



PLANNING COMMISSION MEETING
January 28 & 30, 2013
Meeting Minutes

January 28, 2013 – 6:30 p.m.

Commissioners present: Blaser, Britton, Burger, Culver, Hird, Josserand, Lamer, Liese, von Achen

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

MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of December 10, 2012.

Motioned by Commissioner Hird, seconded by Commissioner Britton, to approve the December 10, 2012 Planning Commission minutes.

Unanimously approved 9-0.

COMMITTEE REPORTS

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

Mr. Todd Girdler, Senior Transportation Planner, said the T2040 committee had been meeting to work on Transportation 2040.

Mr. Liese inquired about upcoming projects.

Mr. Girdler said 6th Street and K-10 was scheduled for updates by KDOT.

Commissioner Hird said the County Commission adopted the Agritourism Text Amendment.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- Ex parte:
Commissioner Burger said she saw Mr. Brad Finkeldei at a gathering and mentioned that they would see each other at this meeting.
Commissioner Culver said he had brief discussion with Mr. Tim Herndon in late December about observations made during last month's Planning Commission meeting.
Commissioner Liese said he also had a brief discussion with Mr. Herndon.
- Abstentions:
Commissioner Hird and Lamer said they would both abstain from Item 8 on Wednesday's agenda.

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ITEM NO. 1 RS7 TO RS5; 10.56 ACRES; SE OF 25TH TERR & O'CONNELL RD (SLD)

Z-12-00325: Consider a request to rezone approximately 10.56 acres from RS7 (Single-Dwelling Residential) to RS5 (Single-Dwelling Residential) for Fairfield Farms East Addition, located SE of 25th Terrace and O'Connell Road. Submitted by CFS Engineers, for Fairfield Investors LLC, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

APPLICANT PRESENTATION

Mr. Bill Newsome said they were attempting to deliver starter price housing and the rezoning would accommodate that. He said this would allow them to have a wider array of product for sale and the timing would support economic developments in the area.

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Commissioner Hird, seconded by Commissioner Blaser, to approve the rezoning of approximately 10.56 acres from RS7 (Single-Dwelling Residential) District to RS5 (Single-Dwelling Residential) District 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. Density shall be limited to 6 dwelling units per acre to prevent the total area from being replatted in the future that would exceed the low-density category.

Unanimously approved 9-0.

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**ITEM NO. 2 CONDITIONAL USE PERMIT FOR COMMUNICATIONS TOWER; NEAR THE
SOUTHEAST CORNER OF N 400 RD & E 550 RD (SLD)**

CUP-12-00287: Consider a Conditional Use Permit for construction of a 180' tall communication tower for county emergency communication equipment, to be located east of the existing water tank near the southeast corner of N 400 Road and E 550 Road. Submitted by Selective Site Consultants on behalf of Douglas County Emergency. Jere McElhaney, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

APPLICANT PRESENTATION

Mr. Trevor Wood, Selective Site Consultants, was present for questioning.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Hird said the upgrade in the communication system was a big step forward for Douglas County.

ACTION TAKEN

Motioned by Commissioner Hird, seconded by Commissioner von Achen, to approve the Conditional Use Permit for the 180' tower and forwarding it to the County Commission subject to the following conditions:

- 1.) The provision of a revised site plan add the following notes to the face of the drawing:
 - a) *" The owner at the owner's expense shall remove any tower that is not in use for a period of three years or more."*
 - b) *"A sign shall be posted on the tower or the exterior fence around the base of the tower noting the name and telephone number of the tower owner/operator."*
 - c) *"Use of this tower for other carriers shall require County Commission approval as the tower owner in addition to site plan review and approval of any a co-location request for new equipment."*
 - d) *"A change of ownership of the tower shall require a new Conditional Use Permit and public hearing."* This will allow review of the intended use of the tower and public notice of the proposed change.

Unanimously approved 9-0.

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ITEM NO. 3A PRELIMINARY PLAT FOR LANGSTON HEIGHTS ADDITION; E SIDE OF K-10 & S OF W 6TH ST (SLD)

PP-12-00228: Consider a Preliminary Plat for Langston Heights Addition, a 70 lot subdivision that includes detached, duplex and multi-family residential lots. An original variance from Section 20-811 (c) of the Subdivision Regulations that requires sidewalks on both sides of streets was withdrawn at the December Planning Commission meeting. The property is along the east side of K-10 highway and south of W. 6th Street, north and south of Crystal Lane and Palisades Drive extended to the west. Submitted by Landplan Engineering, for Langston Heights, LC, property owner of record.

ITEM NO. 3B UR TO RM12D; 4.582 ACRES; N & S OF CRYSTAL LANE & PALISADES DR (SLD)

Z-12-00229: Consider a request to rezone approximately 4.582 acres from UR (Urban Reserve) to RM12D (Multi-Dwelling Residential), located north and south of Crystal Lane and Palisades Drive extended as shown in the preliminary plat of Langston Heights Addition. Submitted by Landplan Engineering, for Langston Heights, LC, property owner of record.

ITEM NO. 3C UR TO RS7; 9.122 ACRES; N & S OF CRYSTAL LANE & PALISADES DR (SLD)

Z-12-00231: Consider a request to rezone approximately 9.122 acres from UR (Urban Reserve) to RS7 (Single-Dwelling Residential), located north and south of Crystal Lane and Palisades Drive extended as shown in the preliminary plat of Langston Heights Addition. Submitted by Landplan Engineering, for Langston Heights, LC, property owner of record.

ITEM NO. 3D UR TO RM12; 9.98 ACRES; E SIDE OF K-10 & S OF W 6TH ST (SLD)

Z-12-00232: Consider a request to rezone approximately 9.98 acres from UR (Urban Reserve) to RM12 (Multi-Dwelling Residential), located along the east side of K-10 highway south of W. 6th Street and along the west side of a proposed street known as Renaissance Drive, as shown in the preliminary plat of Langston Heights Addition. Submitted by Landplan Engineering, for Langston Heights, LC, property owner of record.

ITEM NO. 3E UR TO RS5; 3.88 ACRES; E SIDE OF K-10 & S OF W 6TH ST (SLD)

Z-13-00015: Consider a request to rezone approximately 3.88 acres from UR (Urban Reserve) to RS5 (Single-Dwelling Residential), located along the east side of K-10 highway south of W. 6th Street and along the west side of a proposed street known as Renaissance Drive, as shown in the preliminary plat of Langston Heights Addition. Submitted by Landplan Engineering, for Langston Heights, LC, property owner of record.

STAFF PRESENTATION

Ms. Sandra Day presented items 3A-3E together.

Commissioner Liese asked about the implications of the exercise. He asked if the residents in the area counted on something like that happening; a road that would relieve the tension through the neighborhood.

Ms. Day said yes, she felt they could count on Renaissance Drive being extended. She said the exact alignment would still need to be worked out.

Commissioner Liese asked if there was a contingency that the road would need to be complete before the final phase.

Ms. Day said yes, there would be a note on the Preliminary Plat as an expectation. She said when the Final Plat was submitted the additional agreements/notes would be added to ensure the public improvements were in place prior to the development of row houses.

Commissioner Josserand asked how the road extension would be financed.

Ms. Day said it would probably be at the developer's expense, depending on whether or not a segment of it was at a collector or standard street. She said the applicant could seek to request the creation of a benefit district. She said there were a number of different avenues.

Mr. McCullough said typically there was a policy that required the applicant to fund development costs. He said there was no current request for public assistance for the payment of the infrastructure. He said when studies point to the need for certain infrastructure, such as sewer, roads, or water, the development then brings that infrastructure to the site being served. He said that was why the applicant was working off site with other owners in the area to negotiate those issues.

Commissioner Burger asked if the land owners were aware of the study and/or were they within the notification area.

Ms. Day said they were within the boundary of notice and had been advised of the request. She said the exercise staff did internally was to look at the land uses, not a formal study or plan amendment, for a concept of how the area might develop. She said staff shared it with the applicant who had some contact with other property owners.

