



**PLANNING COMMISSION MEETING**  
**February 27 & 29, 2012**  
**Meeting Minutes**

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February 27, 2012 – 6:30 p.m.

Commissioners present: Belt, Blaser, Britton, Burger, Culver, Finkeldei, Hird, Liese, Singleton

Staff present: McCullough, Day, Larkin, A. Miller, Ewert

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**MINUTES**

Receive and amend or approve the minutes from the Planning Commission meeting of January 23 & 25, 2012.

Commissioner Belt said on page 14 under the ex parte section the name should be Matt Jones.

Commissioner Hird said his name was spelled incorrectly in a sentence.

Motioned by Commissioner Culver, seconded by Commissioner Singleton, to approve the January 23 & 25, 2012 Planning Commission minutes with the minor changes noted above.

Motion carried 6-0-2, with Commissioners Blaser and Liese abstaining. Commissioner Finkeldei was not present for the vote.

**COMMITTEE REPORTS**

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

Commissioner Blaser said the MPO met and talked about the Public Participation Plan and it was on the website now.

Commissioner Liese said there was also an MPO re-election.

Commissioner Hird said the Agritourism Committee continued to meet and the text amendment was on the Wednesday night agenda.

Mr. McCullough said Commissioners Belt and Hird attended the kick-off meeting for the Oread Overlay District. He said the consultant toured the Oread neighborhood and met with groups.

**COMMUNICATIONS**

Receive written action of any waiver requests/determinations made by the City Engineer.

- Access standards for the Library Minor Subdivision, MS-12-9-11

Motioned by Commissioner Liese, seconded by Commissioner Blaser, to receive written action of the waiver request/determination made by the City Engineer for the Library Minor Subdivision, MS-12-9-11.

Approved 8-0, with Commissioner Finkeldei not present for the vote.

**EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- Ex parte:  
Commissioner Belt said he spoke with Mr. Dan Hughes and Mr. Ted Boyle regarding the North Mass Development.

Commissioner Burger spoke with a family who lives in North Lawrence and briefly discussed the North Mass Development.

- No abstentions.

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**ITEM NO. 1A RM12D & RS7 TO RM12D; 14.52 ACRES; SOUTH & EAST OF 25<sup>TH</sup> TERR & O'CONNELL RD (SLD)**

**Z-12-37-11:** Consider a request to rezone approximately 14.52 acres from RM12D (Multi-Dwelling Residential) and RS7 (Single-Dwelling Residential) to RM12D (Multi-Dwelling Residential) and RS7 (Single-Dwelling Residential), to adjust zoning boundaries, located south and east of 25<sup>th</sup> Terrace & O'Connell Road. Submitted by Johnson Group, LLC, for Fairfield Investors, property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

**APPLICANT PRESENTATION**

Mr. Aaron Gaspers, Johnson Group, was present for questioning.

**PUBLIC HEARING**

No public comment.

**ACTION TAKEN**

Motioned by Commissioner Singleton, seconded by Commissioner Blaser, to approve the request to modify the boundary line of the RM12D and RS7 district boundary affecting 14.52 acres in the area located southeast of 25<sup>th</sup> Terrace and O'Connell Road 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. Commissioner Finkeldei was not present for the vote.

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**ITEM NO. 1B PRELIMINARY PLAT FOR FAIRFIELD FARMS EAST ADDITION 1; SOUTH & EAST OF 25<sup>TH</sup> TERR & O'CONNELL RD (SLD)**

**PP-12-15-11:** Consider a Preliminary Plat for Fairfield Farms East Addition 1, located south and east of 25<sup>th</sup> Terrace & O'Connell Road, including considerations of a waiver to install sidewalks on only one side of the street. Submitted by Johnson Group, LLC, for Fairfield Investors, property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented item 1B.

**APPLICANT PRESENTATION**

Mr. Aaron Gaspers, Johnson Group, was present for questioning.

**PUBLIC COMMENT**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Belt inquired about the recent work done with complete streets and what part that played in the discussions.

Ms. Day said there was strong support for many to require sidewalks on both sides of the street. She said a lot of planning had gone into this area specifically and that it had been platted for some time but not constructed. She said there were sidewalks on both sides of the streets for the collector and arterial streets but that the interior local street piece would be applicable to the variance.

Commissioner Blaser inquired about the statement 'if there is no sidewalk and the street is of standard width then I can go the direction I want to go anyway.' He asked if that meant someone would have to cross the street.

Ms. Day said yes, to stay on the sidewalk someone would need to cross mid-block or at the intersection.

Commissioner Blaser said a lot of work was going into Complete Streets and he felt the issue would come up again. He said in this case he would not vote to approve the variance. He found it hard to believe that section of sidewalk was the expense that would break this job. He felt sidewalks should be on both sides of the street and the City Code should be followed. He expressed concern for the safety of children and the handicapped.

Commissioner Liese said it would not hurt the discussion to know what additional cost would be associated with a sidewalk.

Ms. Day said the City Engineer did a back of the envelope calculation and it was \$4,000-6,000 per lot estimate.

Mr. Gaspers said it would be an additional \$1,000 per lot.

Commissioner Blaser asked how many lots would not have a sidewalk.

Ms. Day said she did not know off the top of her head.

Mr. Gaspers said roughly there would be a sidewalk on one side of the street. He said roughly half of the lots would not have a sidewalk in the R-O-W in front of their lot.

Commissioner Hird said he agreed with Commissioner Blaser. He said having sidewalks on both sides of the street becomes more important in a residential area. He said he might vote in favor of the plat but did not agree with the variance portion of it.

Commissioner Singleton said she lives in an older neighborhood that does not have sidewalks and she does not experience any problems with that. She said her main concern was low cost housing in Lawrence and that overweighed the issue of sidewalks on the other side of the street. She said it was not enough of an issue for her not to vote for it.

Commissioner Britton asked the applicant what the cost to the homeowner would be.

Mr. Gaspers said the number \$1,000 was re-spread out over all the lots in the subdivision.

Commissioner Britton asked what the cost to the buyer would be.

Mr. Gaspers said it would be passed on to the buyer.

Mr. McCullough said there are several subdivisions platted under the old Code, such as Doo Little Farm. He said there may be more requests that have been platted under one set of Codes who come in for replatting so this would be helpful in setting precedence for the future.

Commissioner Liese said the hardest thing about serving on Planning Commission was separating fact from emotion. He didn't know the facts supported the idea that the absence of a sidewalk would result in childhood deaths. He did not think this was a child welfare issue. He said he would support the variance because affordable housing was needed and he was not convinced that the absence of sidewalks would be a real problem.

Commissioner Belt said sidewalks on the other side of the street would be twice the safety. He said it may not be worth shortcutting just to save a little bit of money because one of the roles of the Planning Commission was public safety.

Commissioner Burger said she liked having sidewalks on both sides of the street but the traffic here would not be heavy. She said although she would like to support what Complete Streets was trying to do she did not feel in this case it was essential.

Commissioner Britton inquired about why the Code changed in 2006.

Mr. McCullough said it was probably to get toward the Complete Streets philosophy.

Commissioner Britton asked what the total cost to consumers would be.

Mr. Gaspers said he would have to talk to his client but that it would vary.

Commissioner Britton wondered what effect it would have on the ability for a consumer to afford the house. He said he lives in a neighborhood with a sidewalk on only one side of the street and he didn't think it was that big of a deal for safety or aesthetics. He did not think it seemed like that big of a burden and he was not sure it should have an exception from the Code.

Mr. McCullough said there was currently an approved plat on the books and the applicant could implement with a sidewalk on one side of the street.

Commissioner Culver said to keep the price points where they were designed to be he did not think a variance in this situation was uncalled for. He said he would support the plat.

Commissioner Hird said he had reservations about not having sidewalks on both sides of the street but would support the plat. He said given the limited circumstances the variance was justified. He stated he was hesitant to agree to not having sidewalks on future developments.

### **ACTION TAKEN**

Motioned by Commissioner Singleton, seconded by Commissioner Liese, to approve the following: Variance request from Section 20-811 which requires sidewalks on both sides of the street and allow sidewalks on one side of the subdivision streets.

Preliminary Plat of the Fairfield Farms Addition No. 2 and forwarding it to the City Commission for consideration of acceptance of easements and right-of-way and subject to the following condition:

1. Provision of a revised Preliminary Plat that states: Phasing may or may not occur in the numerical order shown. Adequate facilities for public infrastructure shall be reviewed with each final plat as the area develops and may be reflected in public improvement plan recommendations.

