



PLANNING COMMISSION MEETING

May 20, 2013

Meeting Minutes

May 20, 2013 – 6:30 p.m.

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

Staff present: McCullough, Stogsdill, Day, Larkin, Leininger, A. Miller, M. Miller, Bond, Cronin, Ewert

MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of April 22, 2013.

Motioned by Commissioner Britton, seconded by Commissioner Hird, to approve the April 22, 2013 Planning Commission minutes.

Unanimously approved 10-0.

COMMITTEE REPORTS

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

Commissioner Liese said the Metropolitan Planning Organization (MPO) met. He encouraged everyone to visit the website and check out the interactive cycling map. He said the MPO also received the five county regional transportation study.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- Ex parte:
Commissioner Britton had a discussion with County Commissioner Mike Gaughan about the Big Springs Quarry process.

Commissioner Josserand spoke with Mr. David Geyer, Ms. Jane Bateman, and City Commissioner Terry Riordan regarding Menards.

Commissioner Liese said he received an email from Mr. Kirk McClure regarding how to best collect data.

- Abstentions:
Commissioner Graham said she would abstain from Items 4-5 because her current employer has a national account with Menards.

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ITEM NO. 1 VARIANCE REQUEST; 1321 WAKARUSA DR (SLD)

MS-13-00114: Minor Subdivision for University Corporate and Research Park Subdivision No. 3 request for variance from 20-808 (c)(2) (i) and section 20-601(b) requiring a 200' minimum width and section 20-810 (e)(5) requiring a minimum 150' of right-of-way along Wakarusa Drive.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

ACTION TAKEN

Motioned by Commissioner Hird, seconded by Commissioner Blaser, to approve the variance from 20-808 (c)(2) (i) and section 20-601(b) requiring a 200' minimum width and section 20-810 (e)(5) requiring a minimum 150' of right-of-way along Wakarusa Drive.

Unanimously approved 10-0.

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ITEM NO. 2 REMINDER - JOINT HRC/PC MEETING 6/20/13 @ 6:30pm

Continue discussion and develop recommendations regarding Downtown Redevelopment Memo
(January 2013 PC agenda - Item No. 6)

Commissioner Liese reminded the Planning Commission about a joint meeting with Historic Resources Commission on June 20, 2013 at 6:30pm.

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ITEM NO. 3 2012 RETAIL MARKET STUDY (AAM)

Receive Presentation on 2012 Retail Market Study.

STAFF PRESENTATION

Ms. Amy Miller presented the item.

NO ACTION TAKEN

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ITEM NO. 4 HORIZON 2020 CHAPTER 6 AND REVISED SOUTHERN DEVELOPMENT PLAN (MJL)

CPA-13-00067: Consider Comprehensive Plan Amendment, CPA-13-00067, to Horizon 2020 Chapter 6 Commercial Land Use and Chapter 14 Specific Plans, Revised Southern Development Plan, to expand the S. Iowa Street commercial corridor east along W. 31st Street to include 1900 W 31st Street and identify the area as a Regional Commercial Center. Submitted by Menard, Inc. *Deferred by Planning Commission on 4/22/13.*

Authorize the chair of the Planning Commission to sign PCR-13-00192 regarding CPA-13-00067, if appropriate.

ITEM NO. 5 RM12 TO CR; 41.5 ACRES; 1900 W 31ST ST (SLD)

Z-13-00071: Consider a request to rezone approximately 41.5 acres from RM12 (Multi-Dwelling Residential) to CR (Regional Commercial), located at 1900 W 31st Street. Submitted by Menard, Inc., for Mid-American Manufactured Housing, Inc., property owner of record. *Deferred by Planning Commission on 4/22/13.*

STAFF PRESENTATION

Ms. Amy Miller provided an update on the retail market study section of the Comprehensive Plan report.

Ms. Michelle Leininger presented item 4.

Ms. Sandra Day presented item 5.

Mr. Dave Cronin, City Engineer, displayed SLT improvements on the overhead.

APPLICANT PRESENTATION

Mr. Tyler Edwards, Real Estate Representative for Menard Inc., said they were willing to take the suggested staff recommendation of conditional zoning. He displayed the concept plan on the overhead. He did not feel the buffer needed to be 200' and would prefer to see a 100-200' buffer instead. He said Menards would accommodate the new trail, all the new stormwater, and relocate the sewer pipe. He said Menards still needed the ability to have some sort of out lots on the property. He said they were negotiating with the adjacent Snodgrass property, which would allow for second point to the retail development. He said Menards does not do land leases for out lots so it would provide security of a tenant.

PUBLIC HEARING

Mr. Zak Bolick expressed continued support for the Comprehensive Plan Amendment and rezoning. He stated he had reviewed the Keller and Associate studies regarding multi-family uses. He stated that the multi-dwelling use was declining and had high vacancy. He estimated a 7 year inventory of multi-dwelling uses and stated that commercial development was in demand.

Mr. Tim Bateman was in favor of the rezoning for Menards to increase the tax base. He did not believe the retail market was over built. He stated multi-family was overbuilt. Development could not creep east because of the floodplain and that the use posed less risk of noise because it would follow business hours.

