



PLANNING COMMISSION MEETING
October 22 & 24, 2012
Meeting Minutes

October 22, 2012 – 6:30 p.m.

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

Staff present: McCullough, Stogsdill, Larkin, Leininger, M. Miller, Ewert

MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of September 24, 2012.

Motioned by Commissioner von Achen, seconded by Commissioner Culver, to approve the September 24, 2012 Planning Commission minutes.

Motion carried 6-0-2, with Commissioners Belt and Britton abstaining.

COMMITTEE REPORTS

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

No committee reports.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- Ex parte:
Commissioner Lamer said he had conversations with Mr. Phil Struble, Mr. Dan Watkins, and Ms. Melanie Lorenzo regarding Item 2.

Commissioner Belt said he had a brief conversation with Mr. Dean Grob regarding Item 4.

Commissioner Liese said he had a discussion with County Commissioner Jim Flory regarding Item 2 and how commissioners should deal with discrepant information.

- Abstentions:
Commissioner Lamer said he would abstain from Item 2 because he was the President of Friends of the Kaw and they wrote a letter regarding the item.

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ITEM NO. 1 CONDITIONAL USE PERMIT; KANWAKA CORNER SELF STORAGE; HWY 40 & N 1600 RD (MKM)

CUP-12-00154: Consider a Conditional Use Permit for Kanwaka Corner Self Storage, on approximately 3 acres located at the SE corner of U.S. Hwy 40 & Douglas Co Road 442/N 1600 Road. Submitted by Landplan Engineering, for Ryan Sparke, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. Brian Sturm, Landplan Engineering, agreed with staff recommendations.

PUBLIC HEARING

Mr. Walt Spencer, neighbor to the property, said he did not want the proposed wood fence because a pasture fire could burn it. He said he would prefer a non-wood fence. He said the neighbor to the west had people in his backyard without prior warning. He said the property lines established 100 years ago do not agree with the points used by the property owner. He said all the property, 40' from the center road still belongs to state, not the county. He expressed concern about people coming all hours of the day/night pulling in his driveway looking for the storage unit. He wondered if it would be government storage, self storage, and what type of buildings and hours. He said his main concerns were the wood fence, screening, and a way to deter people using his driveway to turn around.

Commissioner Liese asked staff to respond.

Ms. Miller said there were no records of the right-of-way property owner but approval for the improvements was given by KDOT. She said the applicant could consider something other than wood for the fence. She said regarding the historical survey points, the more accurate survey information would be used. She said they could double check with county surveyor for property points. She said she did not know how to keep people out of his driveway but suggested signage might help. She said this was a self-storage facility so it could contain such things as boats and personal belongings. She said regarding security there would be outdoor lighting, fencing that would allow visibility, a keypad for people to gain access so only people using the facility could get into it, but that they would have access 24 hours a day.

Mr. David Conway, property owner to the west, said he did not have a problem with a storage unit being built but that nobody told him about this and he found out about it when he found people in his yard without his permission. He said they put flags in and around his yard and moved the property stake back from its original position. He asked Planning Commission to delay their decision and have someone talk to him about what was intended for the project.

Commissioner Liese asked if Mr. Conway received a notification letter from the Planning Department.

Mr. Conway said yes, he received a letter from the Planning Department about this meeting, but he hadn't seen any plans.

APPLICANT CLOSING COMMENTS

Mr. Sturm said regarding the questions and concerns about property pins and survey points, Landplan Engineering worked with the County Public Works Department and the County Surveyor to

re-establish two section corners in the Highway 40 right-of-way. He stated because the legal description for the property was based off the section line it needed to be re-established and the section corners found to correctly demarcate the boundary. He said in the process of doing the survey Landplan got in touch with all the utility companies which was why flags were placed in the ground. He said the property corners were set by Landplan for the property owner. He apologized for any action that his survey crew may have taken that Mr. Conway wasn't aware of. He said they made attempts to reach Mr. Conway.

Mr. Spencer said the state still owned the right-of-way, 40' from the center line to the west.

Ms. Miller said in the county there were two sections of the Zoning Regulations that relate to setbacks. She said one was the base setback measured from the center line of the highway back a certain distance. She said from that distance it was measured from the base setback line back further. She said since Highway 40 curved in the area the setback would change because the base setback would be different.

Commissioner Lamer asked when Landplan conducted their survey were there any encroachments onto the applicant's property from the neighboring properties.

Mr. Sturm said the property was not encumbered by any title concerns and there were no strange easements crossing property lines. He said there were several stretches of fence that may have been constructed by the property owner to the east or west that were now in fact on the subject property today. He said other than the few stretches of barbed wire fence there were no encroachments.

Commissioner Burger asked if KDOT would have plenty of space to expand.

Ms. Miller said that was the purpose of the base setback. She said KDOT had no issues with the location of the building.

Commissioner Josserand asked if Mr. Spencer's property was to the east.

Mr. Spencer said yes.

Ms. Miller showed a map on the overhead with the access of the property.

COMMISSION DISCUSSION

Commissioner Britton said he was struggling with moving on this when there seemed to be confusion on who owned what property. He was hesitant moving forward on this if things were unsettled.

Mr. McCullough said typically staff takes the documents presented by the applicant as accurate factual record. He said in this case it was unique in terms of where the right-of-way lies. He said they should take the documents presented as factual until challenged in court, outside of this realm. He said there were great questions about encroachments, who shares what, where the fences were, where right-of-way and driveways were, but he advised them to use the record before them tonight. He stated there weren't competing surveys, just one document that showed where the improvements were, submitted by a professional design firm.

Commissioner Liese said in the staff recommendation it says findings of fact so Planning Commission bases their decision on those facts.

Mr. McCullough said the facts of the case were before them.

Commissioner Britton asked what happened if they approved the Conditional Use Permit and then a challenge or lawsuit followed.

Mr. McCullough said they would not determine adverse possession. Planning Commissions decision was based on the record represented today. He said if a court were to provide a different set of facts the applicant may have to change the site plan.

Commissioner Burger asked where Mr. Conroy's property was located.

Ms. Miller showed Mr. Conroy's property on the overhead. She said it was a commercially zoned property used as a residence.

Commissioner Josserand said he was generally inclined to support the applicant. He said the property was zoned for the potential use. He said staff addressed his concern about adverse possession. He said regarding the access issue of people turning into Mr. Spencer's property, he did not see a problem with that. He wondered what they should do with the nature of the fence issue.

Ms. Miller said the requirement was to have a fence and the applicant was putting a fence in but a variance was being requested from another section of the regulations that says there can't be a fence in the front setback.

ACTION TAKEN

Motioned by Commissioner Josserand, seconded by Commissioner Britton, to approve the Conditional Use Permit for Kanwaka Corner Self Storage 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 note indicating the prohibited activities listed in Section 12-319-4.34(i) of the Zoning Regulations.
 - b. Addition of a note that the area shall be policed by the owner or operator for removal of trash and debris.
 - c. Addition of a note indicating the potential for the southern unit to be converted into a restroom for the use of storage tenants.
 - d. Addition of landscaping along the east 36 ft of the northern border in the southwest corner of the property. Landscaping located to the east and south of this area can be relocated to the west.
 - e. Variance shall be required from the prohibition from fencing in the front yard setback to allow the required fencing for the mini-storage facility.

Commissioner Burger asked when this would go to County Commission.

Ms. Miller said normally the earliest it could go was two weeks from Planning Commission's recommendation but that there were a few County Commission meetings cancelled in November.

Commissioner Britton said he was not worried about adverse possession since it would not affect the Conditional Use Permit moving forward. He hoped for patience from the neighbors on the process. He supported the proposal overall and assumed the property owner would make best efforts to make sure the use was not infringing on the adjoining property owners use, to the extent possible.

He encouraged the property owner to work with staff regarding signage and prevent people from using the neighboring driveways.

Commissioner Burger said regarding the land use it was a good opportunity for the property. She felt this type of use had a lot less activity than one might think once it was established. She said County Commission would be very responsive to neighbors concerns.

Commissioner Lamer inquired about other material options for the fence.

Ms. Miller said the building itself was being used as screening in some areas. She said the applicant may have some other fencing suggestions.

Commissioner Liese said given the findings of fact in the staff report he did not feel like he had any choice but to vote to recommend it. He asked Mr. Sturm to comment on some of the concerns.

Mr. Sturm said this was still the beginning of this project for the property owner. He said there would be another public meeting and he would make sure Mr. Spencer and Mr. Conway had his contact information so they could speak with him about any questions. He said they would be happy to work through any issues the neighbors have between now and County Commission, County Board of Zoning Appeals, and through construction. He said regarding the fence on the south property line it had to be an opaque or solid fence to screen the property from the residential use. He said it could be something other than wood, such as a chain link fence with plastic vinyl slats going through the fence. He said Landplan's position was to meet the Douglas County Zoning Regulations and the plan before them tonight does that.

Unanimously approved 8-0.

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ITEM NO. 3 CS TO RS5; .1 ACRE; 833 CONNECTICUT ST (MJL)

Z-12-00147: Consider a request to rezone approximately .1 acre from CS (Strip Commercial) to RS5 (Single-Dwelling Residential), located at 833 Connecticut Street. Submitted by Leslie Soden, property owner of record.

STAFF PRESENTATION

Ms. Michelle Leininger presented the item.

APPLICANT PRESENTATION

Ms. Leslie Soden was present for questioning and agreed with the staff report.

PUBLIC HEARING

Ms. K.T. Walsh, East Lawrence Neighborhood Association and the Zoning Subcommittee of East Lawrence, supported the rezoning.

COMMISSION DISCUSSION

Commissioner Belt asked if they could expect more of these types of proposals from the East Lawrence Neighborhood Association.

Ms. Soden said yes, they were hoping to have a big list at some point. She said they had been working with staff to identify properties. She thanked staff for their work.

Commissioner Josserand asked if 837 and 839 Connecticut would also be rezoned at some point.

Ms. Soden said she bought 833 Connecticut from the people who owned 837 and 839 Connecticut so that's why all three properties were zoned CS.

ACTION TAKEN

Motioned by Commissioner von Achen, seconded by Commissioner Belt, to approve rezoning approximately 4,679 SF from CS (Commercial Strip) 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.

Unanimously approved 8-0.

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Recess LDCMPC

Convene Joint Meeting with Eudora Planning Commission

ITEM NO. 2 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. Deferred by Planning Commission on 9/24/12.*

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Eudora Planning Commissioners present were Kurt von Achen, Jason Hoover, Johnny Stewart, Glenn Bartlett, and Richard Campbell.

Mr. McCullough said the by-laws state the applicant has 10 minutes to present. Staff recommended the applicant have 40 minutes to present with a 5 minute rebuttal after the public hearing. He also suggested granting 5 minutes for each individual audience member instead of 3 minutes.

APPLICANT PRESENTATION

Mr. Dan Watkins, attorney representing property owner, said the staff report did a good job of covering the golden factors and the applicant agreed with the conditions. He said he would discuss one other possible condition to address concerns about monitoring of ground water in the area. He said the application was to move sand dredging from on-river to off-river. He said the Corps of Engineer was restricting on-river dredging over time. He stated in this particular area sand dredging on-river would be restricted as of December 31st. He said there were many off-river sand pit areas in Kansas. He said usually they were right next to the river and many times right next to towns, even in close proximity to ground water supplies and wells. He stated the Conditional Use Permit would utilize the existing Conditional Use Permit so the stockpiling, processing, scale house, and truck loading would all take place where it currently takes place now, with no change. He said the access and truck traffic would stay the same. He said the staff report did a good job of setting out why this particular site was recommended for approval. He said the use of sand dredging was permitted in the valley channel area and had been allowed for the past 30 years. He said the site had excellent access to major transportation networks, was 7,000' from the Eudora wellhead protection area, and outside the FAA 10,000' restrictive area. He said the impacts listed by staff regarding stockpiling, groundwater, river channel, visual, and activity would be the same impacts that have been going on in the area for 30 years. He stated the groundwater issue was already present from the current river dredging. He said the river channel had the potential to change because it changes sometimes, over hundreds of years. He said in 1993 when it flooded, because the banks were fortified by the Penny's operations it didn't cut through. He said visually it would change slightly because there would be dredging in the area as it proceeded south. He said there were few sites that met all the things this site does. He said regarding preservation of the river channel, they would be moving dredging off-river. Regarding preservation of quality soil, this area was currently farmed and most would continue to be farmed for many years as the dredging moved south. He said they had a few neighborhood meetings to talk with the neighbors about the impacts and concerns they have. He said they tried to address some of the concerns with adequate buffers. He said that dredging was highly regulated, by state and federal agencies, with many protections built into this.

Mr. C.L. Maurer, Landplan Engineering, discussed the phasing plan. He said they would strip off areas approximately 10 acres in size and build a berm as they go around. He showed pictures of the dredging machine. He said the noise would be contained by the pit and would bounce upward, not out. He said there would be three observation wells on the western side. He said there would be one control well. He showed slides of the area on the overhead. He also showed slides of active and inactive sand pits in other communities.

Mr. Mehrdad Givechi, traffic engineer, said it would not increase the number of truck traffic in and out of the site because it would not generate additional sand distribution. He stated on average there would be 4-5 trucks in and 4-5 trucks out during the peak hour of operation. He said a few minor items needed to be looked at, none of which would be required, but desired for improved safety. He said they were proposing to realign the driveway on the north side of 1500 Road to make a four-legged intersection so there would be no offset in the driveway and Noria Road to the south. He said they would pave about 100' of the proposed driveway to the north in order to prevent gravel from being tracked to 1500 Road. He said the pavement on 1500 Road was not capable of handling truck traffic. He said the traffic would not use 1500 Road so the intersection would be improved to handle the truck traffic in and out of the site. He stated if the distribution increased there would be a need for an east bound dedicated right turn lane at old K-10 and 1057 Road. He said the pavement was already there but needed to be improved to a full dedicated right turn lane. He said he received comments from KDOT regarding the interchange. He said that the count was higher than usual due to road/bridge improvements in the area and that when traffic was normalized they could look at the intersection functioning with the South Lawrence Trafficway. He said as the South Lawrence Trafficway was built in the area KDOT would close the Noria Road intersection and Noria Road would go over existing K-10. He stated it would only effect background traffic and not traffic in and out of the site. He said the applicant agreed to all of the improvements.