Motion carried 6-2, with Commissioners Belt and Blaser voting in opposition. Commissioner Finkeldei was not present for the vote.

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**ITEM NO. 2 SPECIAL USE PERMIT FOR LAWRENCE COMMUNITY SHELTER; 214 W  
10<sup>TH</sup>/944 KENTUCKY ST (SLD)**

**SUP-12-7-11:** Consider a Special Use Permit for a renewal of a temporary shelter (Lawrence Community Shelter), located at 214 West 10<sup>th</sup> /944 Kentucky Street. Submitted by Loring Henderson, for James Dunn, property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

**APPLICANT PRESENTATION**

Mr. Loring Henderson, Lawrence Community Shelter, was present for questioning.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Liese asked Mr. Henderson his thoughts about the staff recommendation to extend to the end of the year.

Mr. Henderson said he was not sure what the staff reasoning was but that December 31<sup>st</sup> was a livable margin of time and was acceptable.

**ACTION TAKEN**

Motioned by Commissioner Liese, seconded by Commissioner Blaser, to approve the renewal of the Lawrence Community Shelter Special Use Permit for the time period noted below and forwarding the request to the City Commission with a recommendation of approval and the ordinance for adoption on first reading, subject to the following conditions:

1. The Special Use Permit shall expire on December 31, 2012.
2. Provision of a note on the face of the site plan that states that the car port shall be removed by December 21, 2012 or concurrently with the vacating of the property by the Lawrence community Shelter, or plans submitted for a structure compliant with the Historic Resources guidelines.
3. Publication of an ordinance per Section 20-1306(j).

Unanimously approved 8-0. Commissioner Finkeldei was not present for the vote.

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**ITEM NO. 3 FINAL DEVELOPMENT PLAN FOR BAUER FARM PHASE 6; 4700 W 6<sup>TH</sup> ST (SLD)**

**FDP-12-5-11:** Consider a Final Development Plan for Bauer Farm Phase 6, for a 4,607 SF building for retail and restaurant uses and including a drive-thru, located at 4700 West 6<sup>th</sup> Street. Submitted by Landplan Engineering, for Free State Holdings, Inc., property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item.

**APPLICANT PRESENTATION**

Mr. Brian Strum, Landplan Engineering, was present for questioning.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Blaser asked if there was a distance requirement between the entrance and roundabout.

Ms. Day said the roundabout was considered an intersection and it was designed with a known access point.

Mr. McCullough said it was a local street versus a collector or arterial.

**ACTION TAKEN**

Motioned by Commissioner Hird, seconded by Commissioner Culver, to approve the Final Development Plan based upon the findings of fact presented in the body of the Staff Report subject to the following conditions:

1. Submission and approval of a photometric plan prior to the release of the plan for issuance of building permits.
2. Provision of a mylar and applicable recording fees.

Unanimously approved 8-0. Commissioner Finkeldei was not present for the vote.

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**ITEM NO. 4      COMPREHENSIVE PLAN AMENDMENT TO H2020 - CHP 6; NORTH MASS DEVELOPMENT (AAM)**

**CPA-11-8-11:** Consider a Comprehensive Plan Amendment to Chapter 6 of Horizon 2020 to expand the identified boundaries of Downtown Lawrence to accommodate a proposed mixed use project known as the *North Mass Development*. The request includes a proposal to exempt the proposed *North Mass Development* from the current requirement that individual stores in the Downtown Commercial Center have a maximum footprint of no more than 25,000 square feet. Proposed by Paul Werner Architects.

**STAFF PRESENTATION**

Ms. Amy Miller presented the item.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, said this was an exciting project and would be a long process. He thanked staff for their work and he agreed with the staff recommendation. He said regarding the vacancy rate it was all about timing. He said if it could get plated and rezoned this year that would be good progress. He said it took 1 ½ years for the Army Corps of Engineers to figure out where the levy was defined. He said the 25,000 sq ft was an opportunity to get it lifted. He felt it was arbitrary. He said a lot of grocery stores were 45,000 sq ft.

**PUBLIC HEARING**

Mr. Dan Hughes, Sunflower Outdoor and Bike Shop, said he was not against development along the river. He appreciated the efforts of Mr. Rick Renfro and his group to clean up and improve North Lawrence. He expressed concern about retail vacancies. He said in order to increase the pull factor of luring out of town shoppers to Lawrence there needed to be unique destinations that were not available elsewhere and provide a special experience. He said this project, as presented, did not fulfill those requirements. He said the proposal was being pitched as a compliment to downtown but he felt it was mostly a reproduction of the existing downtown. He said it would end up being a downtown A. and downtown B. He said it had the potential to further divide the retail pie to a point where nobody would operate a sustainable business. He said the one glaring addition would be allowing a 25,000+ sq ft 'big box' retailer, which had the potential to crush already established businesses downtown. He said Mr. Renfro told him he did not want a 'big box' retailer and all he wanted was a new Johnny's, some residential, possibly a movie theatre, hotel, and grocery store. He said the developer was asking for carte blanche to build anything they could. He did not feel now was the time to add more retail space. He urged Planning Commission to vote no to the Comprehensive Plan Amendment and rezonings at this time.

Mr. Rob Riley, Lawrence Jiu-Jitsu, supported what Mr. Hughes said. He expressed concern about vacancies downtown. He also expressed concern about the possibility of his business being pushed out.

Mr. Peter Zacharias, Downtown Lawrence Inc. Board of Directors, said he visited with the developers several times. He expressed concern about vacancies. He did not see how the North Mass Development could ever be part of downtown. He felt the North Mass Development would affect downtown negatively. He felt it should just be limited to residential development with moderate commercial but that was not what was proposed. He urged Planning Commission to vote against the project until there was more demand in Lawrence and less vacancies. He said he would like to see the use linked to the zoning before a decision was made.

Mr. Ted Boyle, North Lawrence Improvement Association, said this was an exciting project and felt it would be good for North Lawrence. He said regarding the vacancies mentioned by other speakers the uniqueness of the North Mass Development was the river. He felt it was about time to break the barrier of separating North Lawrence from the rest of the city. He said it would bring money to North Lawrence. He stated the stormwater would dictate what could be built there and define what could be developed. He said the developer would not be able to tie into the city stormwater project and would have to have another big pump, which could cost 5 million dollars. He felt the North Mass Development would benefit the entire community.

Mr. Kirk McClure, Old West Lawrence Association, discussed market conditions, the absence of development controls, and the process. He said Planning Commission did not have sufficient information to make a decision tonight. He stated Lawrence was horribly overbuilt and adding to it would only make the situation worse. He said the City of Lawrence allowed a retail bubble to be built from 1997-2005 and during that time period the stock of retail space grew 34%, adding 1.6 million square feet. During that time the demand for retail only grew 10%. He said the recession slowed the rate of absorption. He felt the North Mass Development, as proposed, would threaten the one unique destination shopping Lawrence has; downtown. He said new 'big boxes' on the other side of the river would not be complementary to downtown and would only compete with it. He said the developer should not be trusted to provide the market studies. He said if the market study was correct then the numbers show the city was more over built than his own numbers. He felt more should be asked of Planning staff since they were the only people who had the demand side data. He recommended the project be denied.

Mr. Chuck Magerl asked Planning Commission to look at the numbers associated with the project. He referenced Horizon 2020 where it states *'The project shall not be approved if the market study indicates the commercial project or any proposed phase cannot be absorbed into the community within three years from the date of its estimated completion, or that it would result in a community-wide retail vacancy rate of greater than eight percent.'* He said he didn't know how an estimated completion could be established to create a benchmark. He said the Land Development Code established a maximum threshold of 100 sq ft per resident to help maintain market health. He said right now the challenge was that the City was disputing the resident count with the Census Bureau. He said until there was a sense of confidence that the numbers were real, the guidelines of Horizon 2020 and the Land Development Code pose real questions about the merit of increasing additional retail and commercial development within the city. He asked them to make sure the numbers justified the idea of seeing something new and growing in the community.

#### **APPLICANT CLOSING COMMENTS**

Mr. Werner said there was no development plan in front of them and that the Comprehensive Plan Amendment was about the boundary of the downtown commercial area. He said the amount of retail and residential needed to be talked about. He said currently the land was zoned industrial. He said he was currently working on four storefronts downtown and was aware of the vacancies downtown. He said he was currently working on a 36 room addition for the Eldridge Hotel and they were not concerned about competition. He said sometimes the private sector doesn't need other people to protect them or they would be present tonight at the meeting. He said residential would probably be the first thing built for the North Mass Development. He said 'big boxes' would not want to locate there.