Ms. Cille King, League of Women Voters, asked for denial. She said the rezoning would be contrary to the Comprehensive Plan and have detrimental impacts to the north and east. She said the CR district was too inclusive and inappropriate for this location. She said only a portion would be used for Menards and the remainder would be speculative development. She felt it would be better to limit the area to only the amount needed for Menards which would allow for more buffering. She stated that other locations were available. She said if the project moved forward the area should be reduced to only accommodate Menards, a natural buffer should be created to the north and east, create a Planned Development overlay with conditional zoning, and encourage the applicant to seek another less inclusive site. Ms. King read into the record the letter provided in the packet from the League of Women Voters.

Mr. Bruce Livingston felt the tax base should be expanded. He stated the proposed property already had infrastructure in place.

Mr. Kirk McClure, Old West Lawrence Neighborhood Association, expressed opposition to the CPA and rezoning. He discussed market analysis, the mythical benefits alleged, and the integrity of planning. He felt retail was overbuilt and that supply had been growing more than demand. He said there would be no jobs, sales tax, and property taxes from this project. He said all those figures were a function of the amount of population in the community and that adding more stores would not create more people to purchase. He said retail jobs would continue on a slow downward path and that adding big box stores would accelerate that pace of decline. He said property taxes would only have a momentary bump and that adding more buildings would not add more value, it just reduces the value by square foot. He expressed concern about the integrity of the planning process. He felt the benefits should be so great to make exceptions. He said this was predatory competition and it was not wanted.

Mr. Ted Boyle, North Lawrence Improvement Association, urged Planning Commission to approve the rezoning. He said the Topeka Mendards received customer pull from other counties.

Mr. Gary Rexroad supported the request from Menards. He said the SLT plans would divert traffic away and that development to the east down 31st Street had natural limitations. He felt the material changes should allow a revision to the Comprehensive Plan to support the request. He believed a Menards in town would bring outside dollars. He said the neighbors were not concerned about the project. He felt Planning Commission should consider this opportunity for Menards.

Mr. Mark Stinger, representative for The Connection apartment complex, supported the project.

COMMISSION DISCUSSION

Commissioner Josserand said he would like more information regarding transportation issues. He asked staff to briefly describe the term 'level of service' within transportation studies.

Mr. Cronin said the level of service was used to rate certain intersections, on a scale from A to F. He said traditionally it was based on delay and that longer than 80 seconds for the average vehicle to travel the intersection was an F.

Commissioner Josserand inquired about the level of service for the intersection of 31st and Iowa.

Mr. Cronin said the existing condition at 31st and Iowa was a D level of service. He said the level of service represented the peak hour. He said the existing condition with the proposed development was an E level of service. He stated the future 2030 level of service was an F. He said many

intersections in Lawrence operate with an F during the peak hour. He said 31st and Iowa had been improved and could handle the additional traffic brought on by the development.

Commissioner Josserand said Mr. McClure referred to public investments associated with the rezoning of the Home Depot area.

Mr. Cronin said when development like that occurs there are improvements made to the public transportation network. He said the impact of the SLT traffic was unknown.

Commissioner Josserand said 31st Street would go all the way to O'Connell and was a direct attachment to a commercial area from a fairly significant residential base.

Mr. Cronin said as growth continued it would generate more trips.

Commissioner Josserand said the transportation study recommended a number of acceleration/deceleration lanes for the Menards proposal.

Mr. Cronin said the initial traffic impact study showed an access point where the existing entrance was for the former trailer park area. He said turning lanes were recommended in lieu of a signal. He said the revised plan showed an access point east of that and would most likely be a signalized intersection which would include turn lanes. He said some things would have to be determined in the future.

Commissioner Josserand asked if the City or the applicant would pay for those investments.

Ms. Day said those would be evaluated as part of the subdivision plat process and site planning. She said many times there were conditions on subdivisions that have an agreement not to protest the formation of a benefit district. She stated that would give the City the opportunity that when various warrants were met for the need of a signal the property owner could participate in that improvement. She said it was something that was still being evaluated as more details about the specific development became known.

Commissioner Josserand asked if those types of agreements would occur subsequent to Planning Commission approval.

Ms. Day said yes.

Mr. McCullough said that was correct. He said if the demand was created by that particular user and the warrant was triggered there were policies that require the developer to pay for those improvements.

Commissioner von Achen asked Mr. McClure about his earlier statement that there would be no new jobs created.

Mr. McClure said the number of retail jobs in any market was a function of the amount of spending, not the number of stores or the square footage of stores. He said the total number of retail numbers would remain the same because it was a function of spending, not the number of stores. He said in all likelihood jobs would be taken away from other vendors.

Commissioner Burger asked Mr. McClure if the numbers of demand versus supply included the nearly one million square footage of improved but not developed retail developments, such as Mercato and Fairfield Farms.

Mr. McClure said no they do not, only inventory of space built taken from the tax assessors numbers, which was only bricks and mortar in the ground. He said the planning process was out of control in Lawrence.

Commissioner Britton said assuming it was true Douglas County dollars were going to Topeka and Olathe, he wondered if it was just as likely jobs would be taken away from Topeka and Olathe, which would add jobs and sales tax revenue to Lawrence.