Mr. Phil Struble, Landplan Engineering, discussed groundwater issues and said he would cover six pertinent issues. He said Penny's had a permit through the end of the year and has had one for the last 30 years for dredging sand. He said they had been penetrating the aquifer for 30 years with permission from the EPA and Corps of Engineers. He said the permits were not being suspended due to ground water quality. He said the groundwater was there safely today and that the aquifer had already been fully penetrated. He said dredging was 7,000' from Eudora's wells. He said microorganisms would not survive several hundred feet of ground water conditions and that pollutants in the river water would not last long before they would become ground water and no longer river water. He said if Eudora decided to treat water for surface water they would need a trickling sand filter. The sand pit was 7,000' of sand filter, which was better than what Eudora's sand filter could do by itself. He said a concept had been brought up called nick point, which was the fear that when the river flooded the area it would create a vertical cut in the riverbank all the way up the Kansas River to Bowersock Dam. He said even with flooding in the past 25 years the riverbank had not moved at all because it had been maintained. Mr. Struble showed a table on the overhead from the KDHE design guidelines as it relates to private wells, which showed the minimum required setback was 50' and the recommended was 400'. He stated the nearest private water well to Penny's was 1,200'. He said a sand pit was nothing more than a water well that was measured in acres, not inches. He said there was very little difference between the sand pit and a water well. He said just because there was more water impounded in a pit did not make it draw more water into the pit, away from neighboring uses, than what a water well would. He said it would not make what goes into the pit go out of the pit faster or further than anything else. He said the sand around it did not know it was a pit or a water well. He said there were some differences, such as no water consumption out of the pit. He said the water pulled out of the sand pit was put right back into the pit. He said the State Statutes governed how water evaporation was dealt with and that they would have to go to the State of Kansas if they were in an area that evaporates greater than 18" net

evaporation per year. He said 5-6" evaporation, such as Douglas County receives, does not have to be accounted for to the State. He said Penny's was regulated and had to protect groundwater supply from pollution. He showed a map of Kansas corridor sand pits and water wells. He said there had not been a single instance where a sand pit polluted a private or public well.

PUBLIC HEARING

Mr. Carl McElwee (via prerecorded video that was shown on the overhead) did not want to see industrial activity encroach on three sides of his property. He said there was a petition from 23 local property owners that opposed the sand pit. He expressed concern that historical houses in the area would not be protected and that good agriculture land would be lost. He said once the overburden was stripped off there was the potential for pollution of the very productive underlying aquifer. He said neighboring wells could be affected adversely by lowered water levels and quality problems caused by mixing pit surface water with aquifer water. He felt the Eudora well 'capture curve' would include the sand pit. He said a large flow-thru lake would be created by the pit, which would mix pit surface water with aquifer ground water and send it further down the river, possibly leading to quality issues. He expressed concern about a nick point being created in the river. He felt the aquifer should be safeguarded and agricultural land protected. He asked Planning Commission to deny the Conditional Use Permit.

Mr. Scott Michie, Eudora Consultant Staff Planner, said the City of Eudora finding was that it does conform with land use and planning policies from a development standpoint. He said Eudora's recommendation was based on Mr. Ned Marks study.

Mr. Ned Marks, geologist hired by the City of Eudora, reviewed the report he wrote that was included in the packet. He said if a contaminant entered through the pit it would have access to the deeper portion of the aquifer that the Eudora wells were completed in. He said any contamination that made it to the bottom of the aquifer would move faster than if it had entered through the soil profile. He said no recent data to evaluate the potential negative or positive impact of the proposed pit was available at this time. He said there was some concern that the water level in the pit would be the same as the water level in the river. He felt the options were to either not approve the Conditional Use Permit or to approve with limitations.

Mr. Doug Helmke, geologist with the Kansas Rural Water Association, said he provides technical assistance to public water systems on water rights and source water protection. He said he advised the City of Eudora to oppose the proposed Conditional Use Permit for a sand dredging operation in the vicinity of their well field, as there had been no reliable information presented that would guarantee that the sand pit would not introduce biological or chemical contaminants into the aquifer. He said surface water used for drinking water required much more treatment than ground water, with much higher infrastructure treatment testing and labor expenses. If the water quality was changed to resemble surface water in any way KDHE would likely require a surface water treatment facility to be constructed if Eudora wanted to continue the use of their existing water rights.

Mr. Scott Jackson, lives east of the proposed sand pit, felt it was wasteful to reduce 400 acres of good agricultural land into something that could not be used. He said a 30" berm was a good idea but felt fertilizer, pesticides, and herbicides would blow into the lake and part of the aquifer. He said even if it took 7-12 years to reach the Eudora wells it would still be there and what would they do then.

Ms. K.T. Walsh agreed with what Mr. Jackson said regarding reclaiming the land back to farmland. She said she was a member of Friends of the Kaw and was surprised they were in favor of the Conditional Use Permit. She wanted to see alternatives proposed.

Mr. Kerry Altenbernd said it was prime agricultural land. He stated there were studies that show one thing and other studies that show something different. He said there would be future floods of the area. He asked Planning Commission to be careful with their decision.

COMMISSION DISCUSSION

Eudora Commissioner Johnny Stewart asked who would pull the samples from the monitoring wells.

Mr. Marks said he oversees drilling on a lot of different operations and has been involved with installing monitoring and observation wells so if he was involved with the project he would be onsite when that was done.

Eudora Commissioner Stewart asked who would control the proposed monitoring wells to the west.

Mr. Marks said that would probably be a determination between the applicant and City of Eudora.

Eudora Commissioner Stewart asked if there would be a condition that the City of Eudora would have access to take samples from the wells.

Mr. Marks said one of his recommendations was that the City of Eudora would have access to collect samples and collect water level data at different times of the year.

Eudora Commissioner Richard Campbell inquired about accumulation of data.

Mr. Marks said if he was involved with the project the first thing he would do was pull all the available information he could find and compile it. He said they would look at the historical information and compare it to the present day information. He said the City of Eudora would have to do a well field analysis, an aquifer test, and collect site specific aquifer characteristic data that could be put back into the models to calibrate and verify.

Eudora Commissioner Campbell inquired about the time period.

Mr. Marks said it could easily take 6-8 months.

Eudora Commissioner Stewart asked Mr. Helmke how he became aware of this situation.

Mr. Helmke said the City of Eudora asked for his opinion on the facts presented.

Eudora Commissioner Stewart asked if it was a paid opinion.

Mr. Helmke said no.

Eudora Commissioner Stewart asked what his role was with the Kansas Rural Water Association.

Mr. Helmke said half his time was spent giving advice on water rights, perfecting water rights, and offering opinions on whether other existing water rights should be purchased. He said the other half of his job was development of source water protection plans.

Eudora Commissioner Stewart asked what his key concern was.

Mr. Helmke said there appeared to be beds of gravel in the aquifer and it was his understanding that there may be a minimal amount of filtration in those beds of gravel. He said if the beds of gravel were exposed in the sides of the pit there was a good chance it would create a preferential flow path of water to the wells, which may contain common contaminants such as bacteria and viruses.

Eudora Commissioner Campbell asked if this was his area of expertise.

Mr. Helmke said it was his job to look at the worst case scenarios and try to protect the water supply from those things. He said he was not saying it would happen but that nobody could probably say there was no risk with the sand pit.

Eudora Commissioner Campbell asked if the studies Mr. Marks discussed could be completed in a year or less.

Mr. Helmke said he would have to defer to Mr. Marks because he had more experience with those kind of aquifer studies and well tests.

Eudora Commissioner Campbell inquired about the gravel data.

Mr. Helmke said he had not seen what was at the pit and away from the pit in the direction of Eudora's well field.

Eudora Commissioner Campbell asked if it was a different kind of study.

Mr. Helmke said no, it was what Mr. Marks talked about with understanding how well the wells operate, what drawdown cones they create, and probably an evaluation of what happens in a dry time of year when there would be large demands of the ground water aquifer and also if the water in the river was high.

Eudora Commissioner Stewart asked why the ground water was hard to clean once contaminated.

Mr. Helmke said if the presence of contamination shows up 12 years away from where it was introduced there would still be current contamination coming through the system to the water wells.

APPLICANT CLOSING COMMENTS

Mr. Watkins said there had been no evidence presented that river water would navigate to Eudora wells. He said there were many sand pits and were highly regulated and not contaminating wells in much closer proximity than the Eudora wells. He said there would be no light or oxygen for the ground water and that would limit the possible contaminants to nitrates and salt, primarily. He said KDHE recommends a 100' setback for this particular use and that Penny's would have a 300' setback from Mr. McElwee's house, which was upstream from the sand pit. He said they would be 1200' from any other well in the area and 7,000' from the Eudora wells. He stated the aquifer was already exposed to river water today and had been for 30 years. He said there was no evidence that there was migration or contamination. He said there was a need for sand and that valley channels were the place to get it. He stated the impacts listed by staff were the same that had existed for 30 years. He felt this was as close to an ideal site as any.

Eudora Commissioner Stewart asked Mr. Watkins if samples could be collected from the monitoring wells.

Mr. Watkins said yes, as often as they wanted to.

COMMISSION DISCUSSION

Commissioner Britton asked why the Corps of Engineers was ending the current permit.

Ms. Miller said she believed it was because of damage to the habitat on the river caused by on-river dredging.

Mr. Struble said in 1990 the Corps of Engineers got together with the Kansas River Dredgers and created an operating program that would monitor what happens in the Kansas River and it was a 20 year program that technically started in 1992 and expires at the end of this year. Part of that program was that they shoot cross sections of the entire Kansas River to monitor degradation of the riverbed as it exists on an every other year basis. He said the operating permit says that if any section degradation was more than 2' they would suspend those permits until that section aggregates back up and then permits can be reissued. He said it had nothing to do with environmental issues.

Commissioner Britton asked why it was important for the river to come back up 2'.

Mr. Struble said to maintain the hydraulic grading of the Kansas River through the whole section. He said if one section goes down then there is bank degradation and other negative impacts.

Commissioner Britton said those sounded like environmental factors.

Mr. Struble said the rule was only that if the riverbed degradation was more than 2' than the permit would be suspended.

Commissioner Josserand asked if that was degradation away from the actual dredging site.

Mr. Struble said that was correct.

Commissioner Josserand asked if it would be correct to say that in recent years there had been a concern about in-river dredging and the urging of non-river sand extracting methods.

Mr. Struble said yes but that it was not just limited to Kansas.

Commissioner Josserand asked if there was a shortage of sand that was driving up development costs in Douglas County.

Mr. Struble said yes. He said it had not been unusual in the last 3 years for the majority of sand used in Lawrence to be trucked in from other places. He said the trucking cost becomes part of the cost of sand.

Commissioner Josserand inquired about the potential risks of rechanneling of the river.

Mr. Struble said that was a difficult question to answer. He said rivers move and it was hard to control rivers. He said the approach was that they were trying to do the best they could. He said Penny's rock armored the banks and received compliments from the Corps of Engineers for doing that. He said there was only one access road to the site and Penny's wanted to protect their investment. He said they had had a number of meetings with the Corps of Engineers to discuss these types of issues. He stated they would be willing to a condition to provide rock armor on the back side.

Commissioner Josserand asked if they should we be worried about an evulsion event.

Mr. Struble said the Corps of Engineers responsibility ends at the top of the bank. He said the Corps of Engineers encouraged the dredging to relocate off-river.

Commissioner Josserand asked if the Corps of Engineers had announced any policy in Kansas that they would refuse all river dredging.

Mr. Struble said no. He said they were in the process of negotiating a new 20 year river dredging permit. He said that did not mean that they would get to dredge for 20 years.

Commissioner Culver asked Mr. Struble how many current sand pit operations were in Douglas County.

Mr. Struble said the number extracting sand was zero.

Commissioner Belt inquired about increased demand for sand.

Mr. Struble said there was no change for the demand of sand.

Commissioner Belt wondered if hydraulic fracturing pulled the market in that direction.

Mr. Struble said he was not involved in that and said he would suspect the sand not involved in that.

Commissioner Liese said he was sensitive to times when one city, such as Eudora, draws a conclusion that was different from what Lawrence decides. He asked staff to comment.

Mr. McCullough said staff had some experience with these types of applications. He said they were looking county wide and have an active exercise to try and find out where in the county staff could support these types of uses, taking into account several different elements. He said there was a second application much closer to Eudora where staff supported Eudora's opposition. He said there was a lot of discussion at the time regarding proximity, and if it moved to the west between Lawrence and Eudora would staff support it. He stated when staff weighed all the issues, such as demand, location, prime agricultural soil, traffic, and with this being an existing location for the use of dredging of sand, staff felt obligated to support this. He said regarding the issue of wells, there was an argument that the data was unknown, which could become known through monitoring. He said they did not hear the same type of testimony that they did when it was adjacent and much closer to the wells of Eudora. He said the testimony to date on this site was that there was potential and much farther away. He felt there should be some exercise in determining how steps could be taken to mitigate the impact.

Commissioner Liese asked how the number of years for the 30 year Conditional Use Permit was determined.

Ms. Miller said that was a standard number of years for a quarry because of the time it takes.

Commissioner Liese asked if there were any other conditions regarding testing that could reassure the citizens of Eudora.

Mr. McCullough said he thought they would need to develop a condition that spoke to that very issue. He said if it came out as a recommendation to the County Commission staff would need to take the time to meet with the City of Eudora and applicant to negotiate the condition out.

Commissioner Liese asked if a condition could be that one year of testing take place before further development.

Mr. McCullough said it could be a condition.

Commissioner Liese asked if Bismarck Lake was a sand pit.

Mr. Watkins said it was.