#### **COMMISSION DISCUSSION**

Commissioner Hird asked if staff was satisfied regarding the thoroughness and completeness of the retail market study.

Mr. McCullough said staff summarized on page 106 of the packet that the proposal does go past some of the indicators of supply and demand. He said what had changed since the indicators were established as indicators to review with any development proposal, was that staff was not seeing speculative building in the market right now, they are real projects. The economy has changed that for the most part in Lawrence. He said yes, in theory if everything was vacant, indicators would suggest that this should not be an approved project. He said the private sector was waiting for real tenants before bringing forth projects.

Commissioner Hird inquired about the limitation of 25,000 square feet on a building downtown.

Mr. McCullough said the applicant made some points regarding the dynamics of the pattern, street, ally, block, and lot size, that would be different with this development. He said there would perhaps be a little more room for a bigger project. He said staff did not want a 'big box' to compete with that market.

Commissioner Hird asked how the proposal prevented a 'big box' from competing.

Mr. McCullough said 'big boxes' were typically larger than 50,000 square feet.

Commissioner Hird asked how 'big box' was defined.

Mr. McCullough said an example of a small 'big box' would be Wal-Mart on 6<sup>th</sup> Street, which was approximately 99,000 square feet.

Commissioner Burger asked staff what the square footage of the former Borders building was.

Ms. Miller said it was roughly 20,000 square feet. She said regarding the 50,000 square feet staff was trying to accommodate the applicants proposed idea with the potential for a movie theatre.

Commissioner Hird said a grocery store was needed in North Lawrence and nobody would object to that but he was not interested in a 'big box' store on the edge of downtown.

Mr. McCullough said it would be a linear progression of approvals, starting with the umbrella policies and then getting down to the site plan and details. He said it was a unique enough area that when the zoning presentation was heard tonight they would see a recommendation for design guidelines to help guide the details of the aesthetics, physical development, ratios of residential to commercial, etc. He said there was a lot of work still to be done on the project.

Ms. Miller clarified that there was no definition of 'big box' in the Land Development Code but it is listed in the table and refers to Retail Establishment - Large, which is a store over 100,000 square feet.

Commissioner Burger referred to page 95 of packet where it states *'For Downtown Lawrence to remain economically stable and vital there is a need to expand the boundaries beyond the current configuration illustrated in the adopted Comprehensive Downtown Plan.'* She wondered if there was any history information to support that statement.

Ms. Miller said that was existing original language in the Comprehensive Plan from its conception in the mid 1990's so she could not provide history.

Commissioner Blaser said he was surprised that Downtown Lawrence Inc. sent a letter of support but then spoke in opposition tonight.

Mr. Zacharias said from the audience that Downtown Lawrence Inc. did not see the final plan until today.

Commissioner Blaser expressed concern regarding the pull factor. He said what Lawrence was doing was not working. He said the auto industry and 'big box' industry figured out that it may be better to have competition. If there is competition then it draws customers. He said Lawrence does not draw customers. He said he was not sure what the answer was. He said North Lawrence on 2<sup>nd</sup> Street was one of the entrances to the city and he was in favor of cleaning up that area. He thought the proposal was a great idea and would help downtown. He said there would be some logistics to be worked out for getting across the bridge. He said unless he heard strong arguments he would vote in favor of this because he felt something needed to be done.

Commissioner Singleton said she did not think most people were aware of the project since there were only five people present tonight. She felt that changing the boundaries of the heart of the community needed a much more comprehensive study than what they had. She said the proposal was nice but that the best waterfront property in Lawrence was now Abe and Jake's and the Marriott. She felt there would be more conversations if more people were aware of the topic. She was not comfortable changing the borders of downtown. She said the market study did not seem to be accurate with what she sees downtown. She said the economy and culture fundamentally changed with how businesses are developed and loans being granted, as a result of the collapse of the economy. She said she was not comfortable changing the boundaries of the heart of the community based on the information received tonight.

Commissioner Burger said the plan was ambitious and creative. She said the language the Comprehensive Plan included was from a mid 1990's context. She said in the mid 1990's there was somewhat of a boom. She agreed with some of the speakers this evening on a few issues. She discussed a 'new to new' type of customer that goes to the newest area. She said when the newness wears off and there's another new area there's a lot of infrastructure that everyone is invested in. She said there was the potential for locally owned businesses to suffer and perhaps not make it through that wave. She had concerns regarding environmental issues. She wondered if the project had been put forth before insurance agents to see if it would work. She was concerned this wasn't the right time for a project like this that seemed to be driven by a boom market concept. She stated the former Borders building was still empty and that Sears and Old Navy had left as well. She did not think this was the right Comprehensive Plan. She said labeling it North Mass was a nice idea but with the river it may not be the best way to do something good for North Lawrence. She said a good Comprehensive Plan would include an increase in residential to bring more people into North Lawrence before the retail component. She said a theatre was a nice idea but a grocery store was a great idea. She would like to see more change in the Comprehensive Plan to be more specific in those areas. She appreciated the creative and ambitious thinking behind the project and thanked the developers for wanting to invest in North Lawrence. She said the retail component was too critical and she agreed that they may not have the right information to be able to make a decision. She did not think that was necessarily what the Comprehensive Plan indicated with the mid 1990's content. She appreciated the public comment. She said she could not support the plan at this point.

Commissioner Liese inquired about the rationale for a Comprehensive Plan Amendment. He asked about the parameters of what the developers could do in North Lawrence without the Comprehensive Plan Amendment.

Mr. McCullough said this was not in a neighborhood plan currently. He said with the proposed mixed-use type development staff looked to the Comprehensive Plan first which says that to do that kind of development pattern you need to look at expanding downtown. He said there may have been a different avenue to take with designating it for mixed-use but it was the most efficient and best path with the fact that the applicant wanted to use the CD zoning and mixed-use nature of it. He said the proximity of this to downtown led to looking at that section of the Comprehensive Plan which already talked about a need to expand downtown.

Ms. Miller said the current sites are zoned to a multitude of zoning categories. She said in looking at the Comprehensive Plan the only thing identified in the area were some heavy commercial uses. She said there were no other categories in the Comprehensive Plan that specifically talk about this piece directly north of the Kansas River.

Commissioner Culver had some concerns with the openness of establishing a policy amendment to extend downtown. He said there were a lot of things that were exciting, promising, and opportunistic about expanding downtown into North Lawrence. He agreed with Commissioner Blaser regarding the pull factor and bringing in retail dollars, which wouldn't change if they continued to do the same thing. He thought there was opportunity with this area to follow some of the guidelines within the Comprehensive Plan which seemed to fit. He said he had some difficulty when looking at a current snapshot of some of the vacant buildings discussed this evening. He said buildings may be sitting open today but that it was just a snapshot and they needed to look ahead and start somewhere. He said if plans were not put in place and moved forward the opportunity may diminish. He said the area was an underutilized area of the community with a lot of opportunity. He felt they would be rushed to discount the amendment to the Comprehensive Plan completely and felt they should do their due diligence in looking at it as an opportunity.

Commissioner Britton said he was struggling with this one. He was exciting about the prospect of anything new. He agreed that Massachusetts Street and the historic downtown was the heart of the community and the number one priority needed to be to protecting that. He did not know if this would be a threat to that or not. He said if there was better or more comprehensive information out there then they should take it slow and know they are going in the right direction with the proper controls. He thought in general this was a great dream development to have but he did not feel like he had enough information and surety that Massachusetts Street would come out as healthy or healthier. He said he looked forward to being able to support something like this but could not support it tonight.

Commissioner Liese said he had all the confidence in the world that the businesses on Massachusetts Street would do fine with competition introduced. He said a really good development would bring in more business. He felt this project was great and he would support it 100%. He felt the pull factor would be great for Massachusetts Street. He wished Mr. Renfro and others from the community were present tonight for more input.

#### **ACTION TAKEN**

Motioned by Commissioner Liese, seconded by Commissioner Belt, to defer and direct staff to provide more information to address issues raised.