Mr. McClure said home improvement was not a draw from other communities.

Commissioner Britton said there was discussion about Lawrence residents driving to other communities and he wondered if a store in Lawrence would keep them from driving to other stores.

Mr. McClure said Lawrence could really only support one home improvement center.

Commissioner von Achen asked staff about the numbers in the retail market study and how reliable they were as a predictor of vacancy.

Mr. McCullough said the retail market study was not trying to predict vacancy, it was just saying it was the assumption all the properties were constructed and vacant. He stated that would be the vacancy if all of that was built and vacant. He said that basis for looking at it that way came at a time in the economy when a lot of spec commercial building was being constructed and since the recession there has been little to no spec building of commercial property.

Commissioner von Achen asked why vacancy was assumed when a building opened.

Mr. McCullough said there was the concept of predatory building to take away from other like retail.

Commissioner von Achen asked it was the Planning Commission's responsibility to look at the market studies or just the land use.

Mr. McCullough said they were looking at both for their review.

Commissioner Hird asked if the concept of predatory retail was experienced in Topeka with three home improvement stores in close proximity.

Mr. McCullough said he did not have data to speak to that.

Mr. Edwards said the Menards in Topeka was doing great and that Home Depot and Lowe's were also doing fine.

Commissioner Britton asked Mr. Edwards about a list he provided about cities that had another home improvement store within a close proximity. He asked if there had been enough time to know if they could coexist.

Mr. Edwards said in the last five years Menards had opened 30-40 new stores and made it through the economic hard times.

Commissioner Lamer asked if Menards strategy was to try and collocate next to other home improvement stores.

Mr. Edwards said it wasn't necessarily a strategy but that it happens often because larger commercial areas have more tracts by it. He said Menards does not have a problem with it because it brings more of a synergy of home improvement users. He said it was similar to car dealerships locating in the same area.

Commissioner Lamer asked if that decision was what drove the site selection process for this location.

Mr. Edwards said no. He said the decision to locate at this site was the overall South Iowa retail market.

Commissioner Lamer said what they had heard was that there was a huge pull factor for Menards and citizens who leave Lawrence to go to Topeka and Kansas City to shop. He stated the applicant said this was the only site that worked but yet people are driving 20-30 minutes to go shop at a Menards. He said it didn't seem to fit in his mind that people were not willing to drive across town to places that were already appropriately zoned. He said he had a problem with why the Comprehensive Plan should be changed.

Commissioner Liese said he had not heard any business owners comment about the Menards location. He said as a business owner himself he really relies on stores like Menards and frequently has to shop outside of Lawrence to find what he needs. He said he felt bullied by Menards that they won't locate anywhere else. He said he would like to see Menards moved to a place that was zoned for it and in the Comprehensive Plan.

Commissioner Burger said there were certain things about the application that were exciting and creative. She said her hesitancy increased as testimony was shared. She wondered if the Douglas county tags that are seen in the Topeka Menards parking lot are perhaps people who work there too and are already there. She said Menards had a significant pull factor with a loyal commerce base. She said she was sympathetic to Menards and its supporters. She said regarding the predatory nature, in the past few years Planning Commission approved infill in the parking lot at Walmart on Iowa. She said it did not create a new business, it just relocated a business from 23rd Street to Iowa, leaving an opening on 23rd Street. She did not think Menards was out to do anything other than operate a good business and create a loyal customer base but that predatory argument had additional validity because Menards said it was not financially viable for them to occupy this site without having the opportunity to sell parcels to other commercial investments. She did not want to see open spots on 23rd Street. She said she had many hesitations and was concerned that Menards was not able to do the project without selling out lots.

Commissioner Blaser said auto dealers locate in the same area because it attracts people who want to shop for cars. He thought that healthy competition was the real reason Menards wanted to locate there.

Commissioner Lamer said competition was great but Home Depot was not allowed to build a full service store when it was developed and Menards would be able to build a full service store if approved.

Commissioner Hird said the difference was that Home Depot was subsidized. He said an important factor was that neither Lowe's or Menards wanted to go out to 6th & K-10. He said public testimony had demonstrated that the request was generally viewed as acceptable if certain conditions were placed on the request. He said the comments had been overwhelmingly in support of the project. He said in past years infill development had been preferred over urban sprawl and this was an example of a blighted property that could be turned into something better than more apartments. He thought it was very important to consider the neighbors support of this. He said Planning Commission has been ultra sensitive to people who are opposed to projects so perhaps the same sensitivity should be given to people in support of it. He thought it was a unique piece of property with the floodplain as a natural barrier and changes in the road configuration with the construction of the SLT. He felt any of those reasons could justify approving this. He said he visited a Menards for the first time recently and found it to be different than Home Depot. He said it would compete with home improvement stores but that there were some differences in the stores. He said the property was currently zoned for apartments and that nobody had come up with a better idea. He thought Menards looked like a reasonable alternative and he hoped the concerns about predatory retail do not come true. He said Menards had been known for its adamantly conservative politics but that he was not considering that as a factor. He thought he could support the project because of the support from the residents in the area and also that it seemed to be the best alternative. He said it would be convenient for Menards to locate to 6th & K-10 but that they need to be realistic.