APPLICANT PRESENTATION

Mr. Brian Sturm, Landplan Engineering, said at the December Planning Commission meeting the development group was directed to engaged in further dialogue with the neighbors, come up with a plan that increased the amount of single-family detached houses within the subdivision, reduced the traffic impact in some way or another on the existing Diamondhead neighborhood, and consider the future development of the ground to the south of the subdivision. He said in the last six weeks they had reached a fair bit of productive work. He highlighted the changes in the plat and rezoning. He showed the revised plat on the overhead. He said the most recent plat version was the result of discussions with stakeholders on all sides of the project. He said they met with representatives of the Diamondhead neighborhood twice and owners of vacant property to the north and south, City staff, KDOT, and representatives of USD 497. He said one of the big changes included an increase in single-family housing in the subdivision, specifically based on comments made from Diamondhead residents. He said they found a way to incorporate more single-family homes into the neighborhood. He said specifically the developer chose to remove 13 duplex lots and replace them with 23 single-family lots. He stated RS7 and RS5 zoning were incorporated in the plan. He said the RS5 lots provided transition from the RS7 districts to the east, RM12 & RM12D districts to the west, and RM24 district to the north. He said the change helped to solidly define the east half of the subdivision with single-family detached houses. He said it resulted in an 80% increase in single-family dwelling units over what was proposed in the previous plat. He stated the addition of the single-family homes did bear reference to the 6th Street and K-10 Nodal Plan. He said the Langston

Heights addition plat facilitated development in conformance with the nodal plan. He said the majority of the residential uses in the quadrant would remain low density single-family neighborhoods. The medium density land uses proposed as part of the plat were warranted as a transition from the SLT. He said the overall density for Langston Heights addition preliminary plat remained below 6 dwelling units per acre. He said another significant difference made was regarding traffic impact. He said there were several changes made to address traffic concerns. He stated the amount and type of traffic passing from Langston Heights into the Diamondhead area was a concern. He said one measure taken was to realign the streets in the development. He said Crystal Lane and Palisades Drive no longer carried all the way through the subdivision. He said the east/west streets had been shifted which created an increase in turning maneuvers that a resident would have to make to exit through the Diamondhead neighborhood, resulting in slower and calmer traffic. He stated the street design maintained connectivity from one neighborhood to the next. Another big change the developer made was to delay the of construction of row homes on the west edge of the project until such time that Renaissance Drive was constructed and complete south to Bob Billings Parkway. A note on the plat states no building permits would be awarded for lot 1 block 1 until the road improvements were complete. This action delayed the construction of nearly 40% of the units in the subdivision until an entire ½ mile section of road could be built. In the short term it reduced Langston Heights addition to a 98 unit subdivision, which was a smaller project than what was approved in 2006 and comprised of more than 50% single-family detached houses. He said the developer realized it would be feasible to phase the development this way after a lengthy set of negotiations with area stakeholders produced the alignment. He said the section of Renaissance Drive that runs through USD 497's property would be built as part of the K-10/Bob Billings interchange improvements slated to happen during 2014/2015. He said in conjunction with Alvarado they would complete the remainder of the street between Langston Heights and USD 497's property via a plat. He said only once the street was complete would Langston Heights addition achieve its full build out. He said in the short term Langston Heights traffic would fall by 33%, which was commensurate with the traffic generated by the row homes. He said in the long term the distribution patterns of Langston Heights traffic would be altered. Renaissance Drive would carry 1/3 of the traffic of Langston Heights, removing it entirely from the streets of Diamondhead. He said Renaissance Drive would also provide a way for Langston Heights Elementary to connect and provide a second access point for their school, which should eliminate congestion currently found in the Diamondhead neighborhood. He said they had made a number of revisions for the better.

PUBLIC HEARING

Mr. Brad Finkeldei, Stevens & Brand LLP, let the neighbors talk over a PowerPoint presentation he showed on the overhead.

Mr. Ryan Fike said the developers new proposal only had a slightly reduced density. He stated moving the higher density traffic through a lower density neighborhood was not a good idea and was unsafe for the children in the area. He said the new proposal allowed for the extension of the road to the south which was important, but it would directly increase the flow of traffic down Crystal Lane. He said the neighborhood had expectations set forth in the previous unrecorded plat. He stated the new proposal only reduced the units by 5 and he did not feel there had been real progress made. He said the neighborhood was sent the new proposal only about a week ago and he did not feel all of the neighborhood concerns had been heard. He asked for denial of the rezonings.

Ms. Erica Gudenkauf said there had been a lot of discussion regarding traffic. She showed a slide on the overhead of traffic flow to services in the area. She said most of the amenities that the neighborhood would visit on a regular basis were to the north so the traffic would still go through Crystal Lane. She said traffic study numbers did not take into account actual human behavior and

where people travel. She said Mr. Sturm stated earlier that the revised plat would calm traffic, not reduce it. She said traffic would still go through Crystal Lane and the issue had not been resolved.

Mr. Mark Crabtree discussed neighborhood character and transitional density. He said the position of Renaissance Drive would create row homes and the character would continue to the land to the south. He said the east side of Renaissance Drive, single-family homes, was not cutting it for them. He said RS5 would be small homes. He requested denial of the project. He did not feel like positive movements were made during their discussions with the developer. He said there were other ways to make it work and the neighbors had a plan that could work too. He expressed concern about traffic flow and connectivity. He discussed transition from east to west versus north to south.

Mr. Andy Pitts did not feel the revised plan was significantly different, especially when looking at the density. He said RS5 would only be 45' wide lots. He said he presented his own idea to the developer. He felt RS5 should be replaced with RS7, and removing the fourplexes, while continuing the transition to the west. He felt it would create a different neighborhood than what was on the table tonight.

Mr. Mike Whittlesey said he also had a different plan that would hit some of the issues. He did not feel like the neighborhood ideas and concepts were considered very much by the developer. He expressed concern about traffic and wanted alternatives explored for different connectivity. He asked Planning Commission to deny this concept and allow the developer to come back with another concept.

Mr. Alan Cowles, West Lawrence Neighborhood Association, requested denial. He recommended Planning Commission give the neighbors consideration. He felt there were lots of other places in West Lawrence for high density development.

Ms. Gwen Klingenberg said that Harvard had become more dense with traffic. She felt that RS5 would result in rental property and that the houses would be too small for families. She said regarding the character of the neighborhood, there were protections in Horizon 2020 and the Development Code. She stated all the amenities were to the north and there needed to be a better way to get that high density, including RS5, out of the neighborhood to the main roads without going through single-family neighborhoods.

Mr. Finkeldei felt Planning Commission should be looking at the character of the neighborhood and how it complied with Horizon 2020. He said it was much smaller area to make that transition from east to west. He said that would end up leaving a very small section of single-family homes completely surrounded by higher density. He said the neighbors were worried about the transition from east to west. He felt there were other alternative plans that would add a lot more single-family and protect the neighborhood. He said the neighbors were not opposed to row housing but were opposed to being crammed from east to west and having a small area to reside and live.

APPLICANT CLOSING COMMENTS

Mr. Tim Herndon said one of the neighbors who spoke lived a mile away from the proposed site. He pointed out on the overhead the perimeter width of transition along 6th Street compared to the width along the Southwest Lawrence Trafficway. He said the project conformed with Horizon 2020 and staff recommended approval. He said perimeter transition zone protected the Diamondhead neighborhood and protected the interests of the developer in transitioning from single-family houses. He said all of the houses adjacent to the Diamondhead neighborhood had wider lots than Diamondhead. He said the RS5 houses, within the building envelope on RS5 lots, accommodated 2,400 sq ft on the ground floor. He said a second story addition would increase it to 4,800 sq. ft. and

would be even larger with a basement. He said they were bigger houses than what was constructed in the Diamondhead neighborhood.

COMMISSION DISCUSSION

Commissioner Hird asked staff to respond to the issue of whether there was adequate space for transition from east to west. He asked how that compared to other parts of the city.

Mr. McCullough said staff had not done a full depth analysis. He said the value staff was trying to accommodate was the buffering from the highway to the interior of the neighborhood. He said there should be a transition of some land use, street, and then what was on the east side of Renaissance Drive.

Commissioner von Achen asked if the fourplexes would be delayed.

Ms. Day said no, just the row houses.

Commissioner Britton asked about the prospects of Renaissance Drive being connected to the north.

Mr. Sturm said Landplan Engineering and the development group met with the property owners to the north and they did not have plans at this point to move forward with development of the property. He stated they were interested in what would happen north of them in terms of that whole quadrant of commercial development.

Commissioner Culver asked the applicant about the limitations of the conceptual plan presented as an option by the neighbors. He asked if it was a viable option.

Mr. Herndon said the first thing that jumped out at him was the block length because there needed to be connections every 800'. He stated the idea that they would create neighborhoods that were so incompatible that would require utter severance from one another was contrary from the guiding documents and his own professional principals.

Commissioner Hird asked Mr. Finkeldei about the proposed plan by the neighbors. He asked if the neighborhoods concept plan would provide less of a transition than what was proposed by the applicant.

Mr. Finkeldei said one of the neighbors proposed plans did not have the same road issues that Mr. Herndon discussed but allowed RS7 rather than RS5 and reduced fourplexes and put in a duplex transition. He said the neighbors had come to accept that duplexes could be an appropriate transition to K-10. He said in a perfect world the neighbors would choose all single-family. He said they were trying to come up with a plan that balanced some of the needs of the developer and the desires of the neighborhood.