Commissioner Liese asked if there was a sand pit being developed just north of Lecompton on the other side of the river.

Mr. Watkins said yes. He said he thought it was being developed by MPM from Manhattan, who applied for the one that was too close to the airport, so they developed in Jefferson County.

Commissioner Liese asked how big the Penny's sand pit would be compared to the one being built near Lecompton.

Mr. Struble said it would be a third bigger than the one in Lecompton.

Eudora Commissioner von Achen said once a Conditional Use Permit was approved with the intention that testing would be done the horse was already out of the barn. He felt that the item should be deferred until testing could be done. He wondered who would pay for the error if the applicant was wrong. He felt they should negotiate something such as a surety bond, insurance policy, or surcharge on sand sold out of the pit that would establish a fund to take care of any problems that could develop. He said it was a difficult issue because they needed sand but water was a vital resource and they should not be gambling with it.

Commissioner Liese said he was pretty adamant about voting against the last sand pit proposal. He inquired again about conditioning it.

Mr. McCullough said it could be a condition but it would need to be framed very carefully. He said there were different ways to get at the issue.

Commissioner Burger asked if Eudora had a water development plan that was 30 years long.

Eudora Commissioner Stewart said he could not answer that. He stated half the people in the country get their water from ground source. He suggested the option that if contamination was found in the monitoring wells then the Conditional Use Permit would have a clause that would shut down the plant until the cause and effect were known.

Commissioner Liese asked the applicant to respond to that option.

Mr. Struble said it was not unusual for operations like this to have a plan to what would be done. He said the monitoring well plan included a control well. He said they were concerned that if something was found in the monitoring wells they would want to know it was from Penny's or coming through from somewhere else. He stated even if more research was done in 6-8 months, a lot of that water

would not even get to the monitoring wells in that time period. He said depending on whatever pollutant was discovered in the wells there would be a little different progression of plan. He said they were willing to have conversations about it.

Commissioner Burger inquired about monitoring wells in the 10 year area.

Mr. Struble showed possible locations for monitoring wells on the overhead.

Commissioner Burger said the observation wells made sense in 30 years but she wondered what made sense to the engineers and scientists as the process proceeded.

Mr. Struble said his geologist was not present this evening to speak about that.

Commissioner Britton asked why monitoring wells were part of the plan if the whole idea was 1,200'-7,000' of soil and sand would get rid of contaminants that could be cause by the sand pit.

Mr. Struble said the monitoring wells were part of the first comments from the City of Eudora regarding Penny's application. He said they were not part of the original plan.

Commissioner Britton asked if his position was that the monitoring wells were not necessary because even if something showed up in the monitoring wells there was no way it was actually getting to the well being used.

Mr. Struble said that was correct.

Mr. Watkins said there were certain things that do not break down, such as salt and nitrates. He said they would want to know if those were coming through so that was the idea for the observation wells. He said if those were detected then it would need to be determined where they were coming from. He said the existing operation had access to the aquifer. He said there was no evidence that there were nitrates or salt in any well in the valley. He said the monitoring wells provided an answer to the 'what if' questions and would show if it was happening and allow time to do something about it.

Eudora Commissioner von Achen said another theory was that the aquifer had not been penetrated because the river receives its water from the aquifer. He stated only when there is a huge flood is there minimal charging of the aquifer from the river and that was not very much. He said it was contradictory to what they were saying. He said the river had been polluted his whole life and has not polluted the aquifer because the water flowing down the river does not get into the aquifer, but rather the river was charged by the aquifer.

Commissioner Britton asked Mr. Helmke to comment about the filtering process through 1,200'-7000'.

Mr. Helmke said it was not known.

Eudora Commissioner Campbell said both sides had hired experts and consultants but there was one unpaid expert from the State of Kansas that clearly states there was not enough information.

Mr. Helmke said he did not work for the State of Kansas and that the Kansas Rural Water Association was a private non-profit association.

Eudora Commissioner Campbell felt the only prudent way to proceed was to defer for a year.

Commissioner Liese asked if Mr. Helmke could draw conclusions in a year.

Mr. Helmke said there were other experts more qualified to do those analysis.

Commissioner Liese asked if it could be a condition of the Conditional Use Permit.

Mr. McCullough said it would be a complicated framework for the Conditional Use Permit. He said it would be more beneficial to collect additional data and further analysis, if they felt it was needed. He said it may be prudent to allow that to unfold, be collected, and analyzed. He said it depended on where they were at with the data issue and the potential harm to City of Eudora's wells.

Commissioner Liese asked the applicant to respond to the comment of deferral for 1 year

Mr. Watkins said he did not like it. He said there was no evidence presented that this type of operation caused the kind of problem they were talking about. He said they were willing to do safeguards and if there was any evidence of some pollutant migrating then it would be stopped. He said it was a hypothetical situation that hasn't occurred. He asked Planning Commission to act on the Conditional Use Permit and put conditions on it.

Commissioner Burger asked if there was a reason why 400+ acres was needed for the sand pit operation.

Mr. Watkins said it wasn't needed right away, but over a 30 year time period it would be.

Commissioner Britton inquired about class I and II soils being lost.

Mr. Watkins said some of it could be used in the vicinity and they expected 25% of it to be reclaimed. He said they would gradually lose that area as a farming area as some areas would come back as a farming area but there would be a net loss of farming area.

Commissioner Britton asked if it would still be the same class of soil afterward.

Mr. Watkins said it should be because the topsoil would be put back.

Eudora Commissioner von Achen said Eudora Planning Commission did not participate in the Eudora City Commission Council meeting as was stated earlier. He said he recognized the recommendation would go to County Commission.

Eudora Commissioner Stewart felt the applicant had done a good job of stating their case and felt it had much less potential impact to Eudora water than the last sand pit application. He said with the addition of the monitoring wells if pollution was found it would give Eudora 8-12 years to determine how to handle the contamination headed their way. He said with the appropriate conditions of monitoring well, he was leaning in favor of the Conditional Use Permit.

Eudora Commissioner Campbell said the consultant's, Mr. Helmke, opinion was that there was not enough information to do this and he was not paid by either side, which he felt carried great weight.

ACTION TAKEN by Eudora

Motioned by Eudora Commissioner Campbell, seconded by Eudora Commissioner Bartlett, to defer the Conditional Use Permit until the appropriate data was accumulated to let the experts give an opinion.

Eudora Commissioner Kurt von Achen said they needed sand but that water resources were important. He said he would support the motion.

Motion carried 4-1, with Eudora Commissioner Stewart voting in opposition.

Additional COMMISSION DISCUSSION

Mr. McCullough said the resolution that established the joint meeting did not spell out the process. He said even a motion to defer would be a recommendation to County Commission for their decision.

Commissioner Britton asked if they would send separate recommendations to County Commission.

Mr. McCullough said that was correct.

Commissioner Liese asked the applicant to respond to who would take care of Eudora if the water was polluted.

Mr. Watkins said the condition of the monitoring wells would detect if there was an issue and stop any subsequent pollution and require the owner to fix it if the problem was coming from the pit. He said in terms of investment, the operator was willing to install the wells and place the wells so that monitoring could take place. He said they were willing to have that sort of condition as protection for the City of Eudora. He said maybe they could work out an agreement that Eudora could monitor the wells anytime. He stated the condition could say that if a problem was detected the operator would have to address it and not operate until it was fixed.

Mr. McCullough said if Planning Commission chose that condition staff could craft some language and send it to County Commission.

Eudora Commissioner von Achen said if pollution was found neighbors and Eudora should not have to pay for any damage.

Mr. Watkins said they have a damage claim if water was affected.

Eudora Commissioner von Achen said the damage claim goes far past the 30 year Conditional Use Permit. He suggested a surcharge of so many cents a ton on the sand to build a fund to give real dollar protection to people downstream. He said if it will never happen then the applicant should make sure it doesn't cost any money. He felt someone else should take the risk, not the City of Eudora.

Commissioner Liese asked if he was talking about escrow.

Eudora Commissioner Kurt von Achen said some sort of surety bond, insurance policy, or some other way to significantly protect people downstream.

Mr. Watkins said there were liabilities as an operator that were insured. He said you can't contaminate water without people having a claim, so there were certain protections, such as early detection. He said this hypothetical situation had not been borne out anywhere. He said putting the

kind of conditions they were talking about was what protected the public interest. He said he sympathized with the City of Eudora wanting to protect their water supply. He said Eudora suggested the monitoring wells and then decided the risk was too great.

Eudora Commissioner Kurt von Achen said they should assume the risk.

Mr. Watkins said they would be assuming the risk.

Eudora Commissioner Kurt von Achen said they should accept the ongoing risk.

Mr. Watkins said there was no evidence there was significant risk.

Commissioner Pennie von Achen inquired about the USDA rating the sand in the area as poor quality.

Mr. Watkins said he disagreed with that. He said it was more the level at Mr. McElwee's property that you would have to go down to get the sand. He did not think the operator would be trying to get sand out of the area that was not usable.

Commissioner Culver said he believed it was rated as poor because of the depth they would have to go down to extract, not necessarily the quality of the sand.

Commissioner Pennie von Achen asked about the cost to go down so far for sand.

Mr. Watkins said it affects the return on investment. He said there were not many sites in Douglas County to extract sand.

Commissioner Pennie von Achen asked if the overburden would go back into the pit.

Mr. Watkins said yes, it would be recycled back in.

Commissioner Pennie von Achen inquired about contaminants.

Mr. Watkins said the topsoil would be stockpiled and then the overburden would be recycled. He said if contaminants were found they would need to be addressed.

Commissioner Pennie von Achen asked if the overburden was tested for contaminants.

Mr. Watkins said the observation wells would be for detection. He said the overburden was not currently tested.

Commissioner Belt inquired about additional conditions.

Mr. McCullough said Planning Commission would have to have direct staff on what conditions they wanted to grasp on to. He said they discussed monitoring wells as a way to mitigate potential impacts and pollutants to the aquifer and accepted an argument about protecting the financial position of the City Eudora. He said they also discussed process. He stated typically when an item was deferred it was a short time frame to direct the applicant to go get additional information so Planning Commission could make an analysis and decision. He said Eudora's recommendation was a long term deferral to get that information and negotiate with the City of Eudora regarding some of the issues, and let County Commission make the final decision.

Commissioner Belt asked if deferring was reasonable.

Mr. McCullough said they should be specific as possible and provide proactive language in the motion that they want to move it to County Commission, if that was their desire. He said if they wanted to keep it at the Planning Commission level it would typically be a deferral for one or two months to get specific information. He said Eudora's motion was to have a year's worth of data collected to make decisions about the impact to the wells.

Commissioner Britton felt County Commission should be given the opportunity to make that decision now instead of Planning Commission bottling it up for a year with Penny's left not knowing what to do since their permit expires on December 31, 2012. He felt that was a bad position to put Penny's in. He said he would support passing this along to County Commission with a recommendation of deferral, pending any results of a study to be completed by a consultant selected jointly by the City of Eudora and developer. He felt the deferral should be designed to give the developer the opportunity to explore avenues of giving some financial security to the City of Eudora. He said he would not be supportive of an approval at this point.

Commissioner Belt said the applicant did a nice job of covering as many bases they could reasonably be expected to cover that were factually based. He felt they had a fiduciary responsibility to this municipality as well as a responsibility to Eudora. He did not feel comfortable placing specific conditions that were not reasonable with so many unknowns.

Commissioner Burger expressed concern about the size of the Conditional Use Permit and asked about the size of other operations.

Mr. Watkins said this would probably be the largest sand pit operation on the Kansas River. He said many of them were 70-100 acres in size. He said anything smaller than that would not allow room to dredge.

Commissioner Liese said he was uncomfortable with Lawrence Planning Commission deferring it. He said one of their primary roles was making recommendations. He said he would not vote to defer unless it was for specific information over a short period of time.

Commissioner Culver said it was their responsibility to make a recommendation and a shorter term deferral would not give them the information they would need or would be helpful in making this decision. He felt they had an onus to the applicant, City of Eudora, and Douglas County to give it due process and make a recommendation to the governing body. He said he would not support a deferral at this time.

Commissioner Pennie von Achen said she would support a deferral. She felt the proposal put class I and II soils and water at risk. She said she would not vote in favor of it at this point. She said she could vote for denial but would like more information.

Commissioner Britton said he would support a deferral but felt it didn't matter if they called it deferral or denial because it would be because of the same concerns. He said the important thing was that it went to County Commission one way or the other.

Commissioner Josserand said one of the overlying policy considerations, by a number of people, was to move in-river sand dredging to non-river sand dredging. He said he was concerned about the evulsion risk but said the river would change some day. He said he would prefer the Corps of

Engineer be involved to speak to the risks but he understood they were only concerned about the river. He said he was not nearly as concerned for the potential health or water quality risks if there was an appropriate set of monitoring wells. He felt the applicant had tried to explore that issue but it seemed it may not be good enough. He said the only condition he would like to defer to was trying to figure out a better condition regarding testing modification without sending to County Commission but felt they could work with staff on that. He said he would prefer not to defer.

Commissioner Britton said he was sensitive to the issue but not too worried about the impact on neighbors from industrial activity and traffic since that's what's been going on there for several decades. He said it was a valid concern but didn't rise to the level of denial of this request. He said the water issue was a much closer call and was hard to figure out what study to believe or what logical argument to give more weight to. He stated it would make sense to at least explore some sort of method by which the developer could give financial security where they would be on the hook for the cost of addressing a contamination issue. He felt agricultural land and class I and II soils were a much more valuable and rare resource than the sand being extracted. He felt there were ways this could be worked out given more time and opportunity.

Commissioner Liese said Planning Commission was not the deciding body, County Commission was. He said the applicant had done a terrific job of thinking about the community and about the implications of what they were doing. He said he would not vote for denial but would support the proposal with conditions.