Commissioner Josserand said he was pleased to hear comments from other Commissioners about too many multi-family structures. He said he was struggling with this project. He said he did not care who the ultimate tenant was but he was trying to figure out how much commercial zoning was needed and how to plan for it. He felt they needed to be aware of what those decisions do to community. He said he did not know what the appropriate amount of vacancy was. He said he liked what the applicant had done and he did not care if it was Menards or Walt Disney World. He said he had heard the neighborhood was enthusiastic about the project but he was not sure that was true. He said his conversations with members of the neighborhood included discussions of angst about Louisiana Street and the nature of more retail development in the area. He expressed concern about transportation and the construction of too many home improvement stores.

Commissioner Culver thanked staff for taking the time to look at suggestions from last month and providing opportunities to see if it could be a good fit. He thanked the applicant as well. He felt guiding policies were in place for a good reason to help planning for the future but that it was a balance between current opportunities for the community and long range planning. He felt this was a unique opportunity as a community to have an area that could be developed in a way that had been adapted to mitigate some of the concerns originally proposed. He said builders and contractors travel outside of the community for construction materials which means those dollars are leaving the community. He agreed with Commissioner Josserand that there was not overwhelming support from the neighborhood but that they saw this as an opportunity to get what could fit for the area in a good way. He said there was predictability in the project with hours of operation and a natural transition from commercial to residential that would prevent future strip development heading east. He said it was not known how the SLT would impact traffic. He said Menards knows their business and customers very well and they cannot force an applicant to locate somewhere they do not want to locate because they may miss out on opportunities. He said he would support the revision to the Southern Development Plan and would be disappointed if they could not accommodate a situation in which a new partnership could be created with the business community.

Commissioner von Achen asked staff about the out lots and if Planning Commission would have any discretionary power over when the out lots would be sold.

Mr. McCullough said it would be up to the applicant. He said the lots would be sold and site planned administratively and that there would likely be private covenants.

Commissioner Blaser said since the Comprehensive Plan was created the economy had changed. He felt the Comprehensive Plan needed to be looked at and changed. He said the neighborhood would benefit from improvements to flooding issues and something other than apartments. He said he did not like the term strip out. He said the Walmart on 6th Street had out lots that were approved but not built yet. He believed if they turned down this project it would send the message Lawrence does not want new business.

Commissioner Britton said staff did a good job with the staff report and he appreciated being given some compromised options. He said he was not sure how he would vote. He said it was hard to pinpoint one single change in circumstance that would justify a change in the Comprehensive Plan. He said if they were drafting that portion of the Comprehensive Plan now they probably would put commercial at that location. He said there was also concern in the community about there being too many apartments. He said Mercato was not quite ready to support big boxes in general. He felt this was a good example of infill development. He did not feel this was entirely inconsistent with the node at 31st and Iowa. He said he was not really concerned about the impact on vacancy rates with Menards. He felt they would probably retain more money in town with a Menards and pull other dollars in from outside of Lawrence. He said a lot of the concerns should be discussed at the City Commission level. He said he was leaning toward supporting the proposal presented by staff.

Commissioner von Achen said this was a difficult decision for her because she could see both sides. She said as a consumer she might want Menard's but as a Planning Commission she had to consider other things. She said the retail report concerned her. She shared the same concerns of big box stores that Commissioner Josserand expressed. She said it seemed like every time a project comes forward that's counter to Horizon 2020 it was always marketed as unique and they have to make an exception. She said the alternative was more apartments and she felt Lawrence already had too many. She said there seemed to be a lot of community support which was hard to ignore. She was concerned about stripping out 31st Street but that the floodplain would prevent that. She liked the fact that this project was infill. She said she would reluctantly support the change. She said in terms of the out lots she favored reducing sprawl but that there was already a lot of retail development in the community.

Commissioner Liese thanked staff for their work. He said the public had done a great job of expressing their opinion. He said Menards had put a lot of time and resources into preparing this proposal. He expressed concern about the notion that Lawrence was difficult to develop and he did not like that perception. He felt Menards would provide inventory and options Lawrence wouldn't otherwise have. He clarified his earlier comment and said he did not think Menards was a bully but that he felt bullied because he did not like ultimatums. He said this felt like good planning but he was not yet convinced the jobs and money would not be here. He stated competition was good for business. He said he would vote in favor of the Comprehensive Plan Amendment and rezoning.

Commissioner Blaser inquired about conditional zoning.

Mr. McCullough said the use restriction would come with the zoning. He stated Option 3c included the land use map that would show a 200' buffer in the plan itself. He said staff would take the Planning Commission direction on the 200' buffer to also add as a zoning condition as well. He said it would be implemented through the planning document and conditioned upon zoning.

ACTION TAKEN on Item 4

Motioned by Commissioner Blaser, seconded by Commissioner Hird, to approve Comprehensive Plan Amendment, CPA-13-00067, to expand the South Iowa Street commercial corridor east along W. 31st Street, to include 1900 W. 31st Street and the southwest corner of the property to the east (Snodgrass property) up to but not including the floodplain and floodway (Future Land Use Map Option 1).

Commissioner Hird said regarding public support, this project may not rise to the level of flag waving but it was refreshing to see neighbors not vocally opposed.