Commissioner Hird said he sensed there was some agreement that what backed up to the trafficway probably should be row homes. He said it would be difficult to sell single-family lots backed up to the trafficway, which was why high density housing was usually put in those locations. He said it looked like the plans proposed by the neighbors had less transition and went abruptly from single-family to high density.

Mr. Finkeldei said the only difference was instead of RS5 it had RS7. He said the RS7 would back up to duplexes. He said the original concept plan from 2006 used road buffering so no units backed up to the highway. He said there were lots of other possibilities on the table.

Commissioner von Achen inquired about Mr. Pitts proposed plan.

Mr. Pitts said his plan was the one Mr. Finkeldei showed that switched RS5 to RS7.

Commissioner von Achen asked how many other plans were presented.

Mr. Finkeldei showed several plans on the overhead. He said one plan changed RS5 to RS7 and changed the fourplexes to duplexes. He said a second plan focused on the traffic flow and still had transition of RS7 to duplexes.

Commissioner Liese said he was still struggling with the issue of transition, traffic flow, and the character of the neighborhood.

Mr. McCullough said their instructions from the last meeting were to look at whether the new plans went far enough to meet more single-family. He said in terms of traffic, the Comprehensive Plan and Subdivision Regulations advocate for connectivity. He said there would be a significant increase of traffic trips through an existing part of the neighborhood, upon development. He said single-family homes produce more traffic than multi-dwelling.

Commissioner Liese inquired about the concept of single-family homes generating more traffic.

Mr. McCullough said typically there are more people living in a single-family dwelling so they make more trips per day than multi-dwelling types. He said it was important to keep in mind the ultimate build out of the entire half section of property. He said they were planning for and anticipated Renaissance Drive would connect both north and south eventually. He said they anticipated there would be development to the north and south. He said they planned for connection east to west as well so the development would hit George Williams Way. He agreed with some of the statements made about considering driver behavior, but said they shouldn't necessarily not strive for that connectivity between the neighborhoods. He encouraged them to judge this against the plan in place. He urged them to judge it to the words of the plan and look at what the neighborhood consists of and if it had the right type of housing stock planned, as well as general compatibility of single-family to other housing types.

Commissioner Liese said a comment was made that smaller homes could attract renters.

Mr. McCullough said smaller houses could attract renters, owners, and retirees. He said they could be affordable or luxurious. He said mixing neighborhoods could be a healthier way to develop neighborhoods. He said there was an elementary school in the neighborhood which could attract families with children to the neighborhood as well.

Commissioner Liese inquired about looking at neighborhoods in the area regarding transition.

Mr. McCullough said other areas included larger areas to plan and this was cutoff with the South Lawrence Trafficway so there was a shorter distance to do some of the more traditional residential development. He said there were three different plans presented tonight which all could work.

Commissioner Josserand inquired about traffic counts regarding single-family versus multi-family. He said the traffic manuals have a lot of national data related to single-family detached use but only one study relative to looking at fourplexes. He said the nature by which Lawrence uses fourplexes and duplexes was perhaps substantially different than any kind of national average. He did not

necessarily agree with the statement about more traffic being generated by single-family versus multi-family. He asked Mr. Herndon about RS5 housing and if he thought an 8,000 sq. ft. house would really be built next to a fourplex or duplex.

Mr. Herndon said he was pointing out the capability within the building footprint on a lot that size. He said in his previous home, about ½ mile away backing up to 6th Street, he lived with his nine single-family detached neighbors on a piece of property that was less than two acres. He said they all lived in nice homes on a lovely street.

Commissioner Josserand asked if there was a fourplex next door and row houses a ½ block away.

Mr. Herndon said next door was a proposed church and on the other side of the church was Alvarado Apartment complex.

Commissioner Josserand said RS5 use was a less intense than RS7 but the lots were so small that when put next to an area that was generally high density, they would be small homes that had the potential to become rental property.

Mr. Herndon said it would be medium density and a beautiful neighborhood.

Commissioner Blaser said he was one of the ones that asked for the study about traffic going south out to Bob Billings Way. He said he wished he would have asked about traffic going north. He asked if they deny this project when the builder could come back.

Mr. McCullough said there was a clause in the Development Code that if a zoning application was denied by City Commission, the applicant could not bring back the same application for 12 months. He said they could bring back a different application after 90 days.

Commissioner Blaser asked if there was a way to have access through without going north.

Mr. McCullough said no, it was developed.

Commissioner Hird said the revised plan did have a little more single-family and was in conformance with the Nodal Plan. He said the road reconfiguration was an improved version but did not solve all the problems. He said he liked the idea of not building row homes until the road was extended but since it was to the south that was somewhat offset by Ms. Gudenkauf's map of traffic patterns and amenities. He said transition was a key thing. He said traffic was going to be an inconvenience to the neighbors no matter what was built. He felt RS5 provided more of a transition than otherwise. He said he was not offended by the size of RS5 lots and hoped it would provide affordable housing for young families. He said the professional staff recommendations were influential on his considerations.

Commissioner Liese wondered if there was room for additional compromise. He inquired about deferral versus denial.

Mr. McCullough said Planning Commission would need to provide specific direction for the applicant to focus on.

Commissioner Liese said traffic flow would be a specific issue for the applicant to look at.

Mr. McCullough said bringing Renaissance Drive south prior to the row houses being developed was to act as an offset to allowing the higher density transition. He said if there was compromise in the east side of Renaissance Drive on what those land uses were then maybe there was not that connectivity issue. He said the request involved delaying the row houses until Renaissance Drive was completed to the south. He said the neighbors have requested the use be changed to a less harmful use and reduce traffic. He said the points of contention were whether Renaissance Drive could be taken both north and south and/or whether the land uses could be revised to some other type of land use, such as removing the fourplex, keeping RS5, or going to all RS7, which would be from the neighborhoods perspective, less impactful and more accepting of connections of the street network.

Mr. Bob Santee, developer, said they need to look at the bigger picture and the community as a whole. He stated if it was all single-family it would be dense and smaller. He said anything built there would need to be sold and that small rentals would be foolish. He said they were committed to this piece of property.

Commissioner Liese asked Mr. Herndon to address neighbors concerns and make recommendations.

Mr. Herndon said the traffic study prepared was reviewed by professionals and approved by the City. He stated they met with neighbors two more times and reconfigured the plan twice and the reconfiguration had a remodeled traffic study which was accepted and approved by the City. He asked Planning Commission for permission to correspond with his client if they were going to design on the fly tonight.

Commissioner Liese asked if Mr. Herndon was asking for more time.

Mr. Herndon said he would need to talk to the developer.

Planning Commission took a 10 minute recess to allow the applicant to speak with the developer about possible options.

Mr. Herndon said the economic parameter of the project was being stretched to the limit. He said they were willing to substitute the 24 fourplexes for a continuation of RS5 to Renaissance Drive, all duplexes on the cul-de-sac oriented toward Renaissance Drive, taking the RS5 transition to Renaissance Drive, and substituting the fourplex with duplexes around the cul-de-sac. He said the issue of the value and size of the houses was relative to what the builder was willing to construct on the lots.

Commissioner Burger asked to see the 2006 diagram that had been referenced.

Mr. Finkeldei displayed it on the overhead.

Commissioner Lamer asked staff if they look at each zoning request or with the plat as a whole for conformance with the Comprehensive Plan.

Ms. Day said with this particular application they looked at it as a whole project, the zonings accompanied the plat because the subdivision design was what held the development to a particular density.

Commissioner Lamer asked staff to respond to the overall density with the revisions just stated by Mr. Herndon.

Ms. Day said it would probably be comparable to 6 units per acre or less.

Commissioner von Achen asked how the neighborhood felt.

Mr. Finkeldei said he did not want to answer the question for the group without talking to them. He said the connection to the north was very important to them. He said some were also concerned about traffic so they may be more concerned with making a requirement that there was a connection to the north before some of it was built. He said others were concerned about density.

Commissioner Liese said this was the most extreme compromise he had seen during his two years on Planning Commission. He was impressed with the developer's willingness to consider such a large compromise.

Commissioner von Achen asked staff how Planning Commission should proceed without a plan in front of them.

Mr. McCullough said they could proceed with the motion to revise as presented by the applicant and staff would prepare it for City Commission's consideration with the proper graphics.

ACTION TAKEN on Item 3A

Motioned by Commissioner Hird, seconded by Commissioner Blaser, to approve Preliminary Plat as revised by the applicant during meeting this evening based on the findings of fact in staff report and subject to conditions set forth in the staff report.

Commissioner Britton said it was difficult when there are strong presentations from both sides. He said the neighborhood effort was organized and effective. He felt the applicant had made significant concessions that would improve the original plan from last month that would address some of the issues such as traffic, density, and egress/ingress. He felt this was a pretty good compromise and would respect and preserve the character of the neighborhood. He said he would support the motion, especially with the concession made by the applicant.

