullough, Stogsdill, Day, Halm, Larkin, Ewert

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## **BEGIN PUBLIC HEARING (APRIL 23, 2014):**

### **COMMUNICATIONS**

Mr. Scott McCullough said a video link was included in the packet for the video that was submitted by Raintree Montessori.

### **EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- Ex parte:  
Commissioner Britton said he talked to Mr. Luke Sinclair regarding the Family Fun Center items 8 and 9.

Commissioner Josserand spoke with Ms. Molly Mulloy, Ms. Ann Eversole, and Mr. Rick Hird regarding items 8 and 9. He said he also attended the stakeholder meeting at Raintree Montessori.

Commissioner Graham said she spoke with Mr. Larry Grecian and Ms. Loretta Sidel about items 8 and 9.

Commissioner Kelly said he spoke with Mr. Brian Williams about items 8 and 9 and asked him to send his thoughts in a letter which he did.

Commissioner Rasmussen spoke with Mr. Paul Werner, Ms. Marilyn Bittenbender, Mr. Alex Delaney, and Mr. Luke Sinclair regarding items 8 and 9.

Commissioner Britton said he talked with Mr. Paul Werner after the last meeting about efforts to talk to neighbors regarding items 8 and 9.

Commissioner Liese said he briefly talked to Mr. Rick Hird and Mr. Brad Finkeldei regarding items 8 and 9.

Commissioner Culver said he talked to Ms. Lleanna McReynolds and Mr. Paul Werner regarding items 8 and 9. He said he also received a handful of emails after the communication deadline that he forwarded to staff.

- Abstentions:  
Commissioner Britton said during a conflicts check with his law firm the property owner for items 9, Corporate Holdings II LLC, popped up as a real estate transaction that never got off the ground. He said his law firm never represented them. He said staff attorney Mr. Randy Larkin agreed it did not rise to level of him abstaining.

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**ITEM NO. 7      TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; PARKING &  
ACCESS STANDARDS (SMS)**

**TA-6-14-09/TA-13-00235:** Receive an update on the proposed Text Amendments to the City of Lawrence Land Development Code, Article 9 and related sections of Chapter 20, for comprehensive revisions to parking and access standards.

**STAFF PRESENTATION**

Ms. Sheila Stogsdill presented the item.

**COMMISSION DISCUSSION**

Commissioner Liese suggested the topic be discussed at a future Mid-Month meeting.

Commissioner Rasmussen asked for a copy of the presentation Sheila presented.

**NO ACTION TAKEN**

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**ITEM NO. 8      TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; PARTICIPANT SPORTS & RECREATION, OUTDOOR USES WITH SUP IN CN2 (SMS)**

**TA-13-00488:** Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, to allow for Participant Sports & Recreation, Outdoor uses with a Special Use Permit in the CN2 (Neighborhood Shopping Center) District. Submitted by Paul Werner Architects. *Deferred by Planning Commission on 2/24/14.*

**ITEM NO. 9A      RSO TO CN2; 10.97 ACRES; 4300 W 24<sup>th</sup> PLACE (SLD/TLH)**

**Z-13-00483:** Consider a request to rezone approximately 10.97 acres from RSO (Single-Dwelling Residential-Office) District to CN2 (Neighborhood Shopping Center) District, located at 4300 W 24<sup>th</sup> Place. Submitted by Paul Werner Architects, for Corporate Holdings II LLC, property owner of record. *Deferred by Planning Commission on 2/24/14.*

**ITEM NO. 9B      SPECIAL USE PERMIT; FAMILY FUN CENTER; 4300 W 24<sup>TH</sup> PLACE (SLD/TLH)**

**SUP-13-00486:** Consider a Special Use Permit for Participant Sports & Recreation, Outdoor uses as part of a Family Fun Center, located at 4300 W 24<sup>th</sup> Place. The development includes a 28,000 square foot clubhouse and outdoor tot lot, batting cages, electric go-kart tracks and an 18-hole miniature golf course. Submitted by Paul Werner Architects, for Corporate Holdings II LLC, property owner of record. *Deferred by Planning Commission on 2/24/14.*