Motion carried 6-3-1, with Commissioners Burger, Josserand, and Lamer voting in opposition. Commissioner Graham abstained.

Motioned by Commissioner Blaser, seconded by Commissioner Hird, to authorize the Planning Commission Chair to sign Planning Commission Resolution, PCR-13-00192

Motion carried 9-0-1, with Commissioner Graham abstaining.

ACTION TAKEN on Item 5

Motioned by Commissioner Blaser, seconded by Commissioner Hird, to approve rezoning, Z-13-00071, approximately 32.75 acres from RM12 (Multi-Dwelling Residential) to CR (Regional Commercial), located at 1900 W. 31st Street, with Option 3c conditions:

1. Condition CR to include 200' buffer along north property line, permitting a reduction in the size of out lots on the Menards site, and designate the adjacent property to the east for future commercial development in the Revised Southern Development Plan.
2. Restrict uses to ensure compatibility. Per attachments:
 - a. Animal Services; Livestock Sales.
 - b. Eating and Drinking Establishments; Bar or Lounge.
 - c. Vehicle Sales and Service; Truck Stop, Heavy Equipment Repair, Inoperable Vehicles Storage;
 - d. Industrial Facilities, Laundry Service.

Commissioner Burger asked how many acres were allowed for out lots.

Mr. McCullough said generally speaking, five to six acres.

Ms. Day said that was a basic estimate.

Commissioner Burger asked what defined how many acres the applicant could sell.

Mr. McCullough said it was a product of platting and what on site circulation would be needed, what stormwater improvements would be needed, and how much parking would be needed. He said Planning Commission would see the Preliminary Plat which would show details such as how many lots and the location.

Motion carried 6-3-1, with Commissioners Burger, Josserand, and Lamer voting on opposition. Commissioner Graham abstained.

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ITEM NO. 6 AMENDED CONDITIONAL USE PERMIT FOR BIG SPRINGS QUARRY; 2 N 1700 RD (MKM)

CUP-13-00126: Consider an amended Conditional Use Permit for a revised phasing schedule for Big Springs Quarry, located at 2 N 1700 Rd. Submitted by Mid-States Ventures, LLC, for Bonnie M. Nichols, Trustee, and Mid-States Materials, LLC, property owners of record. *Big Springs Quarry was approved with Conditional Use Permit CUP-7-2-90.*

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. John Hutton, attorney representing Mid-States Materials, thanked staff for their assistance during this process. He said the quarry was purchased by his client in 2006 and the phasing was developed by the previous owner, Martin Marietta, in 1990. He said it has taken a while for his client to get his hands and mind around what the project actually entails in terms of the way it should ultimately be developed. He said one of the requirements his client had to follow under the Conditional Use Permit was to provide a reclamation plan for each phase. He said his client came up with the idea that he may want to move from phase III into phase VI for a variety of reasons, knowing there was not any specific restriction within the Conditional Use Permit. He said Planning staff recommended that the phasing revision be taken before the Board of County Commissioners to make them aware of it. He said the County Commission decided to send it to Planning Commission for review. He said his client was not proposing any type of change to the quarry that would affect any of the neighbors. He said they were not talking about changing setbacks, haul routes, hours of operation, or quarrying in any area that was not eligible to be quarried. He said the only issue was the order of how the project was moved through. He said this was private property governed by a Conditional Use Permit. He said his client felt he could find and utilize very specific efficiencies in terms of the amount of property that would be opened in Douglas County and in Shawnee County at the same time.

Mr. Eric Bettis, Mid-States Materials, was present for operational questions. He said when they open a new phase they have to strip dirt so he would like to be stripping on the west half and crushing on the east half to create synergy in the operations by quarrying it in this manner.

Mr. Hutton said if mining in Douglas County during phase VI and not mining in Shawnee County at the same time then they would have to cross additional roads to get the material to the crushing plant. He said Mr. Dave Buffo had made a request for extensions of the buffer in phase IV. He asked Planning Commission not to take any action on that request at this time because there was no reason to change the buffers that were established.

PUBLIC HEARING

Mr. Dave Buffo, attorney representing Lone Oak LLC, said the phasing had reason and purpose. He said Lone Oak had a residence about 300' on the far western edge of phase IV. He said the current blasting setback and mining setback were at 150'. He said part of the concern was that the blasting had the potential to throw rocks. He said there was also concern about the setbacks to the north in terms of how close the quarry was to ground water wells. He said approval of the Conditional Use Permit and phasing discussed in 1990 had distinct intent and meaning, which gave property owners a bit of certainty.

Mr. Bart Christian, Lone Oak LLC, said after doing his due diligence he bought the property in 2003, knowing there was certainty with the sequence of phasing. He said skipping around on phases had a

negative effect and set a precedent. He expressed concern about his property value if the quarry phasing was changed. He said his residence only had 150' setback from the quarry and his front yard had 0' setback. He also expressed concern about damage to the wells.

Ms. Patty O'Conner asked that the quarry not be granted a change in phasing order.

Mr. Bill and Michelle Best asked that the Conditional Use Permit stay as it was originally written, to be completed in sequential order phasing.