Commissioner von Achen said she would support the motion because of the changes made by the applicant. She said she would like to see Renaissance Drive extended north. She said she hoped the neighbors understood this was a compromise.

Commissioner Hird said before the compromise was made he was leaning toward approving the project because it provided transition. He was relieved the developer made concessions he made. He agreed this was the best presentation from a neighborhood group that he had seen. He felt this would be a better project with the concessions made. He said he had never seen a developer make that kind of concession on the fly during a meeting.

Commissioner Liese said he visited the neighborhood and was impressed. He said he was very impressed with the applicant's willingness to stretch as far as he could. He said he would vote in favor of the motion.

Commissioner Culver felt the neighborhood and applicant time was used wisely during the past month. He stated this was a difficult piece of development with constraints. He said it followed the nodal plan and was a feasible project that kept the character of the neighborhood in tact. He said he would support the motion. He thanked the neighbors and the applicant for going through the process of creating a better product.

Commissioner Blaser said the compromise was not perfect and he would still like to see the road go north but that he would like to see the project move forward.

Commissioner Josserand said the applicant should receive kudos for making adjustments. He said he would vote against the motion. He did not think building townhomes next to K-10 would be very attractive. He said the plat that was never filed years ago lead to expectations that were not being met.

Commissioner Lamer commended the neighborhood group for their excellent presentation. He also commended the developer for the compromise. He said his main struggle was trying to reconcile this with the nodal plan and the low density issue. He said if there had been one plan submitted instead of multiple rezonings it would have been easier. He had reservations about whether it conformed to the nodal plan. He said he would not vote in favor.

Commissioner Burger said going back to testimony of the first meeting and witnessing the traffic herself, she had concerns about the traffic already there. She said she could think of some solutions but they did not address the connectivity. She said if the neighborhood connected to a new development they would have increased traffic issues. She said regarding the argument about not building single-family homes near the highway, there were currently a lot of single family homes built along K-10 in other cities. She did not feel like it was a good argument when looking at other communities. She said the applicant comment about this project being stretched to its limit caused her concern about what type of product they would see.

Motion carried 6-3, with Commissioners Burger, Josserand, and Lamer voting in opposition.
Commissioners Blaser, Britton, Culver, Hird, Liese, von Achen voted in favor of the motion.

ACTION TAKEN on Item 3B-3E

Motioned by Commissioner Hird, seconded by Commissioner Blaser, to approve the four rezonings, Items 3B-3E, with the acreages revised as necessary to conform with the plan offered by the applicant this evening.

Motion carried 6-3, with Commissioners Burger, Josserand, and Lamer voting in opposition.
Commissioners Blaser, Britton, Culver, Hird, Liese, von Achen voted in favor of the motion.

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**ITEM NO. 4 COMPREHENSIVE PLAN AMENDMENT TO H2020, CHP 6 TO ADD
POLICIES FOR THE AUTO-RELATED COMMERCIAL CENTERS
DESIGNATION (DDW)**

CPA-5-5-11: Comprehensive Plan Amendment to Chapter 6 of Horizon 2020 to add policies for the Auto-Related Commercial Centers designation. *Initiated by Planning Commission 5/25/11.*

STAFF PRESENTATION

Mr. Dan Warner presented the item.

Commissioner von Achen asked why there was a minimum of 20 acres.

Mr. Warner said the minimum of 20 acres was meant to establish a good size commercial center.

Commissioner von Achen asked if it included truck repair and if that was a stand alone use.

Mr. Warner said there were a variety of uses that could be part of this use. He said the 20 acres was not necessarily going to be one use. He said it could be, for example, a hotel along with some auto uses such as a car lot. He said it was a development that would likely have multiple uses within the development, with auto repair being one of those potential uses. He said auto repair would be a compatible use with the auto sales use.

Commissioner von Achen inquired about the requirement of 20 acres.

Mr. McCullough said typically the land use designations try to pit an appropriate amount of acreage for the intended use. He said they were not trying to set out exact uses in the language, they were trying to provide examples of what the auto-related center uses could be at any given auto related designation.

Commissioner von Achen said she did not understand the requirement of 20 acres.

Mr. McCullough said when seeking to designate an auto-related center there needs to be enough land to accommodate those things. He said they would not want to put an auto-related center on 5 acres because it would not probably be compatible with its surroundings. He said any one use may not need 20 acres, but as a node of commercial designation it should be significant enough to capture and actually work to accommodate those uses that could go there.

Commissioner von Achen asked if a truck repair business would have to build within the designated area.

Mr. McCullough said it depended on the context. He said, for example, South Iowa Street was also designated as a community regional strip from Clinton down to the highway so there would be any number of opportunities within that existing strip development to do a stand alone auto repair business.

PUBLIC HEARING

Mr. Ted Boyle, North Lawrence Improvement Association, said the only issue the North Lawrence residents had was with truck stops.

Ms. Gwen Klingenberg, League of Women Voters, referenced the letter the League of Women Voters sent. She expressed concern about truck stops. She felt the Comprehensive Plan Amendment would go through smoothly if truck stops were removed.

Mr. Alan Cowles said he did not understand all the implications of this proposal. He concurred with the League of Women Voters. He asked Planning Commission to figure out what it would really turn into.

COMMISSION DISCUSSION

Commissioner Liese asked if the term truck stops could be removed.

Mr. McCullough said yes. He discussed the history of truck stops. He said there was no application to establish a truck stop within the City of Lawrence. He said they had quite a bit of discussion on the issue of truck stop within the Development Code and Comprehensive Plan policies. He said the last debate happened in 2012 when there was a Text Amendment that went through Planning Commission and City Commission related to establishing the IM zoning district. He said they discovered that truck stop was wrapped up in the definition of gas and fuel sales, so essentially a truck stop was permitted just about anywhere commercial would allow a gas station. He said through the work of the Planning Commission and City Commission they really tightened up where truck stops could be permitted and reduced where truck stops could locate by placing them through a Special Use Permit in the CR and IG districts. He said the City Commission did have the opportunity to strike the use completely from the Development Code and made a conscious decision not to do that and found some value in maintaining the truck stop use in the Development Code but with protection through the Special Use Permit process. He said in that discussion three areas were pointed out that were likely to get that use because the language existed in the Comprehensive Plan at that time. He stated if they deny this Comprehensive Plan Amendment as proposed it would still exist in the Comprehensive Plan as truck stop language. He said Planning Commission had the option to delete it from the list of possible examples but that did not necessarily delete it from the opportunity of someone requesting a zoning change and Special Use Permit from the Development Code without a Text Amendment to the Development Code. He said City Commission, in his opinion, most recently wanted truck stops included in the documents as potential to be developed somewhere within the city with full knowledge of where the potential for a truck stop could go.

Commissioner von Achen inquired about the rationale of putting these at the gateways of the city.

Mr. McCullough said the issue was where they would be close to the state highway/interstate system. He said the truck stop may be the most moot of issues because there were good services along I-70.

Commissioner Liese said there was an empty lot across from his store in North Lawrence that was used as a truck stop even though it was not zoned for a truck stop. He said he could not imagine a truck stop benefiting Lawrence. He said he would be in favor of changing the Comprehensive Plan to remove truck stops.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Hird, to approve the Comprehensive Plan Amendment, CPA-5-5-11, to Chapter 6 of Horizon 2020, with the removal of truck stops, and forwarding to the City Commission and the Board of County Commissioners.

Unanimously approved 9-0.

Commissioner Liese directed staff to review Horizon 2020 for other uses of truck stops.

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ITEM NO. 5 SAND DREDGING REPORT (DDW)

Consider Sand Dredging Report and direct staff, as appropriate.

STAFF PRESENTATION

Mr. Dan Warner presented the item.

NO ACTION TAKEN

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ITEM NO. 6 DOWNTOWN REDEVELOPMENT

Receive report related to Downtown redevelopment issues and opportunities. Staff will schedule a joint Planning Commission/Historic Resources Commission work session to consider the report.

STAFF PRESENTATION

Mr. Scott McCullough presented the item.

Commissioner Burger said she would be interested to hear more about the recommendation concerning atmosphere and sunlight at their future meeting.

PUBLIC COMMENT

Mr. Richard Heckler, Brook Creek Neighborhood Association, asked when the joint meeting would be.

Mr. McCullough said it would be March 13, 2013 during the Planning Commission Mid-Month meeting at 7:30am.

NO ACTION TAKEN

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ITEM NO. 7 APPOINTMENTS FOR OREAD DESIGN GUIDELINES

Appointment two Planning Commission members to serve with staff and Historic Resources Commission members on a joint steering subcommittee of the Planning Commission and Historic Resources Commission to process the Oread Design Guidelines.