Commissioner Culver said he would not support the recommendation for denial. He said Chapter 16 of the Comprehensive Plan, Horizon 2020, says *...encourages the responsible use of marketable natural resources within Douglas County through proper extraction and reclamation methods. They are essential to sustainable development activity, primarily in the form of low cost raw materials, such as sand, gravel, timber, oil, gas, and stone, etc.* He felt there were competing values and that's what makes this difficult. He was concerned about the previous sand pit operation that tried to locate in Douglas County but moved to Jefferson County and now Douglas County has no control or say over that operation. He said if they kick the ball far enough ahead and don't make a decision they would miss the boat to where they could come to a good solution that protects the citizens and allows for natural resources in Douglas County to be utilized in a responsible way. As the applicant mentioned, this was a highly regulated industry with securities, precautions, measurements, and regulations in place for any kind of dredging or sand pit operation and were in place for a reason. He said those would take care of a lot of the issues discussed and continue to evolve to address some of those concerns. He said he supported the application because it was an active site so a lot of the impacts listed in the staff report would remain fairly consistent with the current activity and proposed activity. He said there was a need for sand. He said the applicant was willing to provide an abundance of caution by investing in observation wells and the possibility of discussing the opportunity for the City of Eudora and others to sample the wells on an ongoing basis. He said the unknowns made this difficult. He said they could do years and years of research and still may not know some of the possible effects. He said there was no way to minimize the risk completely. He liked the discussions about ways to protect the City of Eudora and felt the governing body could address some of those. He said he was concerned about the class I and II soils and did not think there was necessarily a full mitigation for that but the applicant was willing to reclaim part of the sand pit area to farmland. He said regarding the pollution concerns there was no evidence of that happening in other sand pit locations. He said it was a tough position because there was a movement to take dredges out of rivers but they hadn't adequately planned for how to replace that. He felt there needed to be alternatives because there was still a need for sand. He was not comfortable supporting a denial but would support recommending approval to County Commission.

Commissioner Liese said Friends of the Kaw were supportive of this proposal but encouraged Planning Commission to carefully consider and address neighbor concerns.

Commissioner Josserand agreed with Commissioner Culver's comments.

Commissioner Burger said she was not comfortable with over 400 acres but the conditions in the staff report were so thorough. She said Horizon 2020 supported this type of resource extraction and Eudora land use documents supported it. She said she would not vote to deny but would be much more comfortable with a similar scale of other sand pits along the river.

ACTION TAKEN BY Lawrence

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

Motion failed 3-4-1, with Commissioners Belt, Britton, and von Achen voting in favor of the motion. Commissioners Burger, Culver, Josserand, and Liese voted in opposition. Commissioner Lamer abstained.

Motioned by Commissioner Culver, seconded by Commissioner Josserand, to approve the Conditional Use Permit for Penny Sand Pit 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 approval is contingent upon the issuance of all State and/or Federal permits which are required for this operation.
- 2.) An agreement designating responsibility for the ongoing maintenance of the berms to the property owner shall be executed and recorded with the Register of Deeds prior to the release of the CUP plans to the Zoning and Codes Office. A copy of the agreement shall be provided to the Planning Office for the file.
- 3.) A copy of the easement for the off-site access drive shall be provided to the Planning Office for the file prior to the release of the CUP plans to the Zoning and Codes Office.
- 4.) The applicant shall obtain a Flood Plain Development Permit from the Director of Zoning and Codes prior to the release of the CUP plans.
- 5.) The reclamation plan shall be revised with the following changes prior to release of the CUP plans:
 - a. The plan shall note the requirement that the lake that is being created will have a varied shoreline and will appear natural in appearance.
 - b. The plan shall note that the intended use of the lake, when mining and reclamation is complete, is to be a recreational feature.
 - c. The plan shall note the maximum slope of the lake shoreline for a specified depth to insure that the slopes are of a grade that it would be possible for a person or animal that accidentally entered the lake to exit.
 - d. The plan shall explain the sequential nature of the reclamation process; that overburden produced in one phase will be used to reclaim previously excavated areas.
 - e. The reclamation plan shall note that topsoil will be placed over the overburden in areas that are to be reclaimed as farmland, shoreline, or berms. If topsoil is to be stockpiled and stored it must be vegetated to prevent erosion.
- 6.) The applicant shall submit a revised CUP plan with the following changes:
 - a) A detailed landscaping plan for the buffer area surrounding the McElwee house will be submitted.

- b) The Book and Page number of the recorded easement for the off-site access road shall be noted on the CUP plan.
- c) The ownership shall be noted as Van, LLC as well as Penny's Concrete Inc. on the CUP plan.
- d) The on-site residential structure on the east side of the property will be shown on the CUP plan as on the reclamation plan.
- e) If stockpiling of overburden is to occur on the subject property, the CUP or operation plan should note the maximum height and approximate location. The stockpiles should be placed as far from the existing residences as possible.
- f) List the following CUP conditions on the plan:
 - i. Hours of operation are 6:30 AM to 6:30 PM, Monday through Friday. No removal, transfer, or placement of overburden is permitted outside these operating hours; however dredging and extraction of sand may exceed these hours when necessary.
 - ii. The approval for this Conditional Use is valid for 30 years. An extension request for the CUP must be submitted prior to the expiration date or a new CUP application must be submitted. The Zoning and Codes office shall conduct 5 year administrative reviews to insure compliance with the CUP, operation, and reclamation plans.
 - iii. The only exterior lighting in the areas to be excavated will be the dredge lighting as required by the U.S. Coast Guard.
 - iv. The scale house, processing plant, sediment pond, and stockpile area, approved with CUP-2-2-79, will be used to serve the subject property.
 - v. Sales of overburden, topsoil, sand or aggregate products will occur only on the portion of the property that contains the scale house on the CUP plan.
 - vi. Truck traffic will utilize Noria Road (E 1750 Road), and is restricted from using N 1500 Road or E 1850 Road.
 - vii. The applicant shall work with the Army Corps of Engineers to determine how the existing wetlands on the property will be treated. Prior to any excavation in Phase 21, the applicant will provide documentation to the Planning Office on the wetlands indicating whether the wetlands will be maintained on site or if they will be mitigated elsewhere. If the wetlands will be maintained on site, the operation plan will be revised to include the protection measures and the property owner shall submit a revised CUP plan for administrative review/approval of the wetland setbacks. If the wetlands are to be mitigated, a revised CUP plan shall be submitted to note the removal of the wetlands.
- 7.) The following improvements to nearby roads and intersections shall be completed per the County Engineer's approval before issuance of a permit for the Conditional Use :
 - a. Realignment of the entrance to the sand facility so that it opposes the Noria Road intersection at N 1500 Road.
 - b. Pavement of a 100 ft long section of the site access drive just north of N 1500 Road, as recommended in the TIS.
 - c. Reconstruction of pavement in the Noria Road (E 1750 Road)/N 1500 Road intersection. The existing surfacing is likely a crushed rock base that has been chip sealed. This will not stand up to the increased truck traffic crossing N 1500 Road.
 - d. Construction of an eastbound right turn lane on Route 442 (N 1400 Road) at Route 1057 (E 1900 Road). This is mentioned as a desirable improvement in the TIS. Pavement on the existing shoulder at this location is not adequate for the projected amount of truck traffic.
- 8.) The applicant shall install three observation wells and one control well and that the City of Eudora be allowed to monitor those wells on an ongoing basis.

Commissioner Josserand said he would like the County Commission to examine the scope and size and also examine the possibility of what Eudora Planning Commission made reference to regarding risk.

Commissioner Burger said she was uncomfortable with the acreage but would vote in favor. She expressed concern about the flow and movement of the river.

Commissioner Liese asked if the body of water would be useable for recreation.

Mr. Watkins said it could be.

Motion carried 4-3-1, with Commissioners Burger, Culver, Josserand, and Liese voting in favor of the motion. Commissioners Belt, Britton, and von Achen voted in opposition. Commissioner Lamer abstained.

Adjourn Joint Meeting
Reconvene LDCMPC

PC Minutes 10/22/12

**ITEM NO. 4 PRELIMINARY PLAT; LINCOLN SUBDIVISION; 700 BLOCK LINCOLN ST
(MKM)**

PP-12-00151: Consider a Preliminary Plat for Lincoln Subdivision, an 8 lot subdivision on approximately 3.7 acres located in the 700 Block of Lincoln Street (east of Lyon Park on the north side of Lincoln Street). Submitted by Grob Engineering Services for Bluejacket Ford, LLC, property owner of record.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

Commissioner Liese asked if Mr. Ted Boyle, North Lawrence Improvement Association, was satisfied.

Ms. Miller said yes, Mr. Boyle wanted to know how big the lots were because he did not want the lots to be too small. She said the lots were 10,000 SF and 7,000 SF was what was required. She said Mr. Boyle was happy with that.

APPLICANT PRESENTATION

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

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Commissioner Lamer, seconded by Commissioner Belt, to approve the Lincoln Subdivision Preliminary Plat subject to the following conditions:

1. Provision of a revised plat with the following changes:
 - a. Correction of typographical error in Financing Note No 4.
 - b. Addition of Building Envelope (BE) to the legend.
 - c. Note the width of the new sidewalk as 5 ft.
2. Provision of a revised drainage study per City Stormwater Engineer's approval.
3. Per the variance approval, recording of the final plat is contingent upon approval of a Floodplain Development Permit.

Unanimously approved 8-0.

PC Minutes 10/22/12

**ITEM NO. 5 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; TRUCK STOP
USE (MJL)**

TA-12-00182: Consider text amendments to the City of Lawrence Land Development Code, Chapter 20, Article 4 to change the Truck Stop use from permitted to permitted with a Special Use Permit in the IG (General Industrial) District. *Initiated by City Commission on 8/28/12.*

STAFF PRESENTATION

Ms. Michelle Leininger presented the item.

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Commissioner von Achen, seconded by Commissioner Josserand, to approve the proposed amendments TA-12-00182 to Section 20-403 of the Land Development Code and forwarding to the City Commission.

Unanimously approved 8-0.

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**ITEM NO. 6 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; RECYCLE
PROCESSING CENTER USE (MJL)**

TA-12-00183: Consider text amendments to the City of Lawrence Land Development Code, Chapter 20, Article 4 to change the Recycle Processing Center use from permitted to permitted with a Special Use Permit in the IL (Limited Industrial) District. *Initiated by City Commission on 8/28/12.*

STAFF PRESENTATION

Ms. Michelle Leininger presented the item.

PUBLIC HEARING

No public comment

COMMISSION DISCUSSION

Commissioner Josserand said it was odd a Special Use Permit was required for medium industrial.

Commissioner Liese said there were past discussions on the issue and they concluded that these were not truly continuous.

Mr. McCullough said there was a rich history in process.

Commissioner Culver asked if they were creating a continuum and if the recommendation was taking lighter industrial from a permitted use to a Special Use Permit.

Ms. Leininger said that was correct.

Mr. McCullough said the IM district was taken to City Commission and there was discussion that they did not want to look at the IL and IG districts at that point. They did bring back the two issues of truck stop use and recycle processing center use to look at the continuum use issue and initiated the text amendments.

ACTION TAKEN

Motioned by Commissioner von Achen, seconded by Commissioner Britton, to approve the proposed amendments TA-12-00183 to Section 20-403 of the Land Development Code and forwarding to the City Commission.

Unanimously approved 8-0.

PC Minutes 10/22/12

MISCELLANEOUS NEW OR OLD BUSINESS

MISC NO. 1 VARIANCE; 3512 & 3514 CLINTON PKWY (MKM)

Variance request from right-of-way requirement in Section 20-810(e)(5)(i) associated with Minor Subdivision for Parkway Plaza No. 5 (MS-12-00033); located at 3512 and 3514 Clinton Parkway.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

ACTION TAKEN

Motioned by Commissioner Lamer, seconded by Commissioner Culver, to approve the variance requested from Section 20-810(e)(5) from the requirement to dedicate additional right-of-way for Clinton Parkway adjacent to Lots 1 and 2, Parkway Plaza No. 5 subject to the following condition:

The plat shall be revised to include the following note: "On October 22, 2012, the Planning Commission approved a variance from the requirement in Section 20-810(e)(5) to dedicate 150 ft of right-of-way for principal arterials to allow the right-of-way for Clinton Parkway to remain as shown on this plat."

Unanimously approved 8-0.

MISC NO. 2 VARIANCE; 2522 & 2530 ALABAMA ST (MKM)

Variance request from right-of-way requirement in Section 20-810(e)(5)(i) associated with Minor Subdivision for Meadow Hill (MS-12-00193); located at 2522 and 2530 Alabama Street.

STAFF PRESENTATION

Ms. Mary Miller presented the item.

ACTION TAKEN

Motioned by Commissioner Belt, seconded by Commissioner Culver, to approve the variance requested from Section 20-810(e)(5) from the requirement to dedicate additional right-of-way for Alabama Street adjacent to Lots 1 and 2, Meadow Hill subject to the following condition:

The plat shall be revised to include the following note: "On October 22, 2012, the Planning Commission approved a variance from right-of-way requirements in Section 20-810(e)(5) of the Subdivision Regulations to allow the replatting of this property with the 60 ft of right-of-way currently provided for Alabama Street."

Unanimously approved 8-0.

Consideration of any other business to come before the Commission.

Recess at 11:50pm until October 24, 2012.

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Reconvene October 24, 2012 – 6:30 p.m.

Commissioners present: Belt, Britton, Burger, Culver, Josserand, Liese, von Achen
Staff present: McCullough, Stogsdill, Larkin, A. Miller, Warner, Ewert

BEGIN PUBLIC HEARING (OCTOBER 24, 2012):

COMMUNICATIONS

Mr. McCullough said there were no new communications.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- No ex parte.
- No abstentions.