**ITEM NO. 9C      SPECIAL USE PERMIT; FAST ORDER FOOD WITH DRIVE-THRU; 4300 W 24<sup>TH</sup> PLACE (SLD)**

**SUP-14-00026:** Consider a Special Use Permit for a fast order food with drive-thru as part of the future commercial pad site development, to be located on the west portion of property located at 4300 W 24<sup>th</sup> Place. Submitted by Paul Werner Architects, for Corporate Holdings II LLC, property owner of record. *Deferred by Planning Commission on 2/24/14.*

**STAFF PRESENTATION**

Ms. Sheila Stogsdill presented item 8.

Ms. Sandra Day and Mr. Travis Halm presented items 9A-9C.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, said he held two neighborhood meetings to try and address some of the neighborhood concerns. He said the text amendment was an appropriate change to the Development Code regardless of the outcome of the other items. He said one of the suggestions from several of the neighbors was an outdoor pool or skate park. He said either of those items would need this text amendment to go forward. He said CN2 zoning came from the area plan that was approved by Planning Commission and City Commission. He said he was okay with the conditions in the staff report. He said if the Special Use Permits were not approved the property owner would probably not want all of the conditions on the zoning. He said regarding the Special Use Permit for a drive-thru was not meant for a McDonalds, but something more along the lines of a coffee shop. He said he would be in favor of any language that could be drafted to exclude a McDonalds or Taco Bell from the site. He said the Family Fun Center would include a clubhouse with four to five birthday party rooms, redemption games, non-redemption games, lots of activities for

different aged kids, and an upstairs area for parents to watch their children. He said they were still exploring other ideas, such as laser tag. He said the outdoor area would include miniature golf, batting cages, and electric go-carts. He said the batting cages would use rubber balls to minimize the noise. He said regarding alcohol they did consider a 3.2 beer license but that it was not a driving force of the project. He said they were willing to give up the beer license but that he could not say that no one would ever apply for a liquor license. He said they never intended for beer to be served outside or a bar to be in the facility. He said regarding lighting, the property was lower than Clinton Parkway and that the lights would be fairly manageable. He showed a picture on the overhead that showed the view from the tennis courts looking across Clinton Parkway to The Grove over the proposed Family Fun Center site. He said the intention was to have the lights of the putt-putt course be 3-5' above the sidewalk of Clinton Parkway. He said Clinton Parkway was a fairly well lit street all year long. He said the Family Fun Center proposal was driven by the weather so it would not be open all year long. He said the lights proposed would be less than what else might end up on the site. He said the parking lot lights could be on a motion detector so they would be off when nobody was in the parking lot and would turn on when cars would pull into the parking lot. He showed a drawing on the overhead that showed the distance from the midpoint between the batting cages and go-carts and how far the neighboring properties were. He said the go-carts would be approximately 900' away from the single-family house on the west side of the property. He said he received sound information from the go-cart supplier and that 10 go-carts running at the same time 100' away roundabout. He said regarding security, there would be a fence around the property. He said loitering would be addressed by management and did not feel a security guard was necessary. He said recreation centers, pools, and the bowling alleys did not need security guards. He said an extensive market analysis was prepared and the study saw no issues with the proposal. He said a thorough traffic study was conducted and the infrastructure and street patterns worked. He said several neighbors did not agree with the assessment. He said there were three schools located on Inverness Drive and at 7:45am the street would be congested. He said Raintree Montessori had approximately 540 students being dropped off and picked up daily. He said the Family Fun Center could not compete with that. He said one of the advantages with the proposal was the time it would operate would not coincide with the peak times on Inverness. He said the site was 12-18' below most of Clinton Parkway. He said the times of operation were revised. He said the batting cages and batting cage lights would end at 9:00pm. He said go-carts and go-cart lights would end at 9:00pm Sunday-Wednesday and 11:00pm Thursday-Saturday. He said the outdoor sound system would have the same hours. He said he felt for the people who lived southwest of the site because they had been dealing with the entire stretch for about 15 years. He said the Alvamar pool, with a liquor license, probably had more noise coming off of it than what was being proposed. He said Clinton Parkway was a 4-6 lane primary arterial at 45 miles per hour so he did not feel the project was being crammed into a residential area. He gave the example of Holcom Park being in the middle of a residential area with more lights than what was proposed for the Family Fun Center. He said several neighbors close to Holcom Park felt it was an asset. He gave the example of Black Bob Park in Olathe that had eight baseball fields, pool, batting cages, and football which was completely surrounded by single-family homes. He said noise and time of operation was manageable with the Family Fun Center. He felt if this proposal was denied the property might get another apartment complex. He said the property had been zoned for office for 15 years and had never received a request for office. He said neighbors that were in favor of the Family Fun Center had suggested other locations but that other locations were not available or affordable. He felt this was a good location for the project. He agreed with the staff conditions but requested condition 2a on item 9B be removed.