Commissioner Hird said he would vote against the motion to defer. He said Mr. McClure's comments about vacancy rates were well taken. He said it was always a difficult decision process with this type of proposal. He said it would expand boundaries of downtown to accommodate a mixed-use project that nobody knows what will look like yet. He had great reservations about the square footage limitation and whether that should be doubled for this project. He felt the people from North

Lawrence who want development in North Lawrence should be heard. He said it was an exciting proposal in terms of using the waterfront for a change as an asset to the city. He did not want to defer it because he wanted to get this in front of the City Commission so that the elected officials could weigh in and shape it.

Commissioner Liese felt the support Mr. Boyle claims existed in North Lawrence should be present at the meeting. He felt Mr. Boyle representing North Lawrence was inadequate. He wanted more input from the North Lawrence residents.

Commissioner Hird said Mr. Boyle representing the North Lawrence residents was entirely adequate and he didn't personally need ten more people saying the same thing.

Commissioner Singleton said she was not supportive of a deferral because 30 days would not necessarily give her the information she would need to vote to change the boundaries of downtown Lawrence. She said even if they vote it down that did not mean it would not be brought back. She wanted more information and a comprehensive understanding of what would be built.

Commissioner Blaser said he was not sure what kind of information Commissioner Singleton would need to be more confident. He said the Comprehensive Plan Amendment was only to extend the boundary of downtown. He said the plan was not set in stone. He said buildout would not occur until they had someone to pay the bill. He said he would like to move forward with it.

Motion failed 2-6. Commissioners Belt and Liese voted in favor of the motion. Commissioners Blaser, Britton, Burger, Culver, Hird, and Singleton voted in opposition.

Motioned by Commissioner Singleton, seconded by Commissioner Britton, to deny the Comprehensive Plan Amendment.

Commissioner Liese said he thought it was a good idea to extend the boundaries. He said as much as he loved Massachusetts Street and the business represented tonight there was something going on that was reducing the amount of pull Massachusetts Street has. He opposed the motion. He felt it was a mistake to overlook the residents of North Lawrence who want this project.

Commissioner Burger said she would vote in favor of the motion but would really like to see a project in North Lawrence with this density of residential and a grocery store. She said beyond that she would need a lot of convincing. She said it was an exciting project from a design standpoint. She hoped City Commission would give the public the opportunity to fully process this at their level.

Commissioner Hird asked if Planning Commission denies this would City Commission have to have a super majority to approve it.

Mr. McCullough said that was correct. He said City Commission's options would be to send it back to Planning Commission with further direction or override the Planning Commission decision with a 4/5 vote.

Commissioner Belt felt a lot of good could come from the project but he wanted more information and a lot more input from the public. He said downtown was currently expanding to Vermont Street and New Hampshire Street and that there was continued pressure for real estate on those streets because that's where people want to be, although that's not to say they wouldn't also be equally attracted to North Lawrence.

Commissioner Britton said he really liked the idea and wanted to be certain Massachusetts Street would be okay with assurances that the market could sustain that.

Commissioner Burger said Johnny's was a big component in the North Mass proposal and she had no objection to that.

Commissioner Hird felt it was an exciting project. He felt sending it to City Commission with a recommendation of denial would send the wrong message. He felt they should forward it to City Commission with a recommendation of approval and let the process take place at the City Commission level and then again at the Planning level for the proper platting and development of the project. He did not see what would be gained by saying no and hoping the developer would come back with a different proposal. He said he would vote against the motion.

Commissioner Liese said it looked like the vote would be an even split. He said if that was the case he would move for approval of the project.

Commissioner Blaser said he would vote against the motion and agreed with Commissioner Hird that sending it forward to City Commission with a recommendation of denial would send the wrong message since everybody was enthused about the project.

Commissioner Burger asked staff if the Comprehensive Plan Amendment was approved would it enable anybody at any level to reduce the amount of retail, or would this be giving by right the developer to do retail beyond 25,000 sq ft.

Mr. McCullough said the Comprehensive Plan Amendment only sets policy guidance in Horizon 2020. The next application would be where they would have a greater sense of control. He said the zoning would provide those uses by right, restrictions, conditions, etc. He said the Development Code requires a project be consistent with the Comprehensive Plan, which is why the amendment is required with the zoning when it's not consistent with the Comprehensive Plan. He said the Comprehensive Plan Amendment helps the zoning application to be in alignment with the Comprehensive Plan.

Commissioner Liese said in the Comprehensive Plan, Chapter 6, it states downtown Lawrence was expected to change over time. He said he viewed the Comprehensive Plan Amendment as an opportunity to preserve downtown. He did not see any data that it would detract from Massachusetts Street. He said the Comprehensive Plan Amendment would just support the concept of spreading downtown over the bridge.

Mr. McCullough said a Comprehensive Plan policy could be set as specific as they wanted.

Motion failed 4-4. Commissioners Belt, Britton, Burger, and Singleton voted in favor of the motion. Commissioners Blaser, Culver, Hird, and Liese voted in opposition.

Motioned by Commissioner Liese, seconded by Commissioner Blaser, to approve the Comprehensive Plan Amendment.

Commissioner Liese said this was just a Comprehensive Plan Amendment, not a zoning, plats, etc.

Commissioner Britton said the Comprehensive Plan was not law but was very important. He was not comfortable with this and did not support it. He said he was excited about the concept down the road if he could be assured that historic downtown Lawrence would not be negatively affected. He said he would oppose the motion.

Commissioner Burger said she would not support the motion. She said there was too much text in the document that they would be voting to send forward that she did not think had been proven. She said the project was unique and exciting but felt that by adopting the plan they would be indebted to a certain extent to approve future and pending rezonings that she did not want to be forced to vote for.

Motion failed 4-4. Commissioners Blaser, Culver, Hird, and Liese voted in favor of the motion. Commissioners Belt, Britton, Burger, and Singleton voted in opposition.

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**ITEM NO. 5A IG & CS TO CD; 1.38 ACRES; 401 & 415 N 2<sup>ND</sup> ST (SLD)**

**Z-12-29-11:** Consider a request to rezone approximately 1.38 acres from IG (General Industrial) and CS (Commercial Strip) to CD (Downtown Commercial), located at 401 & 415 North 2<sup>nd</sup> Street. Submitted by Paul Werner Architects, for Exchange Holdings LLC, property owner of record.

**ITEM NO. 5B IG TO CD; 2.14 ACRES; 0 & 100 LINCOLN ST AND 151 & 100 PERRY ST (SLD)**

**Z-12-30-11:** Consider a request to rezone approximately 2.14 acres from IG (General Industrial) to CD (Downtown Commercial), located at 0 & 100 Lincoln Street and 151 & 100 Perry Street. Submitted by Paul Werner Architects, for D&D Rentals of Lawrence, LLC, property owner of record.

**ITEM NO. 5C IG & CS TO CD; .83 ACRES; 409 & 501 N 2<sup>ND</sup> ST (SLD)**

**Z-12-32-11:** Consider a request to rezone approximately .83 acres from IG (General Industrial) and CS (Commercial Strip) to CD (Downtown Commercial), located at 409 & 501 North 2nd Street. Submitted by Paul Werner Architects, for Jeffrey Hatfield, property owner of record.

**ITEM NO. 5D OS & CS TO CD; .34 ACRES; 300, 311, & 317 N 2<sup>ND</sup> ST (SLD)**

**Z-12-33-11:** Consider a request to rezone approximately .34 acres from OS (Open Space) and CS (Commercial Strip) to CD (Downtown Commercial), located at 300, 311, & 317 North 2nd Street. Submitted by Paul Werner Architects, for Riverfront Properties of Lawrence, LLC, property owner of record.

**ITEM NO. 5E IG TO CD; 1.61 ACRES; 139 PERRY ST, 505 N 2<sup>ND</sup> ST, 141 MAPLE ST (SLD)**

**Z-12-34-11:** Consider a request to rezone approximately 1.61 acres from IG (General Industrial) to CD (Downtown Commercial), located at 139 Perry Street, 505 North 2<sup>nd</sup> Street & 141 Maple Street. Submitted by Paul Werner Architects, for HDD of Lawrence, LLC, property owner of record.

**ITEM NO. 5F IG TO CD; .55 ACRES; 133 PERRY ST (SLD)**

**Z-12-35-11:** Consider a request to rezone approximately .55 acres from IG (General Industrial) to CD (Downtown Commercial), located at 133 Perry Street. Submitted by Paul Werner Architects, for Kaw River Estates, LLC, property owner of record.