PC Minutes 10/24/12

ITEM NO. 7 IG TO RS7; 14,317 SQ FT, 513 N 7TH ST (DDW)

Z-12-00194: Consider a request to rezone approximately 14,317 square feet from IG (General Industrial) to RS7 (Single-Dwelling Residential), located at 513 N 7th Street. *Initiated by Planning Commission on 5/25/11.*

ITEM NO. 8 IG TO RS7; 7,887 SQ FT, 529 N 7TH ST (DDW)

Z-12-00196: Consider a request to rezone approximately 7,887 square feet from IG (General Industrial) to RS7 (Single-Dwelling Residential), located at 529 N 7th Street. *Initiated by Planning Commission on 5/25/11.*

STAFF PRESENTATION

Mr. Dan Warner presented items 7 and 8 together.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Josserand inquired about the history of the odd shape of the lot.

Mr. Warner said he was not aware of the property history.

Mr. Steve Spacek, property owner of 513 N. 7th Street, said it was leftover access land for the church that owns the house to the south.

ACTION TAKEN on Item 7

Motioned by Commissioner Belt, seconded by Commissioner Britton, to approve the rezoning request for approximately .3 acres, from IG (General Industrial) District to RS7 (Single-Dwelling Residential) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report

Unanimously approved 6-0. Commissioner Culver was not present for the vote.

ACTION TAKEN on Item 8

Motioned by Commissioner Britton, seconded by Commissioner Belt, to approve the rezoning request for approximately .18 acres, from IG (General Industrial) District to RS7 (Single-Dwelling Residential) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report

Unanimously approved 6-0. Commissioner Culver was not present for the vote.

ITEM NO. 9 W OF K-10 PLAN & NODAL PLAN FOR W 6TH ST & K-10; CC600 (AAM)

CPA-4-2-12: Reconsider a Comprehensive Plan Amendment to Chapter 6 of Horizon 2020 to create CC600 District policies and to Chapter 14 Specific Plans, to revise the West of K-10 Plan and A Nodal Plan for the Intersection of West 6th Street & Kansas Highway 10 (K-10) designating the node of 6th Street and K-10 as a CC600. *Remanded to the Planning Commission by the City Commission on 9/25/12.*

ITEM NO. 10 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; CC600 (MJL)

TA-4-3-12: Reconsider a text amendment to the City of Lawrence Land Development Code, Articles 1, 2 and 13, to provide for a CC600 (Community Commercial) District. *Remanded to the Planning Commission by the City Commission on 9/25/12.*

ITEM NO. 11 A & B1 TO CC600; 146 ACRES; W 6TH ST & K-10 (MKM)

Z-4-5-12: Reconsider a request to rezone approximately 146 acres located in the NW quadrant of the intersection of West 6th Street/Hwy 40 and Kansas Hwy 10 (K-10) from County A (Agriculture) District and County B1 (Neighborhood Business) District to the pending district CC600 (Community Commercial) District to accommodate a regional recreation facility. *Remanded to the Planning Commission by the City Commission on 9/25/12.*

STAFF PRESENTATION

Mr. Scott McCullough presented items 9-11 together.

Commissioner Liese asked if anyone had ex parte to disclose.

Commissioner Josserand said he ran into City Commissioner Bob Schumm and that Mr. Schumm asked him to read his comments from the minutes.

Commissioner Liese said Ms. Jane Eldredge left him a voicemail and they played phone tag but never actually spoke.

Commissioner Belt, Britton, Culver, Josserand, and von Achen said they all received a voicemail from Ms. Eldredge.

APPLICANT PRESENTATION

Ms. Jane Eldredge, Barber Emerson, presented a PowerPoint presentation. She said planning for this area had been going on since at least 1996 when the Northwest Area Plan was planned. She said when it started in 1996 it was just the northeast quadrant which was now the node. She said the 2003 nodal plan was approved by the City Commission but not County Commission, so the County Commission never adopted the industrial planning that was shown on the west side of the nodal plan. She showed the nodal plan on the overhead. She stated the location had great transportation access. She said the applicant offered the northwest quadrant to the City as a regional recreation center to meet the recreation needs of the community and spur economic development. She said this was a highly visible node and the applicant felt it would be a good donation. She said the move of the proposed recreation center was 500' across the South Lawrence Trafficway. She said there was a need for something between the community commercial and the regional commercial. She said planning was an evolving process and things happen over time. She stated the surrounding

infrastructure anticipates extension of utilities so that was not a problem. Staff noted it would provide opportunities for the community as a whole, as well as non-local visitors. She said the idea of retail commercial was to help support the regional recreation center that would be having tournaments and bringing more visitors to town. She said Chapter 12 of Horizon 2020 discusses economic development and this project would meet the goals of that chapter; employment growth, tax base growth, income growth. She said the City hired the sports and leisure company to look at the impact of the regional recreation center and they determined benefits that could not be quantified in terms of numbers, and the spurring of economic growth and ancillary private sector development. They also measured the economic impacts at the time of construction of the recreation center and the ongoing recurring economic impact. She said they also looked at the increase in property values. She said the City also engaged Springstead, a company in Kansas City, to look at whether a transportation development district would be appropriate to use some of the sales tax generated for some of the roads necessary, which would still be a viable option. She showed a zoning map of Mercato on the overhead. She asked that the adjustment necessary be made in the West of K-10 Plan where the northwest quadrant had the recreation center moved out of it and moved across the South Lawrence Trafficway to be adjacent to the northeast quadrant. She asked that they adopt the Comprehensive Plan Amendment and recommend it to City and County Commission for approval, as well as the rezoning. She said this was a unique location and there were neighbors petitioning for commercial zoning.

PUBLIC HEARING

Mr. Lance Johnson said he represented Gateway West Landholding Company, property owner to the south, and they were supportive of the text amendment, comprehensive plan amendment, and rezoning.

Mr. Mike Kelso said his property was just to the north of what was to be the site of the recreation center. He said he attended all meetings associated with the project and met with the developer and property owner regarding the various options for zoning. He said he also spoke with all land owners in the Northwood Estates development who were now in support of the CC600 zoning. He said the CC600 zoning gave them security knowing how the land could be used and how it would not be used. He urged Planning Commission to support the rezoning to CC600.

Ms. Gwen Klingenberg reminded them that City Commission said to take a broad view of this. She said there was a way to do all of this. She stated this was the gateway to Lawrence and an important part of the city. She felt the most important thing was that the Northfield neighborhood was protected with a 200' bufferyard. She said IL zoning would allow for a hotel and some commercial, while IBP zoning would give some lower density kind of items between that and the neighborhood. She said retail only spread income around and did not generate income.

Mr. Ron Crawford said this node was the last remaining gateway into Lawrence and he encouraged Planning Commission to take it seriously in planning and executing it. He felt the conditional zoning was appropriate if done well.

Commissioner Belt asked Mr. Crawford for examples of how he thought the initial plan was not carried out in the way he would have assumed.

Mr. Crawford said 31st Street was a struggle but turned out fairly well in the end. He said the K-10 entrance from the east used to have Farmland Industries which couldn't be fixed at the time. He said there was still the gateway near Hallmark Cards that could have work done over time. He said there were plenty of examples of how work was done to try and improve the situations, some with more success than others.

APPLICANT CLOSING COMMENTS

Ms. Eldredge thanked Planning Commission, staff, and neighbors for their work. She said the property owner offered to do a 200' green buffer as a covenant so regardless who owned the property it would not disappear. She said there would be opportunities with the site plans to look at the details.

COMMISSION DISCUSSION

Commissioner Britton asked staff what made Mercato particularly suitable for big box stores.

Mr. McCullough said at the time the west side was getting its designation from industry. He said it was a period that desired industry. He said in the last several years there had been opportunities open up to get industrial parcels designated and zoned, such as the former Farmland Industrial Park. He said there was history of different land uses. He said the street infrastructure could support a number of uses such as industry, retail, commercial, and high density residential.

Commissioner Britton asked if the northwest corner could accommodate one or two big box stores the way the Mercato area could.

Mr. McCullough said it could.

Ms. Eldredge said the northwest corner was more visible than the northeast corner and a big box store may not be a desirable sight there. She said the neighbors would be happier with a smaller retail, not a big box retail.

Commissioner von Achen asked if Planning Commission should take into account whether the community could financially support this.

Mr. McCullough said he did not know that it enters into the discussion of appropriate land use designation, text amendment to create CC600, or even the rezoning because those were separate development issues that the Planning Commission wasn't necessarily charged with.

Commissioner von Achen asked if they should consider the impact this would have on downtown retail.

Mr. McCullough said he thought they should. He said that was a requirement that was vetted heavily at the May Planning Commission and there was a report included in their packet this evening regarding that. He said the Sports Village could be a draw to the community from outside and would not necessarily harm downtown. He said regarding who pays for infrastructure the development would pay for the infrastructure and cost. He said when the recreation center was on the west side the City was the developer and the community at large would have been paying for a portion of that infrastructure to bring it across K-10.

Commissioner von Achen inquired about Ms. Klingenberg's earlier comment about how many uses could be accommodated under light industrial zoning.

Mr. McCullough said they had not gone through the exercise of any of the industrial districts like they did with the CC600 district to look at the uses. He said essentially the IL and IBP districts had some amount of commercial retail uses associated with it. He said some uses may not be appropriate, such as a big box Home Depot. He said they could probably get to the same place with the

combination of different zoning districts, but the goal with this exercise was to keep it in one zoning district, CC600.

Commissioner von Achen asked if Planning Commission decided they wanted a combination of things, could they use multiple zoning districts.

Mr. McCullough said the CC600 zoning did have a few very light industrial uses permitted.

Commissioner Belt inquired about UR zoning.

Mr. McCullough said UR zoning came up at the City Commission level. He said this was an opportunity to create CC600 as a zoning tool and that it was likely the most appropriate land use pattern for this node and that the zoning district would be a valuable tool. He stated per Code the property was now annexed into the city and needed a city zoning. He said if they believed the CC600 designation was appropriate and they were comfortable with conditional zoning, giving the expectation to everybody about the uses, than CC600 with the conditions was likely the right thing to do at this time. He said UR zoning was a tool used for property annexed into the city and the development was lesser known. He said the property could not sit there with no zoning.

Commissioner Belt asked how long it would take to rezone the property for development if it was zoned UR.

Mr. McCullough said it would go through the rezoning process which would take approximately 3-4 months.

Commissioner Belt inquired about sports oriented retail.

Ms. Eldredge said it generally included hotels/lodging. She said the recommendation was to have one chain type hotel and one smaller fancy hotel. She said it involved various dining opportunities and small retail shops, such as sporting good stores or other kinds of recreation.

Commissioner Belt asked if such things as miniature golf or water slides were options.

Ms. Eldredge said it could include ice skating, roller skating, a lacrosse field, or other kinds of sports that would be interested in being located near a regional recreation center or near some KU facilities that could be privately run.

Commissioner Josseland read mayor Schumm's comments from the September 25, 2012 City Commission minutes:

Schumm said he had been pretty adamant that if the rec center failed for any reason he wasn't in favor of rezoning any land that was not needed for that. We have a rec center in the general vicinity, possibly with a larger project than before. The site is now in the 150 acre range, more a park than just a regional rec center. It has grown and grown for the best. We have an obligation to support that with ancillary uses. There is still a need for additional land uses. He was willing to send this back to the Planning Commission and have them look at the whole area. He wanted all property owners notified. He said he wanted to see a comprehensive view of the whole area. The area will be a major commercial, industrial or mixed use area, a major are for activity and he hoped the Planning Commission could come back with some innovative plans for the area. He hoped they could take a broader global view. He would support rescinding and sending it back to Planning.

Commissioner Josserand said the development was so much larger and on the other side. He wondered if they should take a fresh view at the entire area. He said some of his biggest personal issues were timing and zoning.

Mr. McCullough said he could not necessarily interpret the mayor's direction. He said he thought the mayor wanted Planning Commission to look at the fact that the project had moved to the east and if they were on track with CC600 as a concept. He said there were some challenges in veering too far off of where they had been with the development of the CC600 and the current plan for office industrial warehouse. He said on the east side there were a number of parcels that surrounded the recreation center that had their approvals in place. He said the Links development, some single-family subdivisions that have ongoing plats, and Mercato would make it difficult to do too much in those areas for newly designating something. He said the other challenge was that there had been a several month process with property owners and stakeholders from all four corners that all seemed to be supportive of the commercial node part.

Commissioner Burger inquired about the need expressed in the past by the Chamber of Commerce for industrial options for potential industrial employers. She said with the South Lawrence Trafficway going forward and the improvements KDOT would be doing, they would be remiss if they didn't talk about the stock they would be giving away if they approved this in this location. She wondered if there was something in the packet from the Chamber of Commerce regarding this industrial plot.

Mr. McCullough said he did not believe they were missing any input from the Chamber of Commerce. He said this was an opportunity that was not known when a lot of the planning for the area was done. He said it was a unique and special land use that gave the ability to look at this node fresh. He said there were not a lot of land uses that could change the thinking about two state highways and the need for an employment center to something to accommodate a large sports village concept.

Commissioner Britton asked Mr. Kelso how he would feel about an office park in the area.

Mr. Kelso said he could not speak for the other neighbors regarding an office park but that they did discuss the possible uses under the CC600 that might augment what's going on the other side of the highway. He said he was not sure about an office park.

Commissioner Liese said his impression was that City Commission wanted Planning Commission to start with a clean slate and reaffirm or change our minds. He said there was not opposition to it, it was more to give Planning Commission one more opportunity to allow the community and developer to talk to us.

Mr. McCullough said he thought City Commission was asking Planning Commission to look at all the facts and input that they would in any sector or nodal plan.

Commissioner Liese inquired about Ms. Klingenberg's earlier concept of IL zoning rather than CC600. Ms. Klingenberg was no longer present at the meeting so Commissioner Liese asked if staff could comment about what she said.

Mr. McCullough said Ms. Klingenberg had spoken in earlier meetings about maintaining the industrial designation there.

Commissioner Liese said he didn't hear the community and neighbors saying that was what they wanted. He felt the neighbors had been through enough. He felt like it was a good place for CC600 and that the beauty in it would come during the site planning stage. He thanked City Commission for

sending it back to Planning Commission to allow the opportunity to make sure everyone would be happy.