Mr. Mike Riling, attorney representing Kansas Fun Center LLC, said Mr. Glen Lemesany was the owner of Kansas Fun Center LLC and he had substantial investment in the area. He said this project

did not come up overnight and that it had been studied for two years. He said it would be a good quality family fun themed development.

Mr. Rick Hird, attorney representing the bank that owns the land, said the bank was frustrated that the things that had been proposed for the site had been denied or abandoned. He said the Inverness plan called for CN2 zoning at this location. He said the text amendment would harmonize Horizon 2020 and the Code by adding outdoor recreation uses with a Special Use Permit. He said the Special Use Permit would provide protection through the process. He said his client was advocating for approval of the project as a whole and that there were no objections to the conditions in the staff report. He said if the project was not approved his client did not want to agree to some of the conditions set forth by staff on the rezoning request.

## **PUBLIC COMMENT**

Ms. Lleana McReynolds, Raintree Montessori, read the following letter:

*"My name is Lleana McReynolds, and my husband and I own Raintree Montessori School, a program we started 36 years ago. Raintree has grown from a small school with 35 children, four teachers, a cook and a goat, to large school with 500 children, over ninety staff, two cooks and a menagerie of animals. Raintree is our life's work, and we know our success is due in large measure to the fact we live in Lawrence, Kansas, a university community that values education and good city planning. Over the past 36 years, I have visited many schools, but few compare to Raintree, and, frankly, few cities of comparable size compare to Lawrence. When we started the school, it was with the understanding the city would stand by its development plan. Originally it was called Plan 95, and about the same time the two-lane county road in front of our school became Clinton Parkway, the city planners and the Planning Commissioners developed a new overall development plan for Lawrence called Horizon 2020. Concerned that the parkway would become another version of the heavily commercial 23rd street, the planners created guidelines in the planning and construction of Clinton Parkway. The guidelines allowed limited commercial development such as office buildings or a garden store at the four corners where Wakarusa intersects with Clinton Parkway. The remaining land was to be residential. The parkway itself was to be just that, a parkway with trees planted in the medians, a jogging path running parallel to the new road and exercise stations built at intervals. Development began in earnest in the surrounding area, and over time neighborhoods sprang up, townhouses were constructed, and three more schools were built nearby. The uniqueness of a city rests on the shoulders of those with vision, and the strength of that vision depends on faithful adherence to the plan. Three of the obstacles we faced at Raintree were when that vision was in direct opposition to the plan. The first was when Plan 95 was still in affect, and the church wanted to sell the building we were renting to a nightclub developer. The second was when Warmack, a mall developer from Arkansas, wanted to build an enclosed shopping mall west of the school, and the third, when a concrete company proposed the construction of a plant south of Raintree. We were young and idealistic, and we thought, we, with help from our Raintree parents and other community supporters, defeated the projects, but it was really because of the plan. One of the indirect outcomes is the vibrant downtown we all enjoy today. When the majority of cities across the country were allowing mall developers to construct indoor shopping centers on the outskirts of their cities and turning their main streets into ghost towns, Lawrence said no, and not to just one cornfield mall proposal, but two! The moral of the story is that one has to be vigilant when one lives near undeveloped land, and that's the second part of the parkway story. Time passed, and we got busier developing Raintree. We had a few more challenges along the way—a fire destroyed our school, and then it was hit by a tornado, and we let down our guard. During that time, apartment complexes, a convenience store and gas station were built. The neighbors living closest to these recent developments organized and*