APPLICANT CLOSING COMMENTS

Mr. Hutton said this was not the time or place to talk about setbacks because it was ancillary to the phasing. He stated Lone Oak purchased their property long after the quarry was in existence. He said currently the Lone Oak property was for sale and they were asking \$2.3 million dollars for 308 acres. He said the listing agent marketed other properties with quarries as being profitable, so for Lone Oak to say the agent would not be able to sale their property was contradictory. He said the reason the Lone Oak property was not selling was due to it being priced out of the market. He said the quarry had nothing to do with the marketability of Lone Oak. He said the quarry was a commercial venture.

Commissioner Britton asked how the public would get a copy of the original proposal.

Ms. Miller said it was done in 1990 and was recently scanned so there was an electronic version that could be emailed to anyone who requested it.

Commissioner Lamer asked Mr. Hutton if the performance bonds were in place for the property.

Mr. Hutton said yes.

Commissioner Lamer asked if they followed the track of additional performance bonds in the amount of \$400,000 for each 10 acres that were opened up.

Mr. Hutton said yes.

Commissioner Lamer said in the initial Conditional Use Permit there was a layout of how the performance bonds operate in this project and the performance bonds were taken down once the site was remediated. He said the phasing was laid out in the performance bond section.

Commissioner Britton asked if Mr. Hutton was taking the position that the Conditional Use Permit did not need to be amended. He asked how the phasing and the sequencing of mining the areas was not a requirement under the Conditional Use Permit.

Mr. Hutton said the language talked about phasing but did not specify it had to be mined in a specific order.

Commissioner Britton said County Commissioner Mike Gaughan had mentioned to him a possible change in terminology from tracts to phases that may have caused some confusion with the intention.

Mr. Hutton said the term tract was used as well as phase. He said any change would have been made years before his client stepped foot on the property.

Commissioner Blaser inquired about the distance into Shawnee County. He wondered why Big Springs couldn't mine phase VI and use the bridge.

Mr. Hutton said it was not impossible but not the most efficient way to do it.

Mr. Bettis said he intended to use the bridge when they mine in phase VI. He said they want to be able to occupy both tracts, one in Shawnee County and one in Douglas County.

Commissioner Blaser said if they were only mining phase VI the bridge would not be that far.

Mr. Bettis said they would be mining in both.

Commissioner von Achen said Mr. Christian's comments were related to Big Springs hurrying up and getting phase IV over with.

Mr. Christian said he wanted the Conditional Use Permit to be followed in phasing sequence for certainty and to be over as soon as possible.

Commissioner von Achen said Ms. Michelle Best's comment was regarding phase VI coming too soon.

Ms. Best said when she purchased her property two years ago she thought she had years before phase VI would be mined. She said the time would allow them to research how the blasting would affect the natural springs which feed the pond for her livestock.

Commissioner von Achen asked Ms. O'Conner about her specific concern.

Ms. O'Conner said she wanted Big Springs away from her property as soon as possible.

Commissioner Liese asked Mr. Hutton to respond to the letter that Mr. and Ms. Best wrote expressing concern about why the quarry wanted to move ahead to phase VI.

Ms. Best said Big Springs would have to build haul roads for whatever phase they were in so it did not make sense to her. She said during her tour of the quarry she could not get a clear answer about why Big Springs wanted to skip ahead to phase VI.

Mr. Hutton said Mr. Cole Anderson could not answer Ms. Best's questions when she visited the quarry because he was the safety and environmental manager. He said mining phase VI would provide operational efficiencies.

Mr. Bettis said he intended to gain efficiencies by being able to occupy the tract of property in Shawnee County and Douglas County at the same time, stripping in one and producing out of the other.

Commissioner Liese asked if the properties being adjacent would help.

Mr. Bettis said that was correct.

Mr. Buffo said he did not disagree about efficiencies being recognized but felt those same efficiencies could be recognized after quarrying phase VI, V, and then going to phase VI. He said the Conditional Use Permit in Douglas County expires in 2020 and Big Springs got an extension in Shawnee County

for 30 more years until 2050, so he thought part of it was that they could be in Shawnee County longer than Douglas County.

Commissioner Graham asked if the applicant owned other adjacent property in Shawnee County.

Mr. Hutton pointed on the overhead to other properties they own.

Commissioner Britton asked the applicant to respond to Mr. Buffo's comments about achieving the same efficiencies later if following the sequence.

Mr. Hutton said not if they were going to incorporate the Shawnee County tract into the equation. He said the only way to gain the efficiency in phase VI was to do it at the same time.

Commissioner Britton asked why Big Springs could not wait until they were done with phase IV and V to move on to phase VI with the adjacent Shawnee County tract at the same time.

Mr. Hutton said because they had property in Shawnee County that they had plans to mine. He said there were no rules about when they quarry in Shawnee County.

Commissioner Josserand wondered if this was really a legal dispute and whether this was the appropriate forum. He asked Mr. Christian what his intention was when he acquired his property in 2003.

Mr. Christian said he wanted it to increase in value and be able to resale at some point. He said he resides at the property and also uses the property for hunting.

COMMISSION DISCUSSION

Commissioner Burger asked if there was anything that indicates why the phasing was designed the way it was originally.