**ITEM NO. 5G IG TO CD; 1.38 ACRES; 600 N 1<sup>ST</sup> ST (SLD)**

**Z-12-36-11:** Consider a request to rezone approximately 1.38 acres from IG (General Industrial) to CD (Downtown Commercial), located at 600 North 1<sup>st</sup> Street, Block 3. Submitted by Paul Werner Architects, for Abfield Investments, property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented items 5A-5G together.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, displayed drawings on the overhead. He said the stormwater would drive the project because of the drainage underneath the levy. He said there were

some options for traffic. He said the primary mixed use was split up into three areas; primary, secondary, and tertiary. He showed a concept plan on the overhead. He said the best method for the project was the Design Guidelines.

### **PUBLIC HEARING**

Mr. Ted Boyle, North Lawrence Improvement Association, said he had been the elected president of the North Lawrence Improvement Association for 18 years. He said the neighborhood association had discussed this topic for four years and that he was elected to speak on behalf of the neighborhood. He said North Lawrence had been left behind for so many years. He said this would create jobs in North Lawrence. He thought it might also create more exposure and government funds for the Hydroelectric plants along the river. He said the North Lawrence Improvement Association endorses the project.

Mr. Kirk McClure, Old West Neighborhood Association, said the oldest principal of planning law was to plan first and zone second, not backwards. He asked them to deny this. He said there had not been any work done for what the town could absorb for hotel space. He said the applicant spoke to the Design Guidelines, which were necessary but not sufficient. He said they lacked development controls.

Mr. Dan Hughes said regarding the comment Commissioner Liese made about retail, one of the calling cards of downtown Lawrence was a mix of eclectic mom and pop type retailers who are always on the margin of not being there. He said competition does make things better but it can be the straw that breaks the camel's back. He said unless people stop buying on the internet what was the point of building more brick and mortar. He displayed a plan on the overhead. He wondered why they were chasing marginal retail dollars with huge amounts of infrastructure.

### **APPLICANT CLOSING COMMENTS**

Mr. Werner said he had been working on this for five years and the drawing that was included in the packet was one of many concept plans. He said the CD district required 55% food sales on liquor licenses. He said if someone really wanted to build a miniature Power and Light District this would be a good place to do it but that the CD district did not allow that so zoning CD provided protection. He said they were not trying to build a bunch of bars on the other side of the river.

### **COMMISSION DISCUSSION**

Commissioner Liese asked staff how advisable it was to consider the rezoning when it would contradict the Comprehensive Plan Amendment.

Mr. McCullough said staff were aligned with Mr. McClure's statement that planning should occur before zoning. He said that was why the Comprehensive Plan was on the agenda before the zoning. He said the Development Code requires alignment with the Comprehensive Plan. He said the state statute does not require alignment with the Comprehensive Plan but that the local Development Code does, but there was subjectiveness to it as well. He said when Planning Commission and City Commission are asked to judge a zoning request to the Comprehensive Plan there are different perspectives and opinions about whether or not it meets the Comprehensive Plan. He said that was why the more specific they got the harder it was sometimes to meet that specific of a plan. He said he agreed in concept that planning should occur and then zoning should occur.

Commissioner Liese said if Planning Commission approved it then it would be a contradiction of the Comprehensive Plan.

Mr. McCullough said it would. He said the staff report presumed approval because that was what the recommendation was for the Comprehensive Plan Amendment.

Commissioner Finkeldei said Planning Commission was a recommending body so even if they moved to approve the Comprehensive Plan Amendment they would still be voting on zoning without knowing if City Commission would vote for the Comprehensive Plan Amendment. He said they would be sending the Comprehensive Plan Amendment to City Commission with no recommendation. He said they could vote to send the rezonings on with no recommendation or they could vote to deny or approve it but that it would still get to the City Commission. He felt it would be a disservice to not talk about it. He said it could be different when it gets to City Commission and they vote down the Comprehensive Plan Amendment then they know their answer for the next step.

Commissioner Singleton said before they make a motion they should consider the 50,000 gross square feet. She asked if this would not be published until after there were Design Guidelines were completed.

Ms. Day said that was correct.

Commissioner Burger asked if there were Design Guidelines with Bauer Farm.

Ms. Day said that project was looked at for uses that were approved with that zoning for that development and its compliance with the Commercial Design Guidelines, for such things as the four sided architecture and pedestrian scale. She said there was not a specific set for that project.

Commissioner Burger asked if the use of Design Guidelines was a new tool.

Ms. Day said it was not new. She said it had been used for the downtown area for 10+ years. She said the implementation of the industrial and commercial Design Guidelines had been around for approximately 6 years. She said it was a tool used by many communities for many years.

Mr. McCullough said Bauer Farm was a Planned Development so they had specific ideas about such things as lot size, lot use, and building design. He said Design Guidelines better serve an area like downtown that was ever changing or an entire district like 8<sup>th</sup> & Penn.

Commissioner Finkeldei said he thought Bauer Farm was an example of a Planned Development that did not work particularly well. He said when they approved it as one big project they thought they were getting one thing and over time Bauer Farm changed several things. He said with the Design Guidelines that govern an entire area there would be a much better feel of what the end result would be. He said he supported the Design Guidelines in this proposal. He said he would support the request to rezone. He said this was an exciting area and could do a lot for the community. He said it was important to look at it in relation to downtown and North Lawrence. He said this was the start of a long process that he felt would pay off in the end.

#### **ACTION TAKEN**

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to approve the request to rezone approximately 20.36 acres, from IG (General Industrial), CS (Commercial Strip) and OS (Open Space) Districts to CD (Downtown Commercial) District based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval subject to the following conditions:

1. The maximum footprint of an individual store shall not exceed 50,000 gross square feet.

2. Due to the unique characteristics of the Downtown Commercial District (city-provided parking), current Section 20-901 (f) of the Land Development Code exempts uses in the CD district from the requirement to provide off-street parking and off-street loading spaces. One of the characteristics of the subject rezoning is that the city will not provide parking; therefore, the Downtown Commercial District of the subject request shall not have said exemption and shall instead provide parking at the code prescribed ratio for the allowed uses as outlined in the Land Development Code or as adjusted in approved design guidelines.
3. Submission and approval by the City Commission, with a recommendation by the Planning Commission, of design guidelines to address development standards as identified in the staff report.

Commissioner Finkeldei noted for the record that Planning Commission was forwarded the Comprehensive Plan Amendment to City Commission with no recommendation, which was different than what was recommended in the staff report.

Commissioner Liese said he supported Mr. McClure's statement that planning should proceed zoning. He said he would not assume that this would be against planning and violate the Comprehensive Plan. He said it would violate his own beliefs if he didn't vote in favor of the rezoning because he did not believe the area should be general industrial. He said he would support the rezonings with the complete understanding that planning comes first. He said they were making a recommendation and that should guide the City Commission to think about the Comprehensive Plan.

Commissioner Hird said he would support the motion but had hesitation on the 50,000 gross square feet for an individual store. He said if it was a grocery store or theatre he didn't think anyone would have a problem with it but he did not want to see a 'big box' store right next to downtown.

Commissioner Finkeldei said the Design Guidelines could have the square footage smaller than that.

Motion carried 5-4, with Commissioners Blaser, Culver, Finkeldei, Hird, and Liese voting in favor. Commissioners Belt, Britton, Burger, and Singleton voted in opposition.

## **MISCELLANEOUS NEW OR OLD BUSINESS**

Consideration of any other business to come before the Commission.

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**Recess at 9:53pm until 6:30pm on February 29, 2012.**

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Reconvene February 29, 2012 – 6:30 p.m.

Commissioners present: Belt, Blaser, Britton, Burger, Culver, Finkeldei, Hird, Liese, and Student  
Commissioner Cory Davis  
Staff present: McCullough, Larkin, Leininger, M. Miller, Ewert

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**BEGIN PUBLIC HEARING (FEBRUARY 29, 2012):**

**COMMUNICATIONS**

Mr. McCullough said there were no new communications.

**EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- Ex parte:  
Commissioner Britton said he received a letter from Ms. Jane Eldredge from Barber Emerson.

All the other Commissioners said they received the same letter.

Mr. McCullough said the letter was received after the deadline so it will be sent on to City Commission. He asked Commissioner Britton to summarize the letter from Ms. Eldredge.

Commissioner Britton said the letter was in favor of the Industrial Text Amendment.

- No abstentions.