*protested when a third apartment complex was proposed. They didn't want more apartments in their neighborhood. Their property values were being affected, and the traffic was becoming unmanageable. In their efforts to stop another high-density residential project, the neighbors may be on the verge of ushering in a new development phase which could have terrible consequences if a zoning change is allowed. Allowing zoning changes that are against the overall plan is not right. If you want to see what can happen, go to Houston. They have no zoning laws, and you take your life in your hands just walking down the street because there are no setbacks for sidewalks and industries can be built right next to residential areas. The rezoning of this property will change the environment of the parkway forever. The dominos will fall, maybe slowly at first, but fall they will, and before we know it, parts of the parkway will look like 23rd street. We have invested not only our blood, sweat and tears, but also our life savings into creating Raintree, a campus with swimming pools, outdoor amphitheater, fishing pond and a 1/2 mile running path. We are a family-owned enterprise, and as such, we pay huge property taxes providing over \$100,000 annually to the tax base. We would never have created Raintree if we thought the parkway would become a commercial zone. We are not opposed to family fun. In fact we are all for families doing things together, especially activities that get them outside, in nature, and enjoying each other's company. We just don't think this is the right location. This is not about a family fun center. This is about zoning. There are other locations for a project of this kind in nonresidential areas with appropriate zoning already in place. Lawrence is a unique community, the gem of Kansas, with a bustling downtown, creative city planners and visionary commissions. We have faith that you will do the right thing and honor the original development plan for the parkway. We are counting on you."*

Mr. Luke Sinclair said it seemed that the text amendment would be the tail that wags the dog. He said the entire Code would have to be changed to accommodate the Family Fun Center. He said a change to the Code seemed to be a drastic step and that it should be closely scrutinized. He said Ms. McReynolds addressed some of his concerns regarding Horizon 2020. He wondered if the text amendment met the challenge of a changing condition. He said the area already had access to some of the best outdoor recreation amenities and there was no need to be addressed. He said perhaps the project should be located in an area that had a need. He said he was not opposed to this type of development but did not see the justification to amend the Development Code to shove this in a residential area.

Ms. Tami Easley expressed concern about alcohol at the site. She said the Alvamar pool was only open from 12-8pm and that there was no music. She was worried about patrons of the Family Fun Center swimming in the Alvamar pool after hours. She said batting cages could be heard from far away and that noise would carry to her home. She said she was never notified about the previous multi-family proposal.

Mr. Emil Tonkovich said he was opposed to the development. He stated the process bothered him. He felt that people who purchased homes had a reasonable right to rely on zoning. He said nobody expected a go-cart track and beer sales to be next to their home. He said there was a sense of distrust in the community because of Rock Chalk. He said only one City Commissioner objected to a no bid contract for Rock Chalk. He said he did not see this project as a Family Fun Center but rather a teen hangout. He said Raintree and Bishop Seabury have children's interest in mind and they objected to the project. He felt it would have a negative impact on the neighborhood.