Commissioner von Achen said it was her understanding that City Commission wanted them to envision something creative, not necessarily just returned to the previous recommendation made by Planning Commission. She said she was struggling with the idea of what 50 more acres of retail would do to other retail areas in the community. She asked about the study that indicated that the recreation center could support 25,000 sq ft of retail and 40 hotel rooms.

Mr. McCullough said that was a study done to get a sense of the economic impact of the recreation center.

Commissioner von Achen asked if they were talking about a lot more than that.

Mr. McCullough said yes. He said all of the retail in the node could not be attributed to the recreation center. He said they recognized the industrial office warehouse wasn't a compatible land use to the recreation center. He stated the recreation center was going to be the primary development of the northwest corner. He said the retail cap was the same 180,000 sq ft whether or not there was 50 acres more of it. He said one of the benefits of CC600 was that it was likely to have a mix of different uses, even within the 146 acres, because it could hold substantially more than 180,000 sq ft of retail. He said they had the ability and opportunity to build a framework of possibilities for a compatible corner of a very important node. He said the recreation center would still be in the vicinity so it would generate some commercial. He stated community growth would generate demand for commercial.

Commissioner Liese hoped a great site plan and really attractive commercial district would draw people from neighboring counties. He felt commercial was needed in that area.

Commissioner Belt said people probably thought the same thing about Tanger Outlet Mall. He stated the main focus of Mr. Greg Williams from the Chamber of Commerce was to attract primary jobs. Commissioner Belt said on this particular issue he wanted to see something really cool there and be proud of that site. He felt they should at least talk about the potential of providing primary jobs at that location.

Mr. McCullough said the reason the study was commissioned was to advise City Commission about what kind of economic development the site would generate. He said there was a belief that tournaments, relays, and events would be a draw to the region in an economic impact development way. He said the sports village concept was the unique project that was driving the discussion about drawing in folks to the area and what's compatible with that. He said a Corporate Woods type campus would be just as beneficial and doable with the CC600 zoning and very compatible with the neighborhood and would allow some flexibility. He said they may be losing industrial designation but were picking up an economic generator in the sports village.

Commissioner Liese inquired about the permitted uses.

Mr. McCullough showed the list of permitted uses on the overhead.

Commissioner Culver asked when the appropriate time in the process would be to implement the 200' buffer yard of green area.

Mr. McCullough said probably in the platting stage. He said there was a buffer requirement but the 200' was something negotiated between the property owner and neighborhood. He said the timing would likely be prior to development.

Commissioner Culver asked Ms. Eldredge to elaborate.

Ms. Eldredge said the agreement was part of the CC600 package.

Commissioner Culver said there were other uses, beyond retail, within CC600. He said he saw advantages with the retail component as well as options and limitations. He thanked the neighbors, developer, staff, and the governing bodies for their discussions. He said it appeared there was some consensus and it was refreshing. He felt it was important for people to be part of the process and be heard. He said however the project unfolded it was reassuring that the stakeholders would be part of the process. He said it would be hard for him to support UR zoning because the neighbors wanted some certainty. He said a lot of the details with the project would be addressed at the site planning level. He said regarding the economic standpoint of it, primary jobs were highly important and he thought that was something that would continue to be focused on. He felt the opportunity to have something like a CC600 with the regional recreation complex was not an opportunity in every part of the community. He said there was some added weight to create some opportunities to enhance and compliment a project of this nature in that area. He said CC600 was innovative because it was a new zoning and filled a need. He said overall he would support the current Planning Commission recommendation from previous discussions. He said looking at it from a comprehensive perspective, without the recreation center project, allowed them to look at it with a cleaner slate and he supported continuing with the previous recommendation.

Commissioner Burger said when they talked about this in May she asked if it was possible to add more primary job creation light industrial type land uses to the west of this location and the response was that it had been looked but because the nature of the land it was not an option. She asked if there would be an option to add the industrial that was being eliminated by approving this farther south on K-10, especially knowing KDOT was committed to making improvements at Bob Billings Parkway & K-10.

Mr. McCullough said this amount of industrial designation was maintained. He said these were the only industrial facility uses maintained in the CC600 because they would be compatible and would maintain the ability to create employment type land uses. He said the reason they liked the industrial and high intensity commercial was the street transportation network and the planning concepts of transitioning land uses. He said going farther west could be looked at for more industrial employment center in nature but it would be getting away from K-10 and I-70.

Commissioner Burger asked if they could go farther west on Hwy 40 or farther west on Bob Billings Parkway.

Mr. McCullough said they could look into going west or south if that was the desire of Planning Commission. He said when looking at the street network and drainage basins it would be more challenging the farther away from the intersection of highways.

Commissioner Burger said the study that suggested the 25,000 sq ft of retail and 43 hotel units was based on Frisco, TX. She said Frisco, TX had a population in 2010 of 116,000, which was not that far off from Lawrence. She said in 2000 Frisco, TX had a population of 30,000, which was a very different dynamic than Lawrence. She said realistically they should plan for less than 25,000 sq ft of retail. She was not sure that this was the right tool to do this plan. She said in her limited time on

Planning Commission they have had projects that looked good on paper but did not end up being quite what she thought. She said that KU purchasing the property on the east side was a wonderful development and unique opportunity. She did not think the previous 2009 plan would allow as much opportunity. She expressed concern about the whole section being CC600. She liked the way the plan was on the south side of Hwy 40 where there was commercial neighborhood, public institutional, and office industrial warehouse. She said she would like to see something that mirrored that on the north side of Hwy 40 because it would be a more creative solution for assurances to the neighborhood. She was unsure how to vote on this. She asked what the tool was that required the most amount of esthetic planning.

Mr. McCullough said there were a number of protections built into the Code in terms of buffer yards, Commercial Design Guidelines, landscape requirements for parking areas, and street trees. He said the site plan process had a notice requirement to the public. He said with a project like this it was tougher to do planned development since it would evolve over time and the plan would change constantly as new users came on board. He said the Development Code had all those protections and a public process for site planning as the protection for aesthetics.

Commissioner Burger said she felt this was an important opportunity for the office industrial warehouse/public institutional element of this side of town. She said farther down K-10 there was not the same opportunity. She stated regarding proximity to I-70 this was as good as it would get on this side of Lawrence.

Commissioner Liese asked how far it was from the Shawnee County line to the proposed project.

Mr. McCullough said approximately 9 miles.

Commissioner Liese said he thought there were people that would value this kind of development versus something like an outlet mall. He asked to what extent site planning was important.

Mr. McCullough said site planning was extremely important. He said they would start with the plat that Planning Commission looked at with the input of the owners to the north and work out a reasonable and good transportation system through the property. He said platting would start the layout of the lots and approach of different streets, and then site planning would follow. He said it would be flexible, depending on what the first development would be, but with protections of the Development Code to assist in the process.

Commissioner Britton asked when the City Commission discussed this was there an acknowledgement that the statute required that if Planning Commission did not act to approve or deny at this specific meeting that it would go back to City Commission essentially if it hadn't been referred to Planning Commission in the first place.

Mr. Randy Larkin said the City Commission did not discuss that.

Commissioner Liese said they had a responsibility to do what they had been asked to do. He said City Commission asked for Planning Commission's opinion.

Commissioner Britton said he felt like what City Commission asked Planning Commission to do was a wholesale look at the CC600 and really think of something perhaps innovative and different. He didn't think the new zoning designation of CC600 was necessarily innovative for the area in terms of Lawrence's last gateway. He wondered if the City Commission knew that Planning Commission would

only have one night to discuss this when they sent it back. He did not think they could take a wholesale look at an important node and gateway in just one night.

Mr. Larkin said it was his understanding that the City Commission sent it back to Planning Commission to determine whether the movement of the sports village across the highway would change their opinion regarding the comprehensive plan, text amendment, and rezoning.

Commissioner Liese read aloud some of the City Commission comments from the minutes. He felt that Commissioner Josserand's earlier comments about what mayor Schumm said was too small of a sampling from the City Commission discussion to base their decision on. He felt they had a responsibility to pay attention to everything said. He was excited that the majority of the community was in favor of this project.

Commissioner Britton agreed they had to act on this tonight.

Commissioner Liese said they could make a motion to defer.

Mr. Larkin said if it was deferred it would be treated under the law as inaction and would go back to City Commission as if Planning Commission was giving the same recommendation they gave previously.

Commissioner Josserand inquired about talking about this in a wide sense as opposed to be limited tonight.

Ms. Eldredge said she agreed with Mr. Larkin's interpretation. She said according to the City Commission minutes the only expression of what City Commission wanted them to do was unanimously contained in their motion, to remand the comprehensive plan amendment, text amendment, and rezoning for consideration per the City Commission comments and specific direction as follows:

Moved by Carter, seconded by Dever, to remand Comprehensive Plan Amendment CPA-4-2-12, Text Amendment TA-4-3-12, and Rezoning Z-4-5-12 to the Planning Commission for consideration per the City Commission comments tonight and the specific direction as follows: Given the change in circumstance that the regional recreation center/sports village is no longer planned for the Gateway Addition property west of K-10, the City Commission has not approved or dis-approved the applications and directs the Planning Commission to review the comprehensive plan, text amendment and rezoning applications in light of the change in circumstance of the regional recreation center/sports village relocating to a property east of K- 10. Motion carried unanimously.

Commissioner Josserand said based on the change in the recreation center location one way to proceed was to vote against the recommendation at this time and make a motion to reopen the issues or ask City Commission to reopen it. He said he had too many questions still to vote in favor of approval. He said he would be supportive if others wanted to examine a larger scope.

Commissioner Liese said he had not heard a good argument for denying it. He felt it would be irresponsible to start over again just because there were new Commissioners.

Commissioner Josserand said he was concerned about too much inventory of commercial land. He felt the timing of zoning was important.

Commissioner Liese asked what Commissioner Josserand would want done with the property if they deny it.

Commissioner Josserand said maybe the property shouldn't have been annexed without the recreation center. He said the issues were connected. He felt timing of zoning was an important consideration. He said he liked the CC600 concept and that it helped protect the neighborhood concerns.

Commissioner Britton said moving the recreation center over to the other side of K-10 was a material change as far as he was concerned. He said it seemed like the City Commission viewed that as a material change as well. He said in the previous meeting he asked what would happen if KU didn't commit to the site because that was material to the determination at the time. He said he worried about the other side of the highway having all the accessory uses because it made more sense there. He said it was a real possibility that instead of having big box stores on the east side and accessory commercial on the west side, they would have the recreation center with accessory commercial on the east side and more accessory commercial on the west side. He said it may end up being so haphazard that it may not work right. He said given the fact they had no choice but to act on it tonight he felt the obvious choice was to deny it. He said there were too many issues that they needed more time to discuss and work through. He felt denial was the responsible way to proceed.

ACTION TAKEN

Motioned by Commissioner Britton, seconded by Commissioner Josserand, to deny the comprehensive plan amendment, text amendment, and rezoning.

Commissioner Culver asked Mr. Johnson how he felt about CC600 in relationship to the property to the south.

Mr. Johnson clarified this was not just his property. He said Gateway West Landholding Company owned two lots and was made up of about 120 members. He said they had followed the process from the beginning and were very comfortable with the CC600 and possible uses. He said the church had a membership of over 1,000 members and in general were supportive as well. He said the neighbors to the north of the subject site had vetted it quite a bit too.

Commissioner Liese asked if the motion denied all three items or just the comprehensive plan amendment.

Mr. McCullough said the rezoning would become moot if the text amendment was not approved.

Commissioner Burger asked why the County did not approve the west part of the nodal plan in 2003.

Ms. Eldredge said they simply didn't take it up on their agenda.

Mr. McCullough said previously there wasn't a clear formal process for sector planning.

Commissioner Burger asked for more detail of the timeline of Mercato. She also asked if KU had shared a timeline for their progress.

Mr. McCullough said KU couldn't move fast enough.

Ms. Eldredge said Mercato's zoning was finalized in the Spring. She said Mercato's zoning was initially looked at approximately four years ago and tied to plats and infrastructure. She said there

was a sewer summit which was when the Baldwin Creek sewer came into play. She said nothing could develop until sewer was available, regardless of what the preliminary zoning was. She said approvals were extended as needed to coordinate everything that had to be done by the City and the developer. She said there still needed to be a sewer line placed under George Williams Way. She said Mercato was close to being ripe for development. She said Mercato worked for three years to get the big box zoning and that was largely triggered by the fact that City Commission and Planning Commission felt that 6th & Wakarusa should not be as large as it is in terms of intensity of commercial. She said the idea was to take big box development out to 6th & the South Lawrence Trafficway since there was enough at 6th & Wakarusa. She said it was all part of gradual development. She stated nothing was planned yet for Mercato and that the only space available for commercial was on the corner, which included five pad sites that could be developed with such uses as McDonalds or a bank, but not a hotel. She said a hotel would be more appropriate on the west side to accommodate the recreation facility.

Commissioner Burger asked if big box stores were not secure yet as an occupant.

Ms. Eldredge said no, there was not currently an occupant, but that was the limitation of the zoning. She said the property owners did not want to change that since it was the only designated zoned approved place in the county for additional big box development.

Commissioner Belt asked if the Mercato Development had existing space for 25,000 sq ft to support the recreation center and 43 hotel rooms.

Ms. Eldredge said no.

Commissioner Liese said considering KU wanted to do the recreation center quickly it would be irresponsible to not approve this. He felt they would need the CC600 zoning and was unconvinced that they had the space for all the things that would likely be needed. He said they probably had enough existing space that could accommodate a lot of little shops in the city, but not the space at this location. He felt if they did not approve the comprehensive plan amendment they would have a problem on their hands because it was annexed into the city and it needed to be zoned. He said it would be irresponsible to deny this because it had been so well deliberated in the past even if others were not on the Commission before, it was what neighbors were asking for, it was annexed and needed to be zoned, the space was needed to accommodate the sports facility, and there were a lot of things that could go at this location that could not go anywhere else. He said it would be irresponsible of Planning Commission to send it back to City Commission and deny it when there was a clean plan with so much support for it.