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**ITEM NO. 6 FINAL PLAT FOR BAUER FARM FIFTH PLAT FOR THEATRE LAWRENCE;  
4700 BAUER FARM DR (MKM)**

**PF-12-7-11:** Consider a Final Plat for Bauer Farm Fifth Plat for Theatre Lawrence, a one-lot subdivision consisting of approximately 4 acres located at 4700 Bauer Farm Drive. Submitted by Landplan Engineering, for Free State Group, LLC, property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

**APPLICANT PRESENTATION**

Mr. Brian Sturm, Landplan Engineering, was present for questioning.

**ACTION TAKEN**

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to approve the Final Plat for the Bauer Farm 5<sup>th</sup> Plat Subdivision and forwarding it to the City Commission for acceptance of easements and rights-of-way, subject to the following conditions:

1. Provision of executed Master Street Tree Plan for recording.
2. Pinning of lots in accordance with Section 20-811(k) of the Subdivision Regulations.

Unanimously approved 8-0. Student Commission David voted in the affirmative.

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**ITEM NO. 7 TEXT AMENDMENT TO CITY OF LAWRENCE DEVELOPMENT CODE;  
INDUSTRIAL DISTRICTS (MJL)**

**TA-10-16-11:** Consider a text amendment to Chapter 20 of the City Code, Land Development Code, to review the uses of the existing industrial districts, explore creating a new district that permits uses with intensities between the IL (Limited Industrial) district and IG (General Industrial) district, review the Gas and Fuel Sales use and create a Truck Stop use which could affect commercial and industrial zoned properties. *Deferred by Planning Commission on 1/23/12.*

**STAFF PRESENTATION**

Ms. Michelle Leininger presented the item.

Commissioner Hird inquired about the thought process of not allowing certain uses in the IM district.

Ms. Leininger said in the IL district a lot of the uses were struck out and either permitted in the IM district as a Special Use or not permitted at all. She said it was the hierarchy effect that they were trying to accomplish, but that by removing other districts out of that you end up with voids in the middle.

Mr. McCullough said it fell in line with the charge to create a district that deleted the heaviest uses and some of the commercial uses. He said the definition of heavy equipment allowed more intensive uses. He said the section still followed the basic concept of removing the impactful heavy industrial uses as well as some of the commercial retail uses.

Ms. Leininger said through this process the Commission gave direction to ease up on using the Special Use Permit process.

Commissioner Liese asked if there was a car and truck sales category.

Ms. Leininger said the category of Light Equipment Repair/Sales/Rentals would include the typical every day automobile. She said the Heavy Equipment Repair/Sales/Rental would be more commercial, agricultural, large vehicle. She said the Light Equipment Repair/Sales/Rentals was more consumer oriented while the Heavy Equipment Repair/Sales/Rental was more business and large scale items that would have less traffic than a Honda Dealership, for example.

**PUBLIC HEARING**

Ms. Gwen Klingenberg, Lawrence Association of Neighborhoods, said she was excited about this. She thought some more items, such as large animal veterinary, could be added. She said truck stops were one of the big issues that neighborhoods did not want. She said neighborhoods did not have a problem with small gas stations. She appreciated truck stops would require a Special Use Permit.

Mr. Hank Booth, Lawrence Chamber of Commerce, said when the Chamber originally approached staff with a plan they could all live with he was not sure this was the direction they had in mind but that it seemed some issues had been resolved and allowed the opportunity for economic development function of creating primary jobs. He wanted to be able to offer properties that were contiguous and not constantly being interrupted with changes to the process. He thanked staff and the Planning Commission for their work.

**COMMISSION DISCUSSION**

Mr. McCullough said on page 215 of the packet, staff was charged with keeping constant the IL and IG district standards about uses permitted. He said as they add the truck stop use and remove it from the gas and fuel sales use that there was a change to a few districts. He stated any district that allows gas and fuel sales, if the definition gets amended and truck stops are removed, it would remove that use from all those districts.

Commissioner Britton inquired about the possibility of someone opening a gas station that may not be designed to accommodate the trucking industry but would have diesel sales in addition to regular car fuel sales.

Mr. McCullough said that would have to be a determination by staff when presented with that type of application in terms of what the use would be.

Commissioner Liese said Ms. Klingenberg made an important point about the concern for truck stops. He asked how truck stop got into the category. He said he would not be able to support it with it in the category.

Mr. McCullough said the exercise to divorce truck stop from gas and fuel sales and create its own category was the direction from Planning Commission. He said staff's recommendation was that it show up in the IM district as a Special Use Permit. He said it could be appropriate given the specific context of the area that it's in and size in the IM district.

Commissioner Liese asked if the Special Use was something that Planning Commission would review.

Mr. McCullough said yes.

Commissioner Finkeldei said for example, when and if the South Lawrence Trafficway was completed, there might be IM zoning on K-10 and might be a fine place for a truck stop. He said there were some areas where a truck stop in an IM district could make sense. He said the Special Use Permit was the compromise by making it difficult but allowable.

Commissioner Liese said he did not have an issue with fueling trucks. He said he thought of a truck stop as a place where truckers sleep.

Commissioner Finkeldei said the definition was 'fuel sales primarily targeted to truckers.' He said even if there wasn't a convenient store, showers, or parking, it would still be a truck stop. He said that's the advantage of the Special Use Permit, it would give control over what was allowed.

Commissioner Blaser asked if Special Use Permits were allowed even in IG would that make everyone happier.

Commissioner Finkeldei said there were some people that did not want their IG changed. He said currently truck stops were allowed in IL and IG.

Commissioner Liese asked if it was too late to think about the difference between truck stop versus truck fueling center.

Mr. McCullough said that was up to the Planning Commission. He said staff could draft language.

Commissioner Finkeldei said that if there was a Special Use Permit and someone proposed a large truck stop Planning Commission could say no to that with the Special Use Permit.

Mr. McCullough said the Special Use Permit could be tailored to be specific of the site.

Commissioner Liese said he was not interested in defining the final term of truck stop but something more like a truck refueling site.

Commissioner Finkeldei asked if he was thinking that in an IM district a truck refueling center would be allowed but not a truck stop.

Commissioner Liese said 'stop' implies overnight.

Commissioner Hird did not feel creating yet another definition was necessary because with the Special Use Permitting process you could control all the elements. He said if they wanted it to only be a fueling center that could be approved with a Special Use Permit. He said to categorically say it should not be allowed in an IM district was a mistake because it might fit there.

Mr. McCullough said he thought Commissioner Liese was saying revise truck stop to truck fueling center and revise the element of the definition to exclude the overnight stay of trucks.

Commissioner Liese asked Ms. Klingenberg about her thoughts on the distinction between truck stop versus truck fueling center.

Ms. Klingenberg said the issue was the amount of trucks and the problems that could come with it, such as theft. She said a truck place where they could get gas and leave was a fuel stop, not a large truck station where they stay. She said the issue was not the fuel part, it was the actual truck stop. She said this would be a new use and it was important that the development community know what they have access to. She said a cleaner more precise definition of what they want would be better for everyone.

Commissioner Liese said he would not be in favor of a Special Use Permit, particularly in an IM district.

Commissioner Burger asked if passing this as is would make any existing properties non-compliant.

Ms. Leininger said there were currently no IM districts and that Lawrence did not currently have any truck stops.

Commissioner Burger said a lot of these different uses in the new district were expansive asphalt type of facilities. She asked how the class I and II soils played into this.

Ms. Leininger said in Lawrence that typically does not come into play. She said the Code outlines the amount of impervious surface on a lot and the amount of green space and landscaping.

Mr. McCullough said the concentration of class I and II soils was in Grant Township.

Commissioner Burger asked if any existing IG in the Northeast Sector Plan would be permitted to become a truck stop.

Mr. McCullough said yes.

Commissioner Finkeldei said just because the plan says it might be IG one day in the future it doesn't have that right until rezoned and annexed into the city.

Commissioner Britton asked if under the current definition of gasoline and fuel sales a truck stop would be allowed.

Mr. McCullough said yes.

Commissioner Britton asked if a property was currently zoned IG could it have a truck stop.

Mr. McCullough said yes.

Commissioner Britton asked if they wanted to leave that use in IG they would have to leave a truck stop use and create a truck refueling center use that would be permitted in IM but not permitted anywhere else.

Mr. McCullough said if they wanted to keep it as a permitted use in IG. He said it was permitted in other districts, not just IG. He said it would affect all the commercial districts and the IL district. He said one way to do it was to modify gas and fuel sales to get truck stop out, create a truck stop use that puts it all back in the commercial and industrial districts, and then create a truck fueling center use for the IM district.