Ms. Lori Sinclair expressed opposition to the development and felt there would be a negative impact to her quality of life. She expressed concern about smells from food uses, trash, noise, and traffic. She said schools have lots of activities before and after school so traffic would not just be at peak times. She said the Family Fun Center would generate outdoor laughing and yelling, excessive



lighting, and alcohol sales. She wondered about the sustainability of a Family Fun Center in Lawrence and how often people would pay to go to the same putt-putt course. She said her neighborhood and property value would decrease and she wanted to live in a residential neighborhood, not commercial area.

Ms. Sarah Williamson concerned for the safety of children in the neighborhood with the increased traffic. She said she moved to this location with the proposed property being zoned residential. She did not feel the site was appropriate for commercial zoning. She said there was no access from Clinton Parkway so the appeal to businesses was very limited. She did not feel this project would be an amenity to the neighborhood and that it would be built for college students in mind. She said alcohol did not belong at a Family Fun Center.

Mr. Larry Grecian said he lived in Osage Beach, Missouri for 30 years and Planning Commission was pretty non-existent. He said rules and zoning were meant to be followed. He felt like they were being bullied into changing the rules by big money. He expressed concern about security at the site and felt there was potential for children to be harmed. He wondered why single-family homes would not work at this location. He was concerned about the lack of transparency from the developer. He said the berms would disappear when the road needed to be widened.

Mr. Doug Baur said the public notice signs that were posted at the site disappeared in the last few days.

Ms. Loren Bennesch said the benefit of one developer would be at the expense of hundreds of property owners. She expressed concern about decreased property values. She felt the project was not the highest and best use of the property. She said she had no argument about the current zoning, only the density. She was concerned about the sustainability and felt it would not be viable for the long term. She said just because apartments were not appropriate for the site that a carnival was.

Mr. Richard Bennesch said RSO zoning was meant as a transition buffer. He said removing the RSO zoning would remove the buffer to the residential neighborhood. He felt if the project needed Special Use Permits than it was too intense. He did not want more high density apartments and that there were many other uses permitted in RSO. He said the entire Family Fun Center industry was on the decline so he was concerned about longevity. He did not feel a carnival was appropriate in a residential neighborhood.

Mr. William Graybill said the project did not fit into the Horizon 2020 Plan. He said Horizon 2020 addressed neighborhood commercial centers. He said the Comprehensive Plan did not support increasing the size or number of new commercial centers but small new inter-neighborhoods centers were possible and/or anticipated as part of the overall new planned neighborhoods. He said the intent was small compact commercial nodes with goods and services to the immediately adjoining neighborhood areas. He said the neighborhood commercial centers were limited to one mile of other commercial centers and that this site was less than ½ mile from HyVee and Wakarusa. He said the nature of CN2 zoning was the emphasis on neighborhood commercial center. He said the Family Fun Center proposal was not something that was a neighborhood commercial center but rather a community commercial center. He asked Planning Commission to deny the project.

Dr. Gary Olson, Clinton Parkway Animal Hospital, said he had been in business at Clinton Parkway and Inverness for 40 years. He agreed with a lot of the comments that had been expressed. He opposed the rezoning.

Mr. Pat Ryan expressed safety concerns regarding the roundabout. He said the pavement was rutting and there was a grade differential. He stated he would like to see the roundabout reworked no matter what the outcome of the project was.

#### **APPLICANT CLOSING COMMENT**

Mr. Werner said the property was not zoned single-family, it was zoned RSO which was low to medium density. He said he heard contradicting statements about how the Family Fun Center would struggle and fail but would also generate monstrous amounts of traffic. He said Planning Commission and City Commission created the area plan with CN2 zoning. He said CN2 was limited commercial and a bar was not allowed. He said the old putt-putt at 31<sup>st</sup> & Iowa was viable for a long time but it became more viable for a bank to be at that location. He felt a lot of the neighborhood concerns could be worked out. He said 12,000 square feet was not a monster commercial center.