ACTION TAKEN

Commissioners Josserand and Lamer were appointed to the Oread Design Guidelines Committee.

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MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

MISC NO. 1 VARIANCE; REVISED PRELIMINARY PLAT FOR FORMER FARMLAND PROPERTY (SMS)

Variance request from sidewalk requirement in Section 20-811(c)(1)(i) associated with a revision to the Preliminary Plat for the Former Farmland Property (PP-12-00101); located at 2700 E 23rd Street. Request is to construct sidewalk on one side of access road adjacent to Tract B (Westar permanent easement) where open ditch section is designed for stormwater improvements.

STAFF PRESENTATION

Ms. Sheila Stogsdill presented the item.

ACTION TAKEN

Motioned by Commissioner Blaser, seconded by Commissioner Josserand, to approve the variance request from Section 20-811(c)(1)(i) to construct only one sidewalk adjacent to the east side of the Access Road included in the Former Farmland Property Subdivision.

Unanimously approved 9-0.

Recess at 10:26pm until 6:30pm on January 30, 2013

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Reconvene January 30, 2013 – 6:30 p.m.

Commissioners present: Blaser, Britton, Burger, Culver, Hird, Josserand, Lamer, Liese, von Achen
Staff present: McCullough, Stogsdill, M. Miller, Ewert

BEGIN PUBLIC HEARING (JANUARY 30, 2013):

COMMUNICATIONS

Mr. McCullough noted that a revised staff memo had been posted for Item 8.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- Ex parte:
Burger questions on river issues and asked staff and they asked
Lamer talked to Joann Bergman questions regarding the application
- Abstentions:
Commissioners Hird and Lamer said they would abstain from Item 8.

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Recess LDCMPC

Convene Joint Meeting with Eudora Planning Commission

ITEM NO. 8 CONDITIONAL USE PERMIT FOR PENNY SAND PIT; N 1500 RD & E 1850 RD (MKM)

CUP-12-00099: Consider a Conditional Use Permit for sand excavation and extraction for Penny Sand Pit, approximately 434 acres located on the NE Corner of N 1500 Road & E 1850 Road. Submitted by Landplan Engineering, for William Penny & Van LLC, property owners of record. *Joint meeting with Eudora Planning Commission. (The Planning Commission voted at their October meeting to forward the CUP to the County Commission. The CUP application is being returned to Planning Commission for a new public hearing after identification of error in mailed public notice for the October meeting.)*

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Eudora Commissioner Richard Campbell inquired about sales of top soil and overburden.

Ms. Miller said that was included as a precautionary measure and that she would not expect there to be any sales. She stated if there were any sales it should only occur on the area that had the scale house and existing processing plant. She said it was a protection measure for the residents that they would not expect vehicles in and out for sales in that area.

Commissioner Burger said the third party report talked about concern over the recreational use potentially changing the impact on ground water. She said the conditions made recreational use the purposed future. She wondered if there was a policy contradiction or would the Conditional Use Permit take care of that.

Ms. Miller said there were many different types of recreation, such as passive recreation, which could include visual recreation like bird watching. She stated there was also active recreation such as boating, skiing, and swimming that could introduce pollutants to the lake. She felt it was important that anything that was public recreation or even membership only would require a CUP.

Eudora Commissioner Tim Pringle asked if the Corps of Engineer approved the river dredging permits for Penny's.

Ms. Miller said she would refer that question to the applicant.

Commissioner Liese recapped the previous votes of Planning Commission, Eudora Planning Commission, and the Board of County Commissioners.

CONSULTANT PRESENTATION

Mr. Kirk Hoeffner, Conestoga-Rovers & Associates, said he provided a third party independent evaluation to Douglas County of the two reports from Mr. McElwee and Mr. Nuzman. He said he was tasked primarily with evaluating the potential that the proposed sand facility would have to contaminate the aquifer and threaten downgrading of wells. He said he did not anticipate any major problems with the proposed operation but did have several recommendations. He said part of the issue with wanting to add additional wells and determine a groundwater flow was because of conflicting information provided in Mr. Nuzman's report. He said some of the groundwater data was

taken from 1958. He stated Mr. McElwee's information was taken from more recent material. He said he proposed the installation of wells to get a better handle on what the actual site conditions were. He said he focused his review on several different reports regarding water quality in different aggregate settings. He said there had been additional investigations done, one of which by Ontario Ministry of Natural Resources in 2006. He stated it was applied research on source water protection issues in the aggregate industry. He said they did an international literature review and did not find any instances of aggregate extraction operation that impacted municipal water supplies. He said there were several other studies conducted in Kansas regarding specific sandpits around the Sedgwick County/Wichita area. He said he did not feel those were the best comparisons because in some of those situations the surface water/stormwater was being directed directly into the pits. He said even those studies found that nitrates, fertilizer, and salts were the primary contaminants found in a few of those pits. He stated the conditional use restrictions, such as berms around the actual pit, would hopefully prevent those types of things.

APPLICANT PRESENTATION

Mr. Phil Struble, Landplan Engineering, said he wanted to clarify an issue dealing with river dredging and how it related to Penny's aggregates. He said the Kansas River Dredgers collectively agreed to a regulatory plan developed by the Corps of Engineers beginning in 1992 and that regulatory plan had a 20 year lifespan. He said in the regulatory plan riverbed degradation was identified as one of the restrictions for river sand dredging operations. He said the plan spelled out that if at any point in time there was a 2' or more riverbed degradation, any running five mile average stretch of the Kansas River, that degradation could have excessive impacts on the morphology and ecology of the Kansas River. He said the regulatory plan included monitoring requirements that required the river dredgers survey cross sections of the Kansas River from Missouri all the way up past Topeka. He said that survey was completed every two years and given to the Corps of Engineers. He said in 2012 the 20 year regulatory plan expired, which concerned the Corps of Engineers and they advised Penny's to do an environmental assessment. He said also when Penny's completed the monitoring activities for riverbed degradation a number of sections of the Kansas River had degraded in excess of 2'. He said one of the sections of river that degraded in excess of 2' was the Penny's aggregate section of the Kansas River immediately adjacent to this site. He said Penny's was aware of this in May of 2012 and were told that their dredging operation would be suspended in May of 2013, until the river aggregates through the cross section period and if it aggregates under the 2' level Penny's could ask to be allowed to go back on the river. He said nothing in the determination of the degradation of the section of the Kansas River had been attributed to any activities or any performance by Penny's aggregate whatsoever. He said Penny's would continue to monitor the aggregation of sand back in that section of the river and if it falls under the 2' section Penny's will asses options and determine if it would be beneficial to ask to be back on the river dredging sand. He said given the circumstances the Conestoga-Rovers report was a great step forward in the process. He said the report took the technical information generated to date and rendered an opinion that Penny's should be able to mine sand safely and protect the neighbors and City of Eudora's water supply if Penny's follows their recommendations. He said once Conestoga-Rovers had a better understanding of the overall project they would allow Penny's to mine sand with the appropriate safeguards. He said he agreed with the staff report with revised conditions.

PUBLIC HEARING

Mr. John Harrenstein, Eudora City Manager, said the Conestoga-Rovers analysis answered the question that no action should take place until the conditions of the aquifer were known. He believed the pre-dredging report was critical to any consideration so he could not support approval of this application tonight. He stated the City of Eudora was opposed to any approval tonight.

Commissioner Liese asked if he was saying the approval should be contingent upon the report coming out.

Mr. Harrenstein said the City of Eudora felt it would be best if the report was completed and then the recommendation for approval from Douglas County Planning staff was forwarded through Planning Commission to the Board of County Commissioners.

Mr. Carl McElwee, representing multiple land owners, requested denial because of an unstable bank which had the potential for cutting off the meander, protection of the aquifer, and the destruction of prime farmland. He showed on the overhead the instability of the bank. He felt there was great potential for the meander in the river to be cut off. He expressed concern about a nick point and degradation. He felt the water levels should be measured for at least one year. He said protection of the river system, ground water, and conservation of prime farmland should be the goals of Douglas County. He asked for denial of the Conditional Use Permit.

Mr. Scott Jackson felt a big pit would attract windblown pesticides, fertilizer, and herbicides that would go into the aquifer. He expressed concern about erosion of the riverbed and prime farmland being ruined forever.

Mr. David Vertacnik expressed concern about erosion. He felt pollutants could access the pit and effect water quality. He also expressed concern about increased truck traffic and the safety of the nearby daycare. He stated the majority of the sand coming out of the pit was going to Kansas City, not into the Lawrence economy.

Mr. Bob Yoos said if approved he would like a study to abate the noise. He suggested mufflers, reduced hours of operation, or electric dredges. He stated it would be nice if after the reclamation they would donate it to the community for recreational use.