Commissioner Britton said he generally agreed with Commissioners Hird and Finkeldei that the Special Use Permit gave the ability to make sure a truck stop was appropriate for a particular location. He was comfortable with it giving the appropriate controls. He said if they wanted to go through the process of creating another new definition for a truck refueling center he did not necessarily have any opposition to that, but felt it was unnecessary.

Commissioner Blaser agreed the Special Use Permit covered it. He felt a truck stop might be appropriate in some areas.

Commissioner Finkeldei suggested instead of creating a third category maybe they could define truck stop to say 'a fuel dispensing facility designed primarily to accommodate the overnight parking of trucks' and in the definition of fuel sales say 'the retail sale from the premises of vehicular and truck fuel.'

Commissioner Liese said he would support that suggestion.

Commissioner Hird felt it could create a situation where trying to stop one use may inadvertently create a ripple effect. He said if a truck stop required a Special Use Permit in the IM district there may be situations where a truck stop was necessary or advisable for a particular location in the IM district. He felt the Special Use Permit allowed proper protections and flexibility. He felt they were making this unnecessarily complicated. He was not in favor of removing truck stop from the IM district. He said they should not assume that all truck stops would have 1,700 trucks a day.

Commissioner Culver agreed with Commissioner Hird. He felt the Special Use Permit was an appropriate tool to use sparingly and would allow flexibility and control to protect the various stakeholders that might be involved with a specific application.

Commissioner Belt said the current Text Amendment was much easier to understand compared to previous versions. He felt there were sufficient restrictions that would allow adjustments to plans. He thanked staff for their work.

Commissioner Burger agreed with Commissioner Belt that the Text Amendment was more efficient and clear. She felt it took care of the people currently in IG. She felt there may be locations where a truck stop may be a benefit to the community. She thought a Special Use Permit in the IM district gave protection to the neighborhoods. She said she would support it as is.

**ACTION TAKEN**

Motioned by Commissioner Blaser, seconded by Commissioner Finkeldei, to approve the proposed amendments, TA-10-16-11, to the Land Development Code and forwarding to the City Commission.

Motion carried 7-1, with Commissioner Liese voting in opposition. Student Commissioner Davis voted in the affirmative.

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**ITEM NO. 8A ANNEXATION; .34 ACRES; PUMP STATION 35 (MKM)**

**A-12-6-11:** Consider annexation of approximately .34 acres located east of intersection of N Michigan Street and Riverridge Road to accommodate a sanitary sewer pump station. Submitted by the City of Lawrence, property owner of record.

**ITEM NO. 8B A TO OS-FP; .34 ACRES; PUMP STATION 35 (MKM)**

**Z-12-31-11:** Consider a request to rezone approximately .34 acres located east of intersection of N Michigan Street and Riverridge Road from County A (Agricultural) to OS-FP (Open Space with Floodplain Management Regulations Overlay) District to accommodate a sanitary sewer pump station. Submitted by the City of Lawrence, property owner of record.

**ITEM NO. 8C PRELIMINARY PLAT FOR PUMP STATION 35 (MKM)**

**PP-12-13-11:** Consider a Preliminary Plat for Pump Station No. 35, a one-lot subdivision of approximately .34 acres, located east of intersection of N Michigan Street and Riverridge Road and a variance from Section 20-810(b) of the Subdivision Regulations to permit the creation of a lot without frontage on a public street or road. Submitted by the City of Lawrence, property owner of record.

**ITEM NO. 8D SPECIAL USE PERMIT FOR PUMP STATION 35 (MKM)**

**SUP-12-6-11:** Consider a Special Use Permit for Pump Station No. 35, a *minor utility*, located east of intersection of N Michigan Street and Riverridge Road. Submitted by the City of Lawrence, property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented items 8A-8D together.

**PUBLIC HEARING**

Mr. David Lee, Professional Engineering Consultants, said he was working with the City Utility Department to replace several pump stations in Lawrence. He agreed with the staff report and was present for questioning.

**COMMISSION DISCUSSION**

Commissioner Liese thanked staff for their work.

**ACTION TAKEN on Item 8A**

Motioned by Commissioner Liese, seconded by Commissioner Britton, to approve the requested annexation of approximately .34 acres, located east of the intersection of North Michigan Street and Riverridge Road.

Unanimously approved 8-0. Student Commissioner Davis voted in favor.

**ACTION TAKEN on Item 8B**

Motioned by Commissioner Liese, seconded by Commissioner Culver, to approve the rezoning request for approximately .34 acres from A (Agriculture) District to OS-FP (Open Space with Floodplain Management Regulations Overlay) 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 8-0. Student Commissioner Davis voted in favor.

**ACTION TAKEN on Item 8C**

Motioned by Commissioner Liese, seconded by Commissioner Britton, to approve the Preliminary Plat for Pump Station No. 35, a one-lot subdivision of approximately .34 acres, located east of intersection of N Michigan Street and Riverridge Road and a variance from Section 20-810(b) of the Subdivision Regulations to permit the creation of a lot without frontage on a public street or road. Submitted by the City of Lawrence, property owner of record.

Unanimously approved 8-0. Student Commissioner Davis voted in favor.

**ACTION TAKEN on Item 8D**

Motioned by Commissioner Liese, seconded by Commissioner Blaser, to approve the Special Use Permit (SUP-12-6-11) for Pump Station 35, a minor utility, based upon the findings presented in the body of the staff report and subject to the following condition:

1. Applicant shall provide a revised site plan with the following changes:
  - a. Addition of a note that the Planning Director granted a waiver from surfacing requirements in Section 20-913(e) to allow the use of aggregate surfacing material for the drive due to the location within the Floodplain Management Regulations Overlay District and limited anticipated use.

Commissioner Burger said in the packet there was a letter from a resident in the neighborhood that lived quite a bit to the north and west of the property so in her opinion, from the Special Use Permit standpoint, it was remote enough from their property to have any adverse impact on the property value.

Unanimously approved 8-0. Student Commissioner Davis voted in favor.

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**ITEM NO. 9A                    VARIANCE FOR PUMP STATION 37 (MKM)**

Variance associated with Minor Subdivision for Sunflower Addition No. 2 (MS-2-1-12), from the sidewalk requirement in Section 20-811(c)(1)(i) of the Subdivision Regulations, and from the right-of-way requirement in Section 20-810(e)(5). Submitted by the City of Lawrence, property owner of record.

**ITEM NO. 9B                    SPECIAL USE PERMIT FOR PUMP STATION 37 (MKM)**

**SUP-12-8-11:** Consider a Special Use Permit for Pump Station 37, a *minor utility*, located at 2100 E 15<sup>th</sup> Street. Submitted by the City of Lawrence, property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented items 9A-9B together.

**PUBLIC HEARING**

Mr. David Lee, Professional Engineering Consultants, said he was working with the City Utility Department to replace several pump stations in Lawrence. He agreed with the staff report and was present for questioning.

Mr. Ron Helmick said he owned property to the north of the pump station and he wondered about screening.

Ms. Miller said they would be moving some of the trees along 15<sup>th</sup> Street for the water line and storm sewer line. The plan was to leave enough to provide screening so the only thing that would be needed was screening for the meter board.

Mr. Helmick asked what kind of water line it would be.

Ms. Miller said a city water line.

Mr. Helmick said he was trying to establish native grassland on the north side.

Ms. Miller said the water line would go to 15<sup>th</sup> Street but would not cross the centerline so there should be no disturbance to the north side.

**ACTION TAKEN on Item 9A**

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to approve the variance requested from Section 20-811(c) to defer the installation of a sidewalk or bicycle/recreation path along E 15<sup>th</sup> Street until such time as future development has occurred in the area and E 15<sup>th</sup> Street has been improved to City standards.

Unanimously approved 8-0. Student Commissioner Davis voted in favor.

**ACTION TAKEN on Item 9B**

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to approve the Special Use Permit, SUP-12-8-11, for Pump Station 37 based upon the findings presented in the body of the staff report and subject to the following conditions:

1. Applicant shall provide a revised site plan with the following changes:
  - a. Note the dimensions of the meter board (control panel).

- b. If the Planning Commission approves the variance from the requirement in Section 20-810(c) to install sidewalks a note to that effect shall be added to the SUP plan, along with any conditions imposed on the variance by the Planning Commission. If the waiver is not approved the site plan shall be revised to show the sidewalk.
- c. Addition of a note that the Planning Director granted a waiver from Section 20-913(e) to allow an aggregate surface for the access drive.