Mr. Riling said he remembered the previous putt-putt and it was good family entertainment. He said the proposal was not meant to be anything short of that. He said it did not close because it wasn't doing well, the property became valuable and it was more profitable as a bank. He said the Family Fun Center was designed as a long term investment. He said the developer agreed to take beer sales off the table. He said it was going to be developed in such a way that all neighbors would come and use it. He said miniature golf courses in Lawrence have been nothing but good wholesome family entertainment.

#### **COMMISSION DISCUSSION**

Commissioner Rasmussen asked if the applicant expected clientele for the Family Fun Center to be from all over town or just the neighborhood.

Mr. Riling said there was no question that patrons would come from all over town.

Commissioner Rasmussen asked staff why CN2 zoning instead of CC zoning. He said CN2 was for sales and goods at the neighborhood level.

Ms. Day said the CN2 zoning district was supported by the neighborhood plan.

Mr. McCullough said this was a use that could serve both the community and the neighborhood. He said CC zoning did not work at this location because there were different Horizon 2020 policies that would be needed to support a CC zoning district at this site.

Commissioner Josserand asked why CN2 zoning was used instead of CN1 zoning.

Mr. McCullough said they were different levels of commercial neighborhood districts because it related to serving the neighborhood and the location. He said the issue of distance from other commercial nodes was a major discussion point when going through the Inverness Park District Plan and that staff noted the conflict with Horizon 2020. He said the prevailing wisdom in the process of the Inverness Park District Plan was the size of the two corners of the plan would support the neighborhood commercial land uses. He said within the plan those were designated for CN1 and CN2 zoning.

Commissioner Denney asked if there could not be any curb cuts off of Clinton Parkway onto this property.

Mr. McCullough said that was correct.

Commissioner Denney asked if Inverness or Crossgate were minor arterials.

Mr. McCullough said they were collector roads. He said the Inverness Park District Plan had a number of options put forth with what the corner could be. He said at the time CN2 was seen as the lesser of two evils to some people who participated in the plan. He said the pushback on apartment development and student housing projects was so great that the commercial node concept won the day.

Commissioner Britton asked if CN2 zoning allowed active recreation by right. He asked what the reasoning for including that as a right and then not having outdoor participant recreation use at all.

Ms. Day said the active recreation was most typically associated with public parks, such as Holcom Park. She said when it had a retail or commercial element it would fall into the other category.

Commissioner Liese said there were letters in the packet that supported the Family Fun Center and he was surprised nobody from the public was present this evening supporting the project.

Mr. Werner said there was significant opposition. He said there may be supporters in the audience who chose not to speak this evening. He said people who are opposed to things were more likely to show up.

Commissioner Britton asked where in the Development Code he could find the description for participant outdoor recreation.

Ms. Day said the definition was in Article 17.

Commissioner Rasmussen said when the Inverness Park District Plan was approved last year it recommended the property be zoned Neighborhood Commercial. He wondered about the level of opposition to multi-family.

Mr. McCullough said the opposition was about the same number of people but primarily residents south of Clinton Parkway. He said there was very strong opposition that generated the Inverness Park District Plan. He said there were two different projects that drove the opposition. He said the intensity and density of apartments were at capacity. He said at that time the HyVee gas station site was vacant and the plan set forth the plan for that.

Ms. Day said the rezoning for the Casitas apartment project that would have rezoned it from RSO to RM15 to accommodate conventional multi-family had a successful protest petition so the rezoning failed at the City Commission level.

Commissioner Rasmussen asked how long the Inverness Park District Plan took to develop.

Mr. McCullough said the Inverness Park District Plan it was originally adopted in 2012 and took about 6-8 months to develop. He said there were revisions that looked at those corners.

Commissioner Kelly said the Alvamar pool was brought up during the public comments and was under the same recreational use as the Family Fun Center property would be.

Mr. McCullough said the Alvamar pool had a Special Use Permit under the old Code.