Mr. Peter Shenouda, Building Blocks Daycare Center, expressed concern about increased traffic. He said he would like a traffic study done.

Mr. Jerry Jost expressed concern about prime soils, class I and class II being lost. He showed soil maps on the overhead. He requested denial of the Conditional Use Permit.

Mr. Al Deathe said Penny's was exceeding the borders of their property. He said if it was a wellhead protection area then why not protect it. He expressed concern about the dredging hours and having to listen to noise all hours of the day and night. He felt a noise standard should be set.

Ms. Nancy Jackson said no one wants to live next door to an industrial mining operation. She said she appreciated the Conestoga-Rovers study and the recommendations made, especially the monitoring of wells. She was concerned about liability and protection. She said if the water supply was degraded in any way than the City of Eudora was on the hook to replace the supply. She wanted a guarantee that if a problem was found there would be funds to address it immediately.

Mr. Michael Almon, Sustainability Action, expressed concern about prime agricultural land, ground water quality, and erosion of the riverbank. He showed a map on the overhead of erosion bends. He discussed erosion of the riverbed. He did not feel a riparian barrier would help here. He felt prime agricultural land should be top priority. He suggested the County approach the Corps of Engineers to encourage a new river permit since Penny's would prefer to dredge in the river.

Ms. Martha Saunders Skeet said her parcel of property was smaller due to losses from flooding. She expressed concern about prime farmland being lost. She agreed with Mr. McElwee's comments. She requested the Conditional Use Permit be denied.

Mr. Robert Lewis said he was a retired farmer and felt the water could be protected with monitoring wells. He wondered where Lawrence would get its sand for construction and maintenance of streets if Penny's was denied.

Ms. Carol Wilcox expressed concern about the quality of water and about increased truck traffic on 15th Street. She was also worried about losing prime agricultural soil.

Mr. Steve Layman showed pictures of the sand dredging operation on the overhead. He expressed concern about the noise. He said he would like to see hospital grade mufflers to abate the sound. He said he opposed the operation due to the sound.

Ms. Karen Miller, on behalf of her father-in-law Mr. David Bieber who owns 160 acres north of Penny's, said the noise bothers his cattle and he has to keep them near the road and feed them hay. She said he was also concerned about the impact on crops. She said her father-in-law did not want this application approved and wanted the noise to be addressed. She said he was concerned about dust control. She said he felt blasting should be prohibited and would also like lighting controlled. She said her father-in-law felt a 30 year term was ludicrous and would like to see a 5 year full review term.

Ms. Joanne Bergman said her prime concern was noise and that the noise from the dredging this past fall was intense. She said she called the Corps of Engineers and they told her they had no control over the sound. She also stated the County does not have control over sound issues on the river. She asked that overnight hours of dredging be prohibited and regulations to control the dredging on river. She said she was a board member of Friends of the Kaw and was not at the meeting when they wrote the letter in support of the pit. She said her understanding was that Friends of the Kaw was in support of dredging off river and only in a pit mine.

Mr. Kerry Altenbernd expressed concern about ground water, loss of significant agricultural land, noise issues, and traffic issues. He felt more studies were necessary. He wondered about who would take care of the area in the future. He felt this was not a good location for a sand pit and asked Planning Commission to deny it.

Ms. Nancy Schwarting agreed with comments about issues of longevity. She wondered who would continue the maintenance of the berm in 30 years and protect the water supply when the land was sold. She said the land was zoned agricultural for good reason. She wondered what good monitoring wells would do if contamination was in the aquifer. She expressed concern regarding water contamination and wondered who would be liable. She expressed concern about drought and flood because they were not predictable. She felt there were a lot of reasons to deny the Conditional Use Permit.

Ms. Marilyn Brune felt water pollution was a serious issue. She felt the top soil would be more productive being farmed than dug up for sand. She expressed concern about concrete being dumped on her property. She asked for denial of the Conditional Use Permit.

Mr. Keith Browning, Douglas County Public Works Director, said the role of Conestoga-Rovers was to look at the previous material and provide their independent opinion to help the Board of County Commissioners. He said Conestoga-Rovers had not done a study, but that's what they were

proposing. He said regarding the traffic there was a traffic study submitted and reviewed. He said the study looked at traffic counts on the road and that they were really not proposing an increase in truck traffic. He said road improvements were recommended. He stated the County was satisfied with the results of the traffic study. He said he could not comment on noise.

Mr. McCullough said they were not looking at the existing dredging in the river because that was not part of this application so it could not be conditioned in any way. He said one of the conditions recommended was the hours of operation, Monday-Friday from 6:30am-6:30pm.

APPLICANT CLOSING COMMENTS

Mr. Struble said regarding traffic, Noria Road did not connect to K-10 and that there were traffic impacts on E 1850 Road beyond this project. He said they would study the ability to put hospital grade mufflers on the dredge to control noise. He said Penny's does not blast so there was no dust, it was strictly wet dredging. He said the Corps of Engineer did not have concerns about that part of the Kansas River. He said the Corps of Engineers uses the picture shown earlier by one of the audience members as a great example of how to rock armor river banks.

Commissioner Blaser asked if Penny's was going to river dredge and pond dredge simultaneously.

Mr. Struble said they would not simultaneously river dredge and sand dredge. He said that was a condition with the Conditional Use Permit. He said if the Corps of Engineers allowed river dredging again in the future then that was a possibility again.

CONSULTANT CLOSING COMMENTS

Mr. Hoeffner said he could not speak to aerial dispersion of pesticides. He spoke about best management practices and that berms could hopefully prevent a lot of runoff from entering the pit. He stated best management practices for application rate and methods could also reduce pesticides. He said regarding water quality, he believed an aggregate mining operation could co-exist in the area. He stated the installation of monitoring wells would provide information if there was a problem. He said there were many different types of contaminants, such as nitrates and salts, and that each had different travel times in the aquifer.

Eudora Commissioner Campbell said Mr. McElwee brought up some good points, such as the number of monitoring wells. He asked Mr. Hoeffner to comment about that.

Mr. Browning said Conestoga-Rovers provided the County with a proposal to do the recommendations discussed and in that proposal they have a scope of work that has not been made public yet and has not been put before the County Commission yet.

Commissioner Liese asked who would pay for the study.

Mr. Browning said it would be subject to County Commission approval. He said he would propose the County contract with Conestoga-Rovers directly and have an agreement with the applicant to reimburse the County for the cost of the study.

Mr. Hoeffner said he proposed more than three monitoring wells for a site of this magnitude. He stated they needed to develop a scope of work and look at the existing data. He said a detailed study would be part of the review.

Commissioner Liese asked if Mr. McElwee had any questions for Mr. Hoeffner.

Mr. McElwee asked Mr. Hoeffner if he agreed with his earlier comment about not taking quick snapshot of values and that they would need to be over a period of months.

Mr. Hoeffner said he agreed that there were seasonal fluctuations in every aquifer. He thought that the initial baseline would provide a great deal of information.

Mr. McElwee asked Mr. Hoeffner what he thought would be necessary to determine long term average behavior.

Mr. Hoeffner said at least a year's worth of monitoring data.

Commissioner Blaser asked how long a baseline study would take.

Mr. Hoeffner said it would take about 3 months.

COMMISSION DISCUSSION

Eudora Commissioner von Achen expressed concern about the long term consequences. He wanted a guarantee that there would be no problem and someone to take responsibility for any possible problems. He felt there should be some sort of insurance policy or long term commitment from the applicant. He felt there should be some sort of fund set up for the County to administer for any future problems. He wanted to see a condition added that would address that.

Eudora Commissioner Campbell also felt there should be a surety bond to take care of any future problems. He said the City of Eudora had no recourse against damage that may or may not be caused by the sand pit. He said the biggest concern was water issues and there was not enough information yet.

Eudora Commissioner Pringle said the consultant, Conestoga-Rovers, retained by County Commission indicated there needed to be more studies. He said Mr. Struble indicated the Corps of Engineers gave Penny's the opportunity to dredge through May. He felt it was premature to approve anything at this point.

Eudora Commissioner Johnny Stewart said it seemed to be a competition between resources of land and sand. He inquired about liability and who would bear the cost.

Commissioner Liese inquired about what options they had in proceeding.

Mr. McCullough said there were some options. He said the Conestoga-Rovers study was commissioned by the County Commission. He said this item was not returned to Planning Commission but only came back due to a notification technicality. He said he thought the Board of County Commission would like to see this item back. He said the way staff framed the recommended conditions, it would go to the Board of County Commissioners where it could gain approval with all the conditions, one of them being a pre-dredging report and study which would occur before any dredging. The pre-dredging report would then go back to the County Commission for review and consideration of any additional conditions to be placed on the Conditional Use Permit. He said the reason it was proposed that way was because there would be costs involved to do the study and the applicant requested some amount of assurance they had a viable product before taking the next step. He said another option was to recommend denial. He said a third option would be to recommend the pre-dredging report be completed before the final Conditional Use Permit approval, and send to the Board of County Commissioners with that recommendation or defer for that cause.