Ms. Miller said no, it was just the way Martin Marietta set up how they planned to quarry it. She said she did not think there was any reason why it had to be done that way but once it was established it was what people started to count on.

Mr. McCullough said phasing plans were common with quarries. He said it was reasonable to discuss the topic as if it was the original request.

Commissioner Lamer said the performance bond for reclamation had clear language stating no more than 10 acres shall be opened, mined, and extracted in a subsequent phase until reclamation was complete on the previous phase. He said the lack of a phasing argument did not have traction in his mind. He said the setbacks of 100' for mining and 150' for blasting along the east side of phase IV did not make sense. He thought the phasing was valid and wouldn't have been included in the document if it wasn't important.

Commissioner Culver said his understanding was that big quarries could take decades to develop so part of the phasing may not be sequential but might be so parts were reclaimed in a shorter period of time versus having the whole thing mined and then reclaimed at the end. He asked the applicant to respond.

Mr. Hutton said the divisions were important for exactly that reason. He said the question was not whether or not phases were necessary or appropriate for the project but rather which order to move

in. He said they were not proposing that Big Springs be allowed to open up two or three phases at the same time and then reclaim randomly.

Commissioner Hird asked if the setbacks were considered by the County Commission in 2009 when the consent decree was entered.

Ms. Miller said there was general discussion about the setbacks. She said the setbacks were not out of compliance and the County Commission was not looking to establish new conditions at that time.

Commissioner Hird asked if the County Commission was made aware of what the setbacks were.

Ms. Miller said yes.

Commissioner Hird said when a property owner purchase property next to a quarry they know there will be mining and issues with wells. He said property owners bought land with the assumption that phasing would stall it for a certain number of years but what the quarry was asking to do was entirely legal. He said the Conditional Use Permit spelled out the phases which was a compelling argument. He said the question was a balance between the gain to the applicant versus the harm to the neighbors. He said it appeared to be an issue of timing of the inevitable. He appreciated the arguments and concerns but felt this was a difficult issue that should be handled by the County Commission. He had empathy for the applicant wanting to conduct their lawful business on land they own and were authorized to quarry. He had some sympathy for the land owners but said they purchased land knowing there was a quarry there. He said he was convinced the phasing did mean something when it was originally set up. He said Conditional Use Permits were subject to amendments.

Commissioner Liese asked staff to respond to the comment that Conditional Use Permits were subject to change.

Mr. McCullough said it went both ways; a quarry owner was responsible for doing due diligence in knowing what phasing process they were purchasing. He said all parties have a responsibility for due diligence. He said there was potential for change on both sides and requests could be made. He said there were opportunities for both parties when purchasing a set of conditions at the time, which were always subject to change.

ACTION TAKEN

Motioned by Commissioner Josserand, seconded by Commissioner Blaser, to approve the revised phasing schedule to allow Mid-States Materials to quarry phase VI following phase III then move on to phases VI and V, which was the original staff recommendation to the County Commission.

Commissioner von Achen said there were good arguments on both sides but that there needed to be a sense of predictability to lay persons. She said she would vote against the motion.

Commissioner Britton said he agreed with Commissioner von Achen and felt it was reasonable to rely on the Conditional Use Permit. He agreed with Commissioner Hird that it was hard to see what the actual complaint was when everything that would happen out there would happen at some point or another. He said there were established expectations on both sides with regard to the order and setbacks. He said he would oppose the motion.

Commissioner Burger asked how close the Best property was to phase VI.

Ms. Best said it was right next to phase VI.

Commissioner Burger asked if any structures were within a ½ mile.

Ms. Best said no. She said her concern was the natural springs which feed the pond for her livestock.

Commissioner Hird said he would vote against the motion because what they were really saying was the owner needed to comply with the phasing schedule. He said the hardship to the owner was difficult to understand because the phasing was in place. He said the hardship to the neighbors was easier to understand because it created a change in circumstances for them. He said he had limited sympathy for the neighbors because of the nature of a Conditional Use Permit. He said they purchased the right to oppose the Conditional Use Permit when an amendment was requested and that's what this process was about. He felt the proper forum for the issue to be resolved was with the County Commission.

Commissioner Liese said he would vote to amend the Conditional Use Permit if there was a compelling reason but felt convenience was not enough of a compelling reason.

Commissioner Burger said she had not found a clause that would speak to what process the applicant would go through if they wanted to go out of phase operations.

Motion failed 3-7. Commissioners Blaser, Culver, and Josserand voted in favor of the motion. Commissioners Britton, Burger, Graham, Hird, Lamer, Liese, and von Achen voted against the motion.

Motioned by Commissioner Hird, seconded by Commissioner Culver, to neither approve or deny the item and send it back to the Board of County Commissioners.

Commissioner von Achen felt it was unfair to the people involved.

Commissioner Hird said it would have to go back to the County Commission either way.

Commissioner Britton said he would oppose the motion because he felt there were established expectations that both sides should adhere to.

Commissioner Liese said he would vote against the motion because he felt they should deny this.

Commissioner Hird said the reason he made the motion the way he did was because it was a balancing of interests that he felt belonged at the County Commission level, not Planning Commission. He said this was a really close call and he did not feel comfortable making that judgment based upon what he knew.