Unanimously approved 8-0. Student Commissioner Davis voted in favor.

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**ITEM NO. 10 TEXT AMENDMENT TO THE DOUGLAS COUNTY ZONING REGULATIONS;  
AGRITOURISM (MKM)**

**TA-8-11-11:** Consider a Text Amendment to the Douglas County Zoning Regulations for the Unincorporated Territory of Douglas County to establish *Agritourism* as a use in the County A (Agriculture) District.

**STAFF PRESENTATION**

Ms. Mary Miller presented item 10.

**PUBLIC HEARING**

Mr. Hank Booth, Lawrence Chamber of Commerce, thanked staff and the committee for their work. He felt like it was a solid document.

Ms. Natalya Lowther, Pinwheel Farms, said she was impressed with how the regulations had been clarified and consolidated. She thought it might be helpful to include a definition or criteria for what a working farm or ranch was. She suggested that an elected board, such as Planning Commission, determine if a use was actually agritourism instead of being determined by one individual. She wondered if regarding the structure and building codes maybe the county could take some of the responsibility with that.

**COMMISSION DISCUSSION**

Commissioner Hird thanked Ms. Lowther for her letter. He said there were some tradeoffs in the document and nobody got entirely everything they wanted in the process. He said one of the major things was that they included in 12-319-7.01b was an addition to the state definition that says '*In order to be considered an agritourism use under these Regulations, the activity must occur on a working farm or ranch or other agricultural land.*' He said that was not a requirement of the state statute and it was not something he was personally in favor of but that there were some members of the committee that felt it should be included. He said all of this was in the agricultural district and he felt it was unnecessary. He gave an example of an agritourism use that was recognized by the state, a bed and breakfast on the edge of the Flint Hills. He said guests can take hikes into the Flint Hills but that the bed and breakfast was not on a working farm or ranch but it was an agritourism use that drew people to the area. He said regarding 12-319-7.03 on Structures and Building Codes the committee was all over the place in discussions. He said some that felt agricultural buildings should be exempt completely. He gave the example of a winery tasting room that was allowed to be built by right without any registration process. He said if it was an agricultural building it did not have to comply with the Code for things such as sprinkler systems, egress, and ingress. He said it was an exempt agricultural building. He said the minute the winery sells a wine glass or t-shirt it becomes ancillary sales that draws the whole thing within the umbrella of Building Codes. He did not feel that made sense that the sale of a wine opener should somehow make the entire use subject to a set of Codes that did not apply if they just sold wine. He said they needed to meet middle ground on it. He said the Maryland statute that staff found had language about exemptions which was okay. He said if they had to comply with Building Code there had to be two ingress and egress doors. He said that many morton buildings only had one side entrance door, one window, and a big sliding door. He said the entrance door would count as ingress and egress but the 15' wide sliding door wouldn't count because it slides instead of opening out and doesn't have panic hardware. He said anyone with that type of building would have to supply a second egress door in order to have kids come in to watch them milk cows. He felt that a sliding barn door should count as an ingress and egress point. He felt they could do some fine tuning of the Building Code. He said a sliding barn door ought to be enough to get people in and out. He referenced the exceptions in 12-319-7.03

Structures and Building Codes that state '*Occupies only levels of the building with two ground-level points of ingress and egress.*' He did not have a problem with that if a barn door was considered one of those doors. He said regarding the exception '*Occupancy does not exceed 50 people at any one time.*' he thought that number was taking out of thin air because that's what was in the Maryland statute. He thought they may want to thoroughly discuss that. He said regarding the exception '*The use does not include overnight stays or the addition of a kitchen.*' it was fine but he thought there could be structures that had catering kitchens that were not full kitchens. He said he would like to see Planning Commission give direction and send back to the committee for one more final look at it.

Commissioner Finkeldei said some of the comments at the Mid-Month meeting were focused on the balancing between encouraging agritourism versus protecting neighbors. He asked if the committee had discussions regarding that.

Commissioner Hird said that was a topic of discussion for well over a year. He said there was currently a sound/nuisance ordinance that would protect neighbors from each other. He said they elected not to add additional requirements since the point of this was to facilitate agritourism.

Commissioner Liese referenced a business named Art's Mexican Products that makes salsa and other foods out of an apartment that qualified as an agritourism use. He wondered how they would protect agritourism from people who would take advantage of it.

Commissioner Hird said if Art's Mexican Products was located in the agricultural district of Douglas County then they would fall under this text amendment. He said the problem with Art's Mexican Products was that it was located on Southwest Boulevard in Kansas City, KS with no connection to agritourism. He said the text amendment would only apply in the agri-district to begin with.

Commissioner Liese inquired about putting agritourism in other districts.

Commissioner Hird said he had not given any thought to doing that.

Ms. Miller said staff did think about that at first but there weren't many other districts where it would apply. She said they decided agriculture seemed like the one district it would fit in.

Commissioner Britton asked Commissioner Hird if he would like Planning Commission to recommend the removal of the extra local definition of agritourism.

Commissioner Hird said that would be his preference.

Commissioner Britton said maybe the reason the local definition was proposed was to prevent someone who had a house on land zoned agricultural from qualifying for this promotion, and to restrict it to folks who were actually using the land for agricultural purposes.

Commissioner Hird said it would need to be tied to a use and fall within the definition.

Commissioner Burger said this was a program that was trying to promote people to use their land in a different way and she did not want to create criteria that would have to be met before they would qualify when they were trying to encourage them to develop something new. She said she would support the elimination of the criteria in 12-319-7.01b.

Commissioner Culver said he would also support eliminating that bullet point b because it may be more prohibitive than promoting of agritourism.

Commissioner Britton asked if the committee discussed conservation as a goal.

Commissioner Hird said they talked about it in the context of keeping people out on the land. He said someone could have the most beautiful spot in Kansas but if they can't use it in such a fashion to make money chances are it would be difficult to stay.

Ms. Miller said they were trying to balance a lot of different things and it depended on how you looked at it. She said when you look at some of the State uses there was someone who had a four wheel drive truck rally who held races on their land. She said it did not help a farm and people weren't really benefiting from the rural experience so that was why they tried to link it to agriculture in some way.

Commissioner Finkeldei said the fundamental question was what they were trying to accomplish with the Text Amendment. He said if they could agree with what they were trying to accomplish with the Text Amendment then the answer becomes easier. He said if their goal was to promote agritourism in Douglas County then they need to take out bullet point b. He said adding bullet point b and adding in some of the things in 703 were all about trying to make that balance a little different. He said it depended where you fell on that spectrum on how much additional regulation you put in there. He said he agreed with Commissioner Hird and would rather have a Code that encourages agritourism but if they discover people abusing it they will have to change the Code.

Commissioner Blaser agreed that a sliding barn door should count as an ingress and egress point.

Commissioner Liese suggested working on the language regarding ingress and egress points.

#### **ACTION TAKEN**

Motioned by Commissioner Liese, seconded by Commissioner Britton, to defer Text Amendment (TA-8-11-11) to consider 12-319-7.03 on Structures and Building Codes, the registration approval process of 12-319-7.01b, and the definition of working farm or ranch

Commissioner Britton said he would like to see subpart b removed but would also like to work in some other control so that locally they could have an opt out.

Mr. McCullough referenced language in 12-319-7.02 that says '*After the use has been registered with the State, a copy of the Agritourism Promotion Act Registration Form shall be provided to the Douglas County Zoning and Codes Office to register the agritourism use with the County.*'

Motion carried 8-0. Student Commissioner Davis voted in the affirmative.

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**MISCELLANEOUS NEW OR OLD BUSINESS**

**MISC NO. 1**

Extension request for PP-10-5-09, a revised Preliminary Plat for lots 7,8 and 9 Block Four and Lots 2, 3, and 4, Block Seven as shown on the approved Preliminary Plat for Mercato dated 4/26/06. (MKM)

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

**APPLICANT PRESENTATION**

Ms. Jane Eldredge, Barber Emerson, was present for questioning.

**ACTION TAKEN**

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to approve the extension request for Preliminary Plat, PP-10-5-09.

Unanimously approved 8-0. Student Commissioner Davis voted in favor.

Consideration of any other business to come before the Commission.

Mr. McCullough said regarding the Aspen Heights development they accepted a design fully in the public right-of-way with the input of the Home Depot manager that would discourage turns into Home Depot from the North from Aspen Heights.

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**ADJOURN 9:00pm**