He said he didn't recommend that because the County Commission needed to take some action on this to give the applicant the true direction on it.

Commissioner Burger said she was concerned about how much percentage of material would stay in Douglas County. She said staff gave her a list of projects that the applicant had been involved with in the current operation and projects they hope to be involved with. She said her understanding was that Penny's had a presence with using the materials within the County. She also wondered what happened to the land if the river moved and the response she got from staff was that it depended on how the river moved. If it was gradual than there was a gradual change of ownership with no compensation. If there was a massive flood and the river moved then there could be some compensation for land owners. She said when the river moves it doesn't necessarily leave behind agricultural land. She wondered about the characteristics of class I and II soils and what they could do for the land during a flood event that other classes of soil could not do. She said there were five different locations identified by staff for sand extraction and some of those areas had class I and II soils. She wondered about the differentiation between soil types and their capability to deal with flood water.

Mr. McCullough said class I and II soils were typically more permeable and allow infiltration to soak up flood waters to a higher degree.

Commissioner Josserand asked Mr. Struble why Penny's wanted to retain the legal right for on river dredging.

Mr. Struble said off river dredging was a national trend sponsored more from the environmental aspects of the river versus engineering aspects. He said there was a strong conflict between the EPA and Corps of Engineers. He said the current trend was that the EPA was winning the battle on a fairly regular basis and making it more restrictive and difficult for river dredging operations to maintain those processes. He said that could be a pendulum that swings one way or the other. He said Penny's was a slight victim to the processes and whims going on. He said they were keeping their options open in case they were allowed to dredge back on the river at some point in the future. He stated Penny's agreed to have only one dredge, which would be either on river or off river, not both.

Commissioner Josserand said at the last meeting he asked if Douglas County was currently an importer of that aggregate.

Mr. Struble said he did not have facts to back that up but that the number of trucks he sees coming from out of town would indicate that could be true.

Commissioner von Achen asked Mr. Jost about the suitability of soil to make berms.

Mr. Jost said he used the USDA soil survey and looked at the suitability of those soils. He said those soils were limited in those uses and would not serve well as berms. He said they were very permeable and water moves through them easily.

Commissioner Josserand said he was pleased to see the recommendation of testing wells. He inquired about the standards for testing.

Mr. Hoeffner said there were drinking water standards from the Kansas Department Health and Environment.

Commissioner Blaser felt class I and II soils should be conserved. He agreed there needed to be a baseline and that the materials coming out of the well now should be tested so they know what it consists of. He felt baseline monitoring was important especially if the owner was going to be held responsible for however many years. He felt they needed to make a decision so that the applicant knew how to proceed. He said they could recommend approval with all the conditions and if the conditions were not met it could not go forward. He felt the issue of noise was solvable.

Commissioner Liese asked if Eudora Planning Commission's denial included conditions.

Mr. Harrenstein said the Eudora Planning Commission was not bound to recommend what the City of Eudora does. He said he represented the Eudora's City Commission position.

Eudora Commissioner von Achen said the motion was an absolute denial, without conditions.

Eudora Commissioner Stewart asked Mr. Harrenstein if Eudora City Commission voted to approve.

Mr. Harrenstein said Eudora City Commission requested specifically from County Commission to conduct an independent study to identify what the goal was of the pre-dredging report. He said the City of Eudora was supportive of the pre-dredging report and believed it should be completed prior to any Conditional Use Permit being developed and recommended to the Board of County Commissioners.

Commissioner Liese asked Eudora Planning Commission what they thought of having a study done before further action was taken.

Eudora Commissioner von Achen said he voted with the motion for denial because he thought there was small chance of the total group deciding to deny until the study was made. He said he would still want a condition added to have the applicant take responsibility.

Commissioner Liese said he was thinking he would not vote in favor. He said he would want to see a study done before further action was taken. He asked staff if it was possible to hold a company liable for any damage done even after they had walked away from the project.

Mr. McCullough said there were a few options to convey that message to the County Commission. He said they could request the pre-dredging report be completed before taking action. He said if Planning Commission desired they could defer it for that amount of time with instruction to complete the pre-dredging report as additional information. He advised Planning Commission to vote in such a way for County Commission to receive the item because there was an unknown for the applicant about where the governing body stands on the issue. He said it would not just be a deferral of a month, it would be more along the lines of 3 months and spending funds to do that. He encouraged Planning Commission to consider sending any recommendation they made to the governing body for action.

Commissioner Liese inquired about deferral versus denial.

Mr. McCullough said County Commission would actually be the governing body to deny the permit but that there may be the one year clause associated with this application where the applicant could not come back with a similar application for at least a year.

Mr. Browning said at the very least it would be cumbersome because what had been contemplated was that in order to have an independent study the County would contract with the consultant and

have the study done and the County would have an agreement with the applicant to reimburse the County. He said he did not think Planning Commission could contract with the consultant to get the study done and have an agreement with the applicant to reimburse the cost.

Mr. McCullough said it would be cumbersome to defer without going to the County Commission because it was at the County Commission level that would contract out the independent pre-dredging report.

Commissioner Burger expressed concern about the size of the project. She said she received a call from County Commissioner Mike Gaughan asking if she thought reducing the acreage would alleviate her concern. She said it was an interesting idea but that she did not know what she thought of it. She said she was still uncomfortable with the size of the project.

Commissioner Liese asked if Penny's could do something to protect Eudora.

Mr. McCullough said there were opportunities and possibilities for agreements. He said one of the challenging parts was assessing what the risk was to the Eudora wells triggered from this land use.

Commissioner Liese said he was trying to figure out a way not to block this but he could not support the project at this time. He felt the study should be complete first.

Mr. McCullough said they could craft language for a motion that withholds final approval until those issues have been addressed.

Commissioner Culver said that was essentially part of condition one, that it would go back to County Commission and final action would not be taken until the results of the dredging report.

Mr. McCullough said it would but they would essentially receive the first preliminary approval of the Conditional Use Permit. He said the noise could be resolved with technology. He stated the pre-dredging report was about well head protection.

Commissioner Culver said he also agreed some of the issues could and should be addressed and wanted to craft a motion to encourage County Commission to have discussions regarding noise and longer term liability. He encouraged County Commission to look at how to have systems in place to determine and objectively tie any water quality changes to the subject property. He said he could support something that encouraged County Commission to look at some of those issues. He said he supported this the last time they saw it. He felt they needed to take into consideration the need and demand of a natural resource like sand in Douglas County. He said given the circumstance that this came back to Planning Commission, denying the Conditional Use Permit would be penalizing the applicant for a notification error that was no doing of their own. He was in favor of forwarding this on to the County Commission.

Commissioner Josserand agreed with Commissioner Culver. He felt if properly executed the ground water could be protected. He felt this was a better proposal than what they saw two months ago.

Commissioner Liese said what had changed in his mind was that the area where he lived was identified as a potential location for sand extraction.

ACTION TAKEN by Eudora Planning Commission

Motioned by Eudora Commissioner Stewart, seconded by Eudora Commissioner Campbell, to deny the Conditional Use Permit.

Motion carried 4-0.

ACTION TAKEN by Lawrence Planning Commission

Motioned by Commissioner Liese, seconded by Commissioner Josserand, to submit the application to the County Commission with a recommendation that the County Commission defer a decision on the application until the pre-dredging report is completed and the recommendations implemented to the satisfaction of the County Commission, as well as development of conditions that address noise from the dredging equipment and issues concerning protecting the city of Eudora's long term financial risk associated with the potential impact to their municipal water wells.

Commissioner Josserand said his only concern was about liability. He said he would not want to box in the County Commission with some preconceived notion.

Commissioner von Achen said not all the concerns were met by the motion. She said one of the concerns was who would be responsible after 30, 50, or 70 years.

Mr. McCullough said at the termination of the Conditional Use Permit or termination of the business use it would become a private recreation lake, but there was some presumption that the owner may want to use it in a different way.

Commissioner von Achen asked what happened if the buyer of the lake did not use the lake for recreational purposes.

Ms. Miller said the property owner would be responsible for maintaining the berms. She said if there was no other activity than there should not be any other pollution source.

Commissioner von Achen asked who would monitor the berm maintenance to make sure it was being done.

Mr. Browning said the County Department of Zoning & Codes would monitor any condition restrictions.

Commissioner von Achen inquired about the pit water being monitored.