Commissioner Burger inquired about a sizeable grocery store.

Mr. McCullough said with food & beverage sales or general retail sales essentially it allowed up to 65,000 sq ft, which was a fairly sizeable store.

Ms. Eldredge said the 6th & Wakarusa Dillons started at 47,000 sq ft and then added another 15,000 sq ft about four years ago.

Mr. McCullough said it was a limit of 65,000 sq ft for one store, which could accommodate one sporting goods store or grocery store, for example.

Commissioner Burger asked if there was space on the west side for that, as proposed.

Mr. McCullough said there could be.

Commissioner Burger asked if there was space for that in Mercato.

Mr. McCullough said no.

Commissioner Josserand read the following statement he wrote: *'I am new to the commission and did not have the opportunity to participate in previous discussions about this issue. Unfortunately Kansas Law requires me to vote tonight. Given that choice, I cannot support approving the current proposal. The change in the location of the proposed recreation center from the west to the east side of K-10 is material in its impact to this nodal area, both in location and in its magnitude. Also, in my view, the fact that the recreation center will not be on the west side will significantly slow down near term development pressure to the west, because of infrastructure costs. A difficult aspect of land use planning, but one that is significant, is timing. Communities don't want to too much vacant zoned property for development. I am worried about this issue. I would support a "real good comprehensive" review of all four quadrants of that intersection as suggested by at least one city commissioner. I would invite such an effort and would invite the city commission, or our own commission to initiate such a review. After that wider review, I might support a vote for a plan the same or very similar to what is in front of us tonight.'*

Commissioner Britton asked if the current zoning for Mercato was only available for big box stores or could other commercial go in there. He asked if there was a ceiling and/or floor in terms of the square footage of retail commercial.

Mr. McCullough showed a map on the overhead of the commercial zoning area and residential zoning to the north. He said Mercato had a development plan that essentially laid out conceptually two big box stores that would take up about 360,000 sq ft of retail with some out lots. He said it was a typical commercial node layout.

Commissioner Britton wondered if five small box stores could work as it was currently zoned.

Mr. McCullough said the plan could change but it had value today to the property owner with what it represented.

Commissioner Britton wondered whether the Mercato site, as currently zoned, could be accessory commercial to the recreation center.

Mr. McCullough said he wanted to be sure they were framing the discussion of retail appropriately. He said the study commissioned by the City showed that the recreation center would bring a certain demand of commercial and that in no way did staff believe it would happen at this node. He said staff was hopeful that other commercial areas of the city would absorb that commercial, such as existing hotels in the city. He said he didn't know it was exactly framing it honestly to think that either Mercato or the west side would be the sole support of accessory commercial use to the sports village. He said not only did they need accessory commercial within close proximity but also compatibility with the sports village. He wanted them to give significant weight to the evolution and process because it had been a lengthy process. He said all corners of the major node had ownership of this development, partly because some commercial retail had been given to every corner. He said City Commission was asking them, in part, if the proximity of the sports village changed enough to think of the node differently.

Commissioner Britton said he did not see any need to approve something quickly because KU wanted to have it open next year. He said they were being asked to give a thumbs up or thumbs down on whether the northwest corner was an appropriate place for the accessory commercial to the recreation center. He said what they were talking about was a choice between the northwest corner or the northeast corner, or not near the recreation center at all. He said if proximity was not an issue there would be no need to rush because Lawrence had hotels and such throughout the city. He said it was not an either or question with regard to the recreation center because the recreation center was going to happen. He said the question was where to put this on the map. He stated the recreation center moving was a material change and he would like to have more time to discuss it and determine if they could do something that had a better prognosis for attracting primary jobs in that area. He stated that may be a possibility under CC600 but it was certainly only one of many possibilities and it did not seem that was the way people were thinking this would be used.

Commissioner Burger asked if Planning Commission voted to reverse their previous recommendation could City Commission overrule that and do what they wanted to do.

Mr. McCullough said that was correct.

Commissioner Liese asked what happened to property in the city that was unzoned.

Mr. McCullough said it would need to be zoned to something because it was in the city and under the Development Code.

Commissioner Liese said if the motion to deny passed they would need to consider UR as a possibility or some other zoning.

Mr. McCullough said ultimately the property needed to be zoned.

Commissioner Liese said the property owner was eager to develop something that was of great value to the community. He said he would feel irresponsible if he thought he could come up with something better than what the community, developer, and staff did. He said he would feel like his vote to deny would be an irresponsible vote, especially if he didn't have some great idea about what the alternative would be.

Commissioner Burger asked if Planning Commission did not send this forward with approval what would happen to the future land use map.

Mr. McCullough said the City Commission would need to affirm any of the comprehensive plan part of this land use package so what happens to the west of K-10 area would depend, in part, on what the City Commission does with the Planning Commission recommendation.

Commissioner Burger asked if the current West of K-10 Land Use Plan would become the plan.

Mr. McCullough said it was already the current plan. He said if the City Commission denied the comprehensive plan that was the plan of record.

Commissioner Burger asked if it would go back to agriculture.

Mr. McCullough said no, it was not designated as agriculture, it was designated for office industrial warehouse.

Commissioner Culver said based on the specific charge to reevaluate whether these recommendations were still something Planning Commission would support with the change of location for the recreation center, from his standpoint it was not that material. He said it was still extremely close and in the same nodal plan. He said if the circumstances were different and it was further away he could see revisiting this completely but they had put a lot of work into this. He said the various stakeholders had also put a lot of time and effort into this and they were at a point where they felt comfortable moving forward. He felt Planning Commission has some onus to do that too. He said the previously proposed recommendation by Planning Commission for the northeast corner fit the surrounding area and in his opinion supported the small change of location of the recreational center. He said he grew up in smaller town in central Kansas and played sports so they traveled a lot to go to sporting events and tournaments, but Lawrence was never one of the locations. He said everywhere they stayed they looked for lodging, food, sporting equipment, grocery stores, gas within close proximity and spent a lot of time and money in those communities because they were built around a recreational facility. He said the amount of commercial demand in sales revenues, although not primary jobs, potentially created by the regional recreation facility could and would support the area and greater community of Lawrence. He had a hard time thinking they would come up with something that would be that much more valuable or different in going further down this path. He said they had already gone down the path and put time and effort into considering it. He said to see the stakeholders who turned the corner of being initially opposed to such an idea to now being on board with it had value.

Commissioner Belt believed the sports complex and development in the node were imminent. He said the material change was important because of how the intersection was aligned. He said from a Planning standpoint he was confident that the KDOT infrastructure improvements would handle all the traffic sent to the site. He said they could reduce a few hundred or thousands of car trips a year by the way they align what was at this node. He said he was not being dismissive of the process, developers, or neighbors but that Planning Commissioners represents the entire community of Lawrence. He said it was not a question about what services would be at the site but rather where. He said they needed more time to set it up better than how it was currently. He said he would support the motion for denial.

Commissioner Liese felt that denying this and not having a better idea was just kicking the can down the road. He felt it would be terribly irresponsible to deny it without proposing something better. He said he had not heard a single alternative proposed by anyone.

Commissioner Josserand said he objected to being called terribly irresponsible. He said he did not have a magic idea tonight but was a little uncomfortable being forced into a position to vote tonight based on the statute.

Commissioner Liese clarified that he did not think any of the Planning Commissioners were irresponsible people based on their vote tonight, he just meant that he hoped they did not dump it back in the lap of City Commission.

Commissioner Burger clarified her earlier comments regarding the proposed future land use plan. She said the portion south of Hwy 40 was a component of public institutional, office industrial warehouse, and had a component that it did not have before of commercial or retail. She said there could be a mirror image to the north side which would regain some of the office industrial warehouse and public institutional opportunity while retaining the retail opportunity that the neighbors and developers worked toward. She said if they went with the West of K-10 Future Land Use map on page 536 of the packet it would do what Commissioner Belt was talking about as far as

reducing the number of trips over the highway back and forth. She felt they had several options they could send to City Commission.

Ms. Eldredge said Mercato would not change and would not have room for a hotel. She stated it may have room for a fast food restaurant such as McDonalds on one of the pad sites but not anywhere near the kind of retail space they were talking about. She said the recreation center would not only need its own commercial, but there was a lot of residential around there that had been planned but not moved into and it would need servicing. She said when a zoning application was denied the property owner has to wait a year to come back. She urged them to think carefully, in terms of long term planning, for this very unique and special location.

Commissioner Burger asked to see a slide that showed the uses on the east side of K-10, north and south of Hwy 40.

Commissioner Liese said he thought the attorney for the developer was saying it did not matter to them what the uses were on that slide because they had no plans to do anything other than what they were saying.

Commissioner Burger asked if Mercato included what was on the south side of Hwy 40.

Ms. Eldredge said no.

Mr. McCullough said no, the area was currently zoned UR and did not have land use approvals.

Commissioner Josserand inquired about what Ms. Eldredge said regarding the applicant not being able to proceed with a rezoning request for a year if denied.

Ms. Eldredge said the applicant could not apply for another CC600.

Commissioner Josserand asked if the City Commission or Planning Commission could initiate a similar a review for the intersection.

Mr. McCullough said it would have to be substantially different zoning request.

Commissioner Josserand asked if a consideration that included an examination of four quadrants of an intersection be significantly different than the single quadrant of an intersection.

Mr. McCullough said staff would have to study the Development Code to determine that response. He said the southwest corner had not been annexed into the city yet.

Commissioner Josserand said without the city recreation center there the infrastructure cost may be significant. He said he would like to start the process of looking at it now.

Ms. Eldredge said the applicant was capable of making the decision of how to spend their own private money.

Mr. McCullough said the purpose of sector planning was to get ahead of development. He advised them to look very long term about the node in general and think about what the best land use pattern was. He felt the West of K-10 Plan was valid with or without the recreation center. He said they had some options. He said they could fall back on the former plan as Commissioner Burger mentioned or fall to this plan. He said they could also respond with a mix of plans. He said if they

employ the sector planning techniques, they don't have the luxury of starting with a completely blank slate because of the approved Mercato location, the church location, and the recreation center site. He said it was a challenge.

Commissioner Liese asked if they denied it would it change much since there weren't that many options.

Mr. McCullough said there were a few options but it would be a bold step to get outside the node and look at things that already had approval, like Mercato and the Links development. He said that was certainly an option but it would be moving into uncharted territory in this particular process in getting land owners that had certain approvals to now talk about a complete change of that.

Commissioner Burger said Ms. Eldredge was kind enough to point out in one of the slides a small portion of the Farmers Turnpike. Commissioner Burger said she misspoke by saying this was all they had as far as an opportunity for industrial. She said she was unfamiliar with the proximity of the Farmers Turnpike industrial acreage so there was plenty that was not developed.

Motion failed 3-4. Commissioners Belt, Britton, and Josserand voted in favor of the motion. Commissioners Burger, Culver, Liese, and von Achen voted in opposition.

Motioned by Commissioner Culver, seconded by Commissioner Liese, to approve the comprehensive plan amendment, text amendment, and rezoning previously submitted to the City and County Commissions with two uses in the rezoning of major utilities and large collections excluded.

Commissioner Liese asked what it would mean if both motions for denial and approval were voted down.

Mr. McCullough said the minutes would be sent to City Commission for review.

Ms. Eldredge asked if in the motion included language about taking the recreation center description out of the northwest corner and putting it adjacent in the northeast corner.

Commissioner Culver amended his motion, seconded by Commissioner Liese, to include the language of the recreation center not being on the subject property on the northwest corner but to its new proposed location.

Motion failed 3-4. Commissioners Culver, Liese, and von Achen voted in favor of the motion. Commissioners Belt, Britton, Burger, and Josserand voted in opposition.

Motioned by Commissioner Belt, seconded by Commissioner Burger, to deny the comprehensive plan amendment and rezoning but approve the CC600 district by means of the text amendment.

Mr. McCullough asked him to elaborate what the goal would be.

Commissioner Belt felt the CC600 district would be a valuable tool for Lawrence and he didn't want to have it delayed by procedural issues.

Mr. McCullough asked if Commissioner Belt wanted to create the framework to use CC600 but not actually used at this specific property.

Commissioner Belt said that was correct.

Commissioner Josserand said he was convinced from reading the materials and listening tonight that there was a great amount of appeal for the creation of the CC600 designation.

Commissioner Burger said everyone had worked hard and she thought it was a good tool. She didn't feel like they got to talk about the southeast quadrant very much and said there was a lot of potential there and that City Commission needed to have a discussion regarding the whole nodal plan.

Commissioner Britton said the reason he liked it was that it made something of all the good work that had been done on creation of the district and the policies that had been worked up and set out in the comprehensive plan. He felt they should solidify that progress and move forward with applying that zone to the appropriate piece of property when the time comes.

Commissioner Liese said he would vote in favor of the motion.

The Commission asked for a recap of the motion.

Mr. McCullough said it was his understanding the motion was to make revisions to create the CC600 policies in Horizon 2020, which was not tied to the recreation center, but would establish the overarching policies for it to be used. He said once policies were established in Horizon 2020 they could be used in sector plans so it was proposed to be used in the West of K-10 Plan, which included the node. He said as he understood it, the motion included denying that item, not revising but essentially falling back on the current W of K-10 Plan. He said then the text amendment was proposed to create the CC600 zoning district and that was a tool that would not go to any specific property until rezoned to it. He said the motion was to approve the text amendment and it would be employed on specific property, which would be the rezoning to the 146 acres. He said Commissioner Belt's motion was to deny the rezoning. He said as he understood it the motion was to approve Horizon 2020 revisions, deny W of K-10 revisions, approve Development Code revisions, and deny the rezoning request.

Commissioner Liese asked if everyone understood the motion.

Commissioner Josserand asked Ms. Eldredge to respond.

Ms. Eldredge said if the CC600 district was created and they took action to deny the rezoning the applicant could not use the created CC600 zoning for at least a year. Ms. Eldredge asked Planning Commission not to put the applicant in that bind.