Commissioner Britton asked if the neighborhood commercial designation was part of the original Inverness Park District Plan.

Mr. McCullough said no, he did not believe it was. He said the residential projects were in the pipeline and the plan initially gave them support. He said City Commission directed the plan be revised due to the opposition.

Commissioner Rasmussen asked if there were any audience members present who were opposed to the apartment proposal a few years ago.

Ms. Sinclair said she was in support of the Casitas apartments but not a high density apartment complex.

Commissioner Graham inquired about bars allowed in the CN2 district.

Mr. McCullough said a recent text amendment allowed a bar or lounge up to 3,000 square feet. Above that square footage would require a Special Use Permit.

Commissioner Denney suggested they break the discussion into two parts; the text amendment and then the other elements.

Commissioner Britton said the CN2 was goods and sales at a neighborhood level and he did not think this kind of use fit that. He felt this type of outdoor participant sports should be at a community center. He said the developer talked about community use and he did not think this kind of use could fit into what CN2 district was designed for. He said he was leaning toward not supporting the Special Use Permit.

Commissioner Culver asked Commissioner Britton if he felt the same way about indoor sports.

Commissioner Britton said an indoor use would not have the same impact but not really designed to serve the neighborhood on a daily routine basis.

Commissioner Kelly said an indoor fitness center could serve as a neighborhood use.

Commissioner Denney said the main difference between indoor and outdoor was seasonal.

Commissioner Liese wondered about tennis courts in neighborhoods.

Commissioner Rasmussen said there was one right across the street and several others in the area.

Commissioner Struckhoff echoed previous comments about whether CN2 contemplates this type of outdoor use. He felt indoor and outdoor uses were different. He felt they needed to take into account the expectation of the neighborhood of an open field when they purchased their homes.

Commissioner Britton inquired about outdoor participant recreation with a Special Use Permit.

Mr. McCullough said one of the distinctions was whether it was part of the City Parks and Recreation system or privately owned.

Commissioner Denney said Mr. Sinclair hit the nail on the head that the text amendment was the key to the whole issue. He said he was not sure that changing conditions indicated a need for a change.

He said there was plenty of outdoor exercise in this part of town. He did not believe CN2 needed to be amended because participant outdoor activity already existed in other classes. He felt it was excluded from CN2 for a reason. He said CN1 or CN2 might be needed or acceptable for neighborhood conveniences but that this project was a seasonal business and would not do much good to the neighborhood when it was closed. He said Mr. Graybill made a good point of saying that it was not supported by the neighborhood. He said CN2 was not designed to be a community activity. He stated this seasonal business was likely to be closed most of the year. He said a vacant closed business may be an attractive nuisance.

Mr. Riling said there would be security to handle the site. He said there was no plan to leave the property unsecure, even when it was closed. He said there would be an indoor component, such as a birthday center, that would be open year round.

Commissioner Liese asked what would happen if Planning Commission denies the text amendment.

Mr. McCullough said Planning Commission was a recommending body to City Commission.

Commissioner Liese said there was not a pressing need for a text amendment, especially if the community was not interested in a Special Use Permit. He said he would not vote in favor of the text amendment because there was no need to change it.

Commissioner von Achen said when the Inverness Park District Plan was approved she never envisioned this type of intensity. She felt this use would take up space for the neighborhood services that were needed. She felt they should protect the existing property owners by providing predictability. She said she would not support the text amendment.

Commissioner Rasmussen said he was conflicted. He said the neighborhood plan supported neighborhood commercial uses. He felt they should support a plan that was only two years old. He said the plan was developed because there was large opposition to a previous plan. He wondered how long the property would remain vacant. He stated there were no good places for teenagers to hang out. He felt like the project would be more fitting in CC since it would draw from all over and not just the neighborhood.

Commissioner Culver said he was also conflicted. He said this was not the type of use he envisioned either. He stated the definition of neighborhood level could be interpreted several ways. He said he could think of other uses that would be a more appropriate fit. He said a lot of progress was made on the area plan but he wondered if they were trying to make the application fit the plan.