Mr. Browning said the monitoring wells would be in place. He said he was not an expert but did not think inadvertent aerial pesticides would be a huge risk for the wells.

Commissioner von Achen was concerned about putting the largest sand pit on the Kaw River on a very unstable part of the river. She said she was uncomfortable with that.

Mr. McCullough said rivers move regardless and there were things that could be done to the banks to mitigate flooding. He said it was in the interest of the applicant to protect the property.

Commissioner Britton asked Mr. Hoeffner about pollution in the water and the filtration process.

Mr. Hoeffner said typically in a waste water treatment plant scenario sand filtration was one of the main components of the treatment process. He said the wells being 7,000' away would provide some natural filtration through the aquifer. He said KDHE had a standard separation distance between a water well and a surface body. He said there was significant travel time between where the pit was proposed to be located.

Mr. McElwee said there were many classes of pollutants. He said nitrate was one of the conservative pollutants, because it does not absorb well, and could travel large distances.

Commissioner Britton said he would vote against the motion because he would prefer to deny the project. He was concerned about the potentially destructive changes to the river, the safety of Eudora's water, and the destruction of class I and II soils.

Commissioner Liese withdrew his motion.

Commissioner Josserand seconded withdrawing the motion.

Motioned by Commissioner Britton, seconded by Commissioner von Achen, to deny the Conditional Use Permit.

Commissioner Burger asked if it would still go to County Commission.

Mr. McCullough said yes.

Motion carried 4-3-2, with Commissioners Blaser, Culver, and Josserand voting in opposition. Commissioners Britton, Burger, Liese, and von Achen voted in favor of the motion. Commissioners Lamer and Hird abstained.

Adjourn Joint Meeting
Reconvene LDCMPC

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**ITEM NO. 9 PRELIMINARY DEVELOPMENT PLAN FOR THE LINKS; 251 QUEENS RD
(MKM)**

PDP-12-00283: Consider a Preliminary Development Plan for The Links at Lawrence, a 630 unit multi-dwelling residential planned development with 9 hole golf course on approximately 81 acres located at 251 Queens Road and associated modification from the height limitation in the RM12 Base District. Submitted by Holloway Engineering, Surveying & Civil Design, PLLC., for Links at Lawrence, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. Kim Fugit, Lindsey Management Company, agreed with the staff report and was present for questioning.

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Commissioner Blaser, seconded by Commissioner von Achen, to approve The Links at Lawrence Preliminary Development Plan based upon the findings of fact presented in the body of the staff report and subject to the following conditions:

1. Agreements not to protest the formation of a benefit district must be executed by the applicant and provided to the Planning Office before recording of the Final Development Plan for the following:
 - a. Street and sidewalk improvements for Queens Road.
 - b. Street and sidewalk improvements for George Williams Way.
 - c. Geometric intersection improvements for Queens Road and Wakarusa Drive.
 - d. Intersection improvements, geometric and signalization, for Queens Road and W 6th Street.
 - e. Intersection improvements, geometric and signalization, for George Williams Way and Rock Chalk Drive.
2. Provision of a revised Preliminary Development Plan with the following changes:
 - a. Remove General Note 1. The City Engineer approved the location of the driveway proposed on George Williams Way.
 - b. Show Utility Easements on the plan.
 - c. Make minor changes to utilities shown on the plan per City Utilities Engineer's approval.
 - d. Revise any reference on the plan to 'Wakarusa Drive' to 'Rock Chalk Drive'.
 - e. Addition of a note stating that prior to any construction activity the perimeter of the protected wooded areas adjacent to the construction activity will be fenced at the drip line and signage stating that any construction activity, grading, trenching or storage is prohibited within the fenced area will be erected.
 - f. Safety measures the City Traffic Engineer determines are necessary for the golf cart and pedestrian crossings shown across Rock Chalk Drive such as signage and pavement treatment shall be shown on the plan and implemented on site.
 - g. Note any approved modifications on the face of the plan.
 - h. Note the number of van accessible ADA parking spaces provided in the parking data on Sheet C1.00 and include dimensions for ADA spaces.
 - i. Label the remnant parcel created in the southwest corner of the intersection of the extension of Headwaters Drive and Rock Chalk Drive as Tract A.

- j. Include a landscape summary on the Landscaping Plan (Sheet 6). This summary shall note the landscape requirements for the interior parking lots, perimeter parking lots, bufferyards, and street trees and note the landscaping provided on the plan.
- k. Revise species listed on the landscape plans per the City Horticulture and Forestry Manager's recommendations.
- l. Provide hydrants and other site improvements per Fire Code Official's recommendations.
- m. Provide a pedestrian access easement for the shared use path being provided from the south to the north border of the property.
- n. Remove General Note 27.
- o. Show the location of the bicycle parking on the plan.
- p. Show a fence along the north property line.
- q. Label that portion of the walkway/recreation path which connects to the north property line as *"To be constructed by property owner when development has been approved for property to the north or if a walkway/recreation path is otherwise constructed from the north. The location of the connection may be revised at that time if necessary to provide a suitable connection to the future development."*

Unanimously approved 9-0.

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ITEM NO. 10 CONDITIONAL USE PERMIT FOR BAKER WETLANDS VISITOR CENTER COMPLEX; 1365 N 1250 RD (MKM)

CUP-12-00248: Consider a Conditional Use Permit for Baker Wetlands Visitor Center Complex, located at 1365 N 1250 Rd. Submitted by Baker University, for the KS Department of Transportation, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. Roger Boyd, Baker University, was present for questioning.

Commissioner von Achen inquired about who owned the land because the staff report referred to the owner as being Baker University on one page and KDOT on another page.

Mr. Boyd said KDOT currently owned the property that the CUP was requested for and Baker University owned the land to the east. He said at the end of the trafficway construction the property would be transferred to Baker University.

Commissioner Blaser inquired about sewer lines.

Mr. McCullough said there was no sewer. He said it may be a topography issue or capacity issue.

Ms. Miller said it was outside city limits, which was served by the Rural Water District.

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Commissioner von Achen, seconded by Commissioner Culver, to approve the Conditional Use Permit for the Baker Wetlands Visitor Center and forwarding it to the Board of County Commissioners with a recommendation for approval based on the findings of fact found in the body of the staff report subject to the following conditions:

- 1) The provision of a revised Conditional Use Site Plan with the following changes:
 - a. Addition of a minimum of 5 bicycle parking spaces.
 - b. Show the areas for the 2 septic systems and a back-up site for the visitor center septic system on the plan. These areas must be a minimum of 3 acres outside of the 100 year floodplain.
 - c. Label or otherwise identify the existing residence, shed, and info pavilion.
 - d. Addition of the following note regarding the measures being taken to improve fire protection at the site: "The supply line will be increased from 3" to 4" with a flush-out in front of the existing wetland manager's residence on N 1250 Rd. The applicant will pay RWD #2 the cost of establishing a flush out/hydrant from their 10" line on the south side of N 1250 Rd approximately 2,200 ft west of the residence and visitor center. These changes will be completed prior to release of a certificate of occupancy for the visitor center."
- 2) Wakarusa Fire Chief approval of the proposed fire protection measures

Unanimously approved 9-0.

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**ITEM NO. 11 INITIATE TEXT AMENDMENT; ZONING REGULATIONS; NANOBREWERY
(MKM)**

Initiate a text amendment to Section 12-319-1 of the Zoning Regulations of the Unincorporated Territory of Douglas County to include *Nanobrewery* in the list of uses permitted with as Conditional Uses and to establish any necessary standards for the use.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Commissioner Hird asked why this wouldn't fit into agritourism.

Ms. Miller said the actual brewing part did not fit into agritourism but that tours would.

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Commissioner Blaser, seconded by Commissioner Hird, to initiate a text amendment for future public hearings to establish Nanobrewery as a use which is permitted in the A District with a CUP and to establish a definition and standards for the use.

Unanimously approved 9-0.

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MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

**MISC NO. 2 VARIANCE FROM ROAD FRONTAGE REQUIREMENT; CLUSTER
DEVELOPMENT (MKM)**

Variance from the road frontage requirement in the Subdivision Regulations for Cluster Development Land Divisions in the Urban Growth Area of 666 ft on minor arterials to permit a frontage of approximately 540 ft. This variance is associated with a Cluster Development Certificate of Survey, CSU-12-00271.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. Dean Grob, Grob Engineering Services, was present for questioning.

ACTION TAKEN

Motioned by Commissioner Hird, seconded by Commissioner Blaser, to approve the variance requested from Section 20-804(c)(x) [11-104(c)(x), County Code] to allow the creation of a Cluster Development in the Urban Growth Area on a minor arterial with 542 ft of frontage rather than the 660 ft required in the Access Management Standards.

Unanimously approved 9-0.

ADJOURN 10:51pm