Commissioner Liese said it would go back in the City Commissions for action.

Commissioner Burger said what she thought she was seconding was the creation of the CC600 land use category. She said she did not mean to second something that would deny specific action to the applicant.

Mr. McCullough said the packet included, for example, the designation of CC600 in Horizon 2020. He said it also included a few pages of policy statements and narrative about where it should be employed. He said typically the narrative and map were married and the map would reflect the narrative in the Chapter 6 of Horizon 2020. He said there was not language yet that reflected the motion, it would have to be created. He said if the motion passed it would go to City Commission and he would present the Planning Commission motion to them and advise them that there was not

language yet to reflect the motion. He stated if the City Commission wanted staff to prepare that language it would be brought back to City Commission for them to decide. He said he thought that was how the process would unfold. He said he interpreted Commissioner Belt's motion to be that they appreciated the fact that Horizon 2020 could include the overarching policies of a CC600 but wouldn't necessarily be shown on a map because the motion did not include designating the node as a CC600. He said the map would likely need to be revised. He said it would be kept at CC400 but build the narrative policies for the CC600. He said that was part A of the comprehensive plan amendment. He said part B would be all the revisions to the map and narrative in the W of K-10 Plan that employs the policies of Horizon 2020, Chapter 6. He said they were not ready to approve that revision yet. He stated the Horizon 2020 policies were not necessarily site specific and the text amendment was not site specific. He said the W of K-10 Plan was site specific and the rezoning was certainly site specific. He said his interpretation of the motion was to approve the non-site specific elements and deny the site specific elements.

Commissioner Liese stated Commissioner Burger's seconding of the motion was invalid because she didn't fully understand the motion.

Commissioner Britton seconded the motion.

Commissioner Liese asked if the difference from the first motion to deny was instead of denying the whole package they would only be denying the rezoning.

Mr. McCullough said it would be denying the rezoning and part of the comprehensive plan amendment that deals with the W of K-10 Plan.

Commissioner Liese asked if the rezoning would be denied if the motion passed.

Mr. McCullough said it would be a recommendation for denial. He said because there was a protest petition on the rezoning the City Commission would need a super-majority vote. He said if the protest petition did not exist, upon its return to City Commission they could act by simple majority vote.

Commissioner von Achen inquired about the implications of the motion failing.

Mr. McCullough said there was a section of the Development Code that states an application cannot be heard for a year if denied. He said the intent was not to wear out neighbors and staff with application after application. He said there had been some debate about who the applicant was and whether a change in applicant was a substantive change for that. He said the value of that was to not bring back the same application. He said a safe thing to think of as an implication was that there would be a year time frame to bring back a CC600 application.

Commissioner Burger asked if the year wait would start with Planning Commission denial or City Commission denial.

Mr. McCullough said City Commission.

Commissioner Burger asked if City Commission voted to deny the clock would start then.

Mr. McCullough said yes. He said City Commission would have to have a super-majority vote on the rezoning because of the protest petition. He said there was some debate. He said there had been a

petition of withdraw. He said staff believed there was a valid protest petition that was submitted after the original hearing which triggers the 4/5 vote by City Commission.

Ms. Eldredge said the proposed zoning amendment eliminated two uses that were not in the original zoning petition so it would be a new zoning to be considered. She said if another protest petition was filed it would require a super-majority vote. She said there would not be a super-majority requirement because it was not exactly the same zoning.

Mr. McCullough said if it comes to that staff would review and advise City Commission appropriately.

Commissioner Liese said he would vote against the motion because of the implications to the applicant of having to wait a year.

Commissioner Britton inquired about the prohibition of bringing a second zoning request. He asked if that came from a city ordinance.

Mr. Larkin said yes, there was a city ordinance.

Commissioner Britton asked if it would also prevent the City from bringing forth an application if the City wasn't the applicant here. He asked if the City Commission could reverse the ordinance to allow it.

Mr. McCullough said not without going through a text amendment process.

Commissioner von Achen suggested the motion could be restated to make things easier by approving the comprehensive plan amendment and text amendment and have the rezoning be a separate motion.

Commissioner Liese said the original assumption was that Commissioner Belt was proposing a modification to the comprehensive plan amendment by taking out the W of K-10 line and simultaneous moving for a text amendment to create CC600. He said a few of the Planning Commissioners didn't realize the rezoning was included in the motion. He asked if Commissioner Belt would consider making separate motions.

Commissioner Belt asked if he could move to approve the text amendment.

Mr. McCullough said the way it was structured they could not do the Development Code zoning district without Horizon 2020. He recommended Planning Commission take separate actions for each of the three items.

Commissioner Belt withdrew his motion.

Motioned by Commissioner Josserand to request City legal council to render an opinion to the City Commission regarding if Planning Commission or City Commission could initiate a comprehensive review of existing Planning and zoning issues at the intersection of K-10 & 6th, which would include all quadrants. Such review would include, but not limited to, considerations of the amendments to the comprehensive plan, sector plans, possible text amendments, possible zoning changes, or other documents considered by Planning Commission during their meeting of October 24, 2012. He said the intent of the motion was to allow Planning Commission to consider a wider set of issues at this intersection because of the material and significant change of the location of the proposed sports village.

Mr. Larkin asked him to clarify his motion.

Commissioner Josserand said the intent was to have City legal staff provide to the City Commission if Planning Commission could proceed on a wider perspective of that intersection.

Mr. Larkin said the City Commission would first have to make a decision on these issues and once they take final action it was a possibility. He said it would depend on what the City Commission would do with the Planning Commission's recommendation. He said there may be no need to look at the bigger picture or there may be a need to look at the bigger picture.

Commissioner Britton asked if the one year prohibition would prohibit Planning Commission from initiating the actions Commissioner Josserand discussed, which included revisions of the comprehensive plan. He asked if the Planning Commission could initiate the rezoning, not subject to the one year prohibition.

Mr. Larkin said the City was the original applicant for the rezoning so they would probably be precluded from doing that. He said he was unsure if the property owner was the applicant in this case.

Commissioner Britton said he understood the motion to mean having something in the pipeline to accomplish all these things but not subject to the one year prohibition.

Commissioner Josserand said City Commission would have several issues to examine and he was trying to let them be unaware of the one year issue. He wanted City Commission to be thoroughly briefed on what that meant.

Commissioner Britton said he was inclined to second the motion but it sounded like it was not feasible with regard to the zoning.

Mr. Larkin said it may or may not be, depending on what happens at City Commission. He said if City Commission were to deny everything and there was a blank slate, at some point in time it would come before Planning Commission again. He said if City Commission were to approve everything then it would be taken off the table and would probably not come back to Planning Commission regarding the node.

Commissioner Josserand said he did not think his motion precluded either alternative, City Commission could do what they wanted, and staff could advise if it was possible.

Mr. Larkin said if City Commission wanted Planning Commission to review the entire comprehensive plan they could ask that to be done.

Commissioner Josserand said it was the one year delay he was concerned about.

Mr. Larkin said it just related to the rezoning of this particular tract.

Commissioner Josserand asked if they could still be allowed to consider rezoning of this tract.

Mr. Larkin said there would have to be an application for rezoning.

Commissioner Josserand asked if the City Commission or Planning Commission could initiate that.

Mr. Larkin said the City was an applicant for this zoning which would preclude them from being an applicant again.

Commissioner Josserand asked if the City would be precluded from any zoning application for that quadrant in the next year.

Mr. Larkin said yes, if it was the same zoning the City would be precluded under the city ordinance. He said it may be possible if there was a substantial difference in zoning.

Commissioner Burger asked if Planning Commission had the authority to initiate the kind of discussion Commissioner Josserand was talking about.

Mr. McCullough said that was exactly what they were doing right now. He said there was an application to do a comprehensive look at the node, zoning, and the text amendments that would accommodate a sports village. He understood some of the frustration was that Planning Commission felt like they didn't have enough time to explore some of the City Commission direction to reexamine that. He said Planning Commission had a lot of discussions this evening on process, impacts, and implications. He felt the City Commission wanted Planning Commission's views on what the impacts of the recreation center moving from west to east would be, what it would mean to the node, and what would be the best land use pattern for the node. He stated that was what City Commission directed Planning Commission to do. He said they needed to get the pending set of applications decided upon and then at that point Planning Commission would have the authority to initiate amendments to the comprehensive plan, the authority to initiate text amendments to the Development Code, and the authority to initiate rezoning of a specific property. He felt they needed to focus on what the City Commission asked Planning Commission to do. He said Planning Commission may not come up with a majority consensus because they were tough items but if they answered the direct questions of City Commission, it would give City Commission the input they were asking for.

Commissioner Liese asked if Mr. McCullough was saying Commissioner Josserand's motion would be redundant.

Mr. McCullough said he was sensing the frustrating that the Planning Commission didn't have more time to explore alternatives. He believed Commissioner Josserand was asking for the ability to get this case to the City Commission, get a decision made, and begin the process over to explore, in light of the fact the recreation center would be in proximity of the node. He said that exercise was what they were in right now.

Commissioner Josserand withdrew his motion.

Motioned by Commissioner Liese, seconded by Commissioner Josserand, to establish CC600 policies in Chapter 6 of Horizon 2020, but to delete the revisions to the W of K-10 Plan.

Commissioner Culver inquired about future ramifications on the rezoning.

Mr. McCullough said it would support future rezoning with no adverse effects.

Commissioner Britton said he would support the motion to create the tool. He said he did not want the motion to be construed that he supported application of that tool to the particular property at the northwest corner of K-10.

Unanimously approved 7-0.

Motioned by Commissioner Britton, seconded by Commissioner Belt, to authorize the Chair of Planning Commission to sign Planning Commission Resolution PCR-5-4-12, and repeal the previous one.

Unanimously approved 7-0.

Motioned by Commissioner Liese, seconded by Commissioner Belt, to approve the proposed amendment TA-4-3-12 to the Land Development Code, Articles 1, 2 and 13, to provide for a CC600 (Community Commercial) District and forward to the City Commission.

Unanimously approved 7-0.

Commissioner Josserand read the following statement written by him: *'I wish to communicate to the City Commission my frustration in the ability to consider a wider set of issues associated with the intersection K-10/US 40. It is my understanding city ordinances may preclude consideration for an entire year the same zoning for the NW quadrant as before us tonight. It would be my desire that such a wider review could proceed more quickly.'*

Mr. McCullough said per State law if Planning Commission failed to deliver a recommendation, which was what they did for the two rezoning and W of K-10 items the City Commission would consider the inaction as a resubmission of the original recommendation.

Commissioner Burger said the way she voted she didn't want to vote to deny because there had been too much work done by everyone involved. She said there wasn't enough work to vote for it.

Mr. McCullough said there were three distinct applications and they took inaction on part of one of the applications and action on the text amendment to support it. He said the process was dictated by State Statute. He said the procedural element was that City Commission asked Planning Commission to look at a certain element of the application and make a recommendation or not make a recommendation. He said if Planning Commission did not take action it would be as if they were submitting their original recommendation.

Commissioner Burger invited someone on the Planning Commission to make a motion to deny the rezoning request and the nodal plan because she could not confirm what was approved previously was appropriate with the changed conditions.

Commissioner Britton felt it was important for City Commission to look at the legal issue of whether the one year prohibition would prevent the City or the applicant from initiating a new rezoning.

Motioned by Commissioner Britton, seconded by Commissioner Belt, to deny the request to rezone the northwest corner.

Commissioner Liese asked if the rezoning application was denied if no application could occur for a year.

Mr. McCullough said Planning Commission's recommendation would go to City Commission.

Commissioner Liese asked if City Commission recommended denial would it be one year before a new application could be submitted.

Mr. McCullough said that was plausible.

Commissioner Liese asked if it was accurate.

Mr. McCullough said staff believed City Commission could not initiate the same application within a year.

Commissioner Liese asked if that meant that for a full year CC600 could not be considered at that location.

Commissioner Britton said it would have to be the same applicant requesting the same zoning relative to the same piece of property. He said CC600 could be rezoned for that property if there was a new applicant or the same applicant could bring forward an application for a different zoning to the same property. He said it did not foreclose it entirely, just an avenue.

Mr. Larkin said it might make a difference if the land owner was not an applicant but it might not.

Commissioner Liese asked if the assumption was that someone other than the land owner would make that application.

Commissioner Britton said one of the things he heard from Mr. Larkin was that there was a question whether the applicant was the land owner or the City, or if they were both the applicant.

Mr. Larkin said that was correct. He said the City was definitely an applicant but that there was some issue about whether or not it was a joint application.

Ms. Eldredge said the applicant went to the City with an application that had multiple zonings. After meeting with the City and the City saying they wanted CC600 the applicant agreed, so the initial application was revised. She said the applicant's fee that was paid at the time of the first application was not refunded to the applicant. She felt the facts were pretty solid about it being a joint application and one with the applicants consent so she felt the rules applied jointly to the City and the applicant.

Commissioner Burger said she thought a lot of people worked very hard and that everybody seemed to be in agreement for the northwest and northeast quadrants. She said she would be very interested if anybody had anything to share about the southeast quadrant but that she didn't need it to vote because what she did know was that City Commission was telling Planning Commission to plan.

Commissioner Liese felt they would be potentially doing an injustice to the neighbors, applicant, and City by denying the rezoning. He felt the message was loud and clear to City Commission that Planning Commission was not ready to make a definitive choice.

Commissioner von Achen asked why they couldn't defer the rezoning.

Mr. McCullough said the process sets out that Planning Commission get the remand at their next available meeting to make their comments and recommendations and send back to City Commission. He said the value of that was so it didn't get tied up in Planning Commission.

Mr. Larkin said a deferral would be treated as the same recommendation they made previously.

Commissioner Liese felt they were making a strong recommendation to City Commission to think very very carefully about this.

Motion carried 4-3. Commissioners Belt, Britton, Burger, and Josserand voted in favor of the motion. Commissioners Culver, Liese, and von Achen voted in opposition.

MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

ADJOURN 11:45pm