Commissioner Culver agreed with Commissioner Hird. He felt there was a lesson to be learned in Conditional Use Permits that if left to interpretation years down the road it could cause heartache to everyone involved. He said there were valid arguments and points from both parties. He felt the issue belonged at the County Commission level.

Commissioner Burger asked if the way Planning Commission voted would require a supermajority vote at the County Commission level.

Mr. McCullough said there was no protest on quarries that would require a unanimous vote.

Commissioner Liese said Planning Commission was an advisory board but that he had grown to appreciate when asked for an opinion. He felt every comment and vote made was important in expressing their thoughts and opinions to the County Commission.

Motion failed 3-7. Commissioners Blaser, Culver, and Hird voted in favor of the motion. Commissioners Britton, Burger, Graham, Josserand, Lamer, Liese, and von Achen voted against the motion.

Motioned by Commissioner Britton, seconded by Commissioner Lamer, to deny the request to revise the phasing for the Conditional Use Permit.

Commissioner Burger said she would support the motion. She hoped the applicant could look at what they wanted to do with all the property and come up with a creative solution that the neighbors would be more in favor of.

Motion carried 8-2. Commissioners Culver and Hird voted in opposition. Commissioners Blaser, Britton, Burger, Graham, Josserand, Lamer, Liese, and von Achen voted in favor of the motion.

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ITEM NO. 7 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; RETAIL MARKET STUDY (AAM)

TA-12-00205: Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Article 11, to modify the requirements for a Retail Market Study. *Initiated by City Commission on 8/21/12.*

STAFF PRESENTATION

Ms. Amy Miller presented the item.

PUBLIC HEARING

Ms. Cille King, League of Women Voters, asked that they keep the current plan and make two additional improvements. She felt they should make the reports annual instead of bi-annual because there was a lot of market fluctuation that would not be noted in a report every two years. She felt the consultant should be chosen by the City and hired independently.

COMMISSION DISCUSSION

Commissioner Josserand felt the issue had some magnitude that they should discuss longer. He recommended deferral of the item.

Commissioner Hird commented about the League of Women Voters letter. He said he had a difficult time making the assumption that consultants were swayed by being paid by an applicant. He said consultants were professionals and he had a hard time with the idea that it was presumed consultants would put their reputation on the line for x amount of dollars. He said unless there was some evidence that it had actually occurred he did not want to go down that road. He said staff wasn't asking for a vote, they were asking to pursue an option.

Commissioner Burger asked for an example of a 50,000 square foot project.

Ms. Miller said an example would be Dillons on Massachusetts.

Commissioner Culver said one part that caught his eye was that the Development Code states that the staff city wide retail report should be updated annually but by practice staff only updates it bi-annually. He asked for clarification on that.

Mr. McCullough said it came down to resources and priorities in the department and the ability to get to it. He said the value of the Code requirement was to understand the general health of the market. He said was obtained through studies and reports. He stated the market was not doing a whole lot and was pretty constant the past five years.

Commissioner Culver inquired about the information provided in the independent retail studies.

Mr. McCullough said staff reviews them and provides comments and questions and the studies are thoroughly vetted by the time they are accepted.

Ms. Miller said in recent years there was only one consultant in the area so every market study had been prepared by that one consultant. She said there was a list, according to the Code, that had to be included in the market study. She said that list was also the same list that staff bases the analysis on and includes in the staff report. She said in all cases so far the same consultant had gone above and beyond by including extra information. She said that information was based on one person's

methodology on what the demand of the market might be. She said the majority of the information in the market study and the majority of information included in the Code section for review was simple math.

Commissioner von Achen asked if the term bi-annual was used to mean two times a year or every two years.

Ms. Miller said every two years.

Commissioner Josserand said some of the things in Option 2 appealed to him. He said he did not see a problem with narrowing the scope of projects. He felt 50,000 square feet was probably too small.

Commissioner Burger said she liked some of Option 2. She liked that the 50,000 square feet took into account neighborhood dynamics. She was not sure that 50,000 square feet would be totally appropriate. She did not think requiring an independent market study was necessary, especially since there was only one person currently doing them. She said staff does such a good job with giving the numbers needed that if an applicant does not agree with the staff numbers they can hire an independent consultant themselves. She did not feel Option 3 was not a good idea because they need to keep an eye on what the retail market was telling them.

Commissioner Blaser felt 50,000 square feet was probably too small. He was not that concerned if they took the vacancy and square foot per capita out of the threshold.

ACTION TAKEN

Motioned by Commissioner Hird, seconded by Commissioner Blaser, to adopt Option 2 with staff providing options with regard to the square footage requirement.

Unanimously approved 10-0.

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**ITEM NO. 8 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; LIGHTING
STANDARDS (MKM)**

TA-12-00204: Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, to establish lighting standards and requirements as an alternative to the photometric plan. *Initiated by City Commission on 8/21/12.*

Item No. 8 was deferred prior to the meeting.

MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

MISC NO. 1 RECEIVE NOTIFICATION OF LANDMARK NOMINATIONS

Received staff memo regarding nominations for listing in the Lawrence Register of Historic Places.

ADJOURN 11:59pm