Commissioner Liese thanked the public for their comments.

Commissioner Kelly said he read the neighborhood plan and it took time to develop. He said comments from tonight concerned him because the plan does call for commercial uses. He said he struggled with amending the Code so soon after the plan was adopted. He said he would not vote for the text amendment because he did not envision these uses in existing CN2 areas.

Commissioner Liese inquired about fast food restaurants with outdoor play areas.

Ms. Day said fast order food with playground would be permitted in CN2. She said the play area would be an accessory use.

Commissioner Josserand thanked staff for their work on this item.

Commissioner Culver asked if sports and recreation participant outdoor uses would pertain to an outdoor pool.

Mr. McCullough said yes.

Commissioner Britton said the Alvamar pool across the street was in a residential district.

Mr. McCullough said when the Alvamar pool was constructed it was under the former Code. He said under the recreational facility category there was private recreation which was set aside for open recreational use as part of a residential development, such as an amenity for a residential subdivision.

Commissioner Kelly said he struggled with the realm from swimming pool to driving range. He said he could see a swimming pool use working in a CN2 district but did not imagine that request coming forward.

**ACTION TAKEN on Item 8**

Motioned by Commissioner Britton, seconded by Commissioner von Achen, to deny the text amendment (TA-13-00488) to the City of Lawrence Land Development Code, Chapter 20.

Commissioner Culver said he would not support the motion for denial. He said with a Special Use Permit it could fit.

Commissioner Britton said he could imagine ways in which it could work with a Special Use Permit. He said it was hard when what they were being asked to do would also include other things. He said they have had a lot of discussion that relates to this specific proposal. He said a lot of the discussion focused on the character of the CN2 district of neighborhood services and goods. He thanked staff for their work.

Motion carried 9-1, with Commissioner Culver voting against the motion.

**NO ACTION TAKEN on Items 9A, 9B, 9C**

Mr. Hird said his client was in favor of the rezoning request and the text amendment was part of the package. He said his client was not interested in CN2 with all the restrictions and absence of approval of the project. He said his client was not interested in the elimination of the possibility of apartments.

Commissioner Josserand said that was already part of the Inverness Park District Plan.

Mr. McCullough said the neighborhood plan does not support more apartments going on the parcel.

Motioned by Commissioner Liese to deny the rezoning request. Commissioner Liese withdrew his motion to allow Mr. Hird to speak.

Mr. Hird said given the vote of the text amendment the applicant would like to withdraw the rezoning and Special Use Permit requests.

Mr. McCullough said the Development Code had language that spoke to the process of this. He said withdrawing an application after it had been advertised for public hearing would constitute essentially denial of the application. He said a new application would have to be substantially different and had a 120 day waiting period. He said a similar request could not be made for 12 months.

Commissioner Culver asked the applicant if all items were withdrawn.

Mr. Hird said yes.

Mr. McCullough said there was no further action needed by Planning Commission.

Commissioner Josserand asked if the applicant came back with a CN1 zoning request would it be different.

Mr. McCullough said yes.

Commissioner Britton said the text amendment would go to City Commission with recommendation of denial.

Commissioner Liese thanked the applicant and said there was public support for the project in a different location.

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**ITEM NO. 10 CONDITIONAL USE PERMIT; METEOROLOGICAL TOWER; 206 E 1600 RD (SLD)**

**CUP-14-00052:** Consider a Conditional Use Permit for a 116' tall meteorological tower with a 10' antenna for monitoring and collecting atmospheric, soil and water data, located at the University of Kansas Field Station, 2060 E 1600 Rd. Submitted by National Ecological Observatory Network [NEON], for University of Kansas Endowment Association, property owner of record.

*Item 10 was deferred prior to the meeting.*

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**ADJOURN 10:55pm**