



PLANNING COMMISSION MEETING
April 23, 2012
Meeting Minutes

April 23, 2012 – 6:30 p.m.

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

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

MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of March 26, 2012.

Motioned by Commissioner Liese, seconded by Commissioner Finkeldei, to approve the March 26, 2012 Planning Commission minutes.

Motion carried 8-0-1, with Commissioner von Achen abstaining.

COMMITTEE REPORTS

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

Commissioner Blaser said the Metropolitan Planning Organization (MPO) met last week and approved the Transportation Improvement Plan (TIP). He said they also discussed the K-10/US-40 interchange.

Commissioner Hird said the Agritourism Committee met and discussed the Special Event Text Amendment on the agenda tonight.

EX PARTE / ABSTENTIONS / DEFERRAL REQUEST

- Ex parte:
Commissioner Liese said Mr. Ted Boyle visited his shop and shared material to him regarding flooding in North Lawrence. He said it was information that the Planning Commission had already seen.

Commissioner Burger said while traveling back from the American Planning Association conference she met the Planning Director of Johnson County who was previously involved with a lot of Lawrence issues. She said he shared information with her regarding the flooding of North Lawrence near the levy in 1993. She said he also explained the importance and origination of the Golden Factors that were included in staff reports.

Commissioner Belt said he had a conversation with Mr. Ted Boyle about item 5 on the agenda, a variance for North Lawrence Addition No. 17.

- No abstentions.

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Recess LDCMPC

Convene Joint Meeting with Eudora Planning Commission

**ITEM NO. 1 CONDITIONAL USE PERMIT FOR TWIN OAKS GOLF COURSE; 1326 E
1900 RD (MKM)**

CUP-2-1-12: Consider a Conditional Use Permit to allow wine tasting and sales at Twin Oaks Golf Course, located at 1326 East 1900 Road. Submitted by Pep Selvan, for JF Burey, property owner of record. *Joint meeting with Eudora Planning Commission.*

STAFF REPORT

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. Pep Selvan, BlueJacket Crossing Vineyard & Winery, said he was trying to help the owner of Twin Oaks Golf Course rejuvenate his business by encouraging more traffic from the K-10 corridor. He also said Twin Oaks would allow BlueJacket to use their parking lot to shuttle people to events at BlueJacket, which would reduce traffic to the winery. He said there was compatibility for each of their needs.

PUBLIC HEARING

Ms. Diane Menzie, volunteer at BlueJacket, was in favor of the Conditional Use Permit.

COMMISSION DISCUSSION

Eudora Planning Commissioners Kurt von Achen, Glenn Bartlett, Grant Martin, and Richard Campbell were present.

ACTION TAKEN by Eudora Planning Commission

Motioned by Eudora Commissioner Campbell, seconded by Eudora Commissioner Martin, to approve the Conditional Use Permit.

Unanimously approved 4-0.

ACTION TAKEN by Lawrence Planning Commission

Motioned by Commissioner von Achen, seconded by Commissioner Blaser, to approve the Conditional Use Permit for the addition of a wine tasting area subject to the following conditions:

- 1) The provision of a revised floor plan with the following changes:
 - a. Addition of a note that the CUP permit may be released after the applicant has obtained the necessary State license for the wine tasting room.
 - b. Addition of a note that states that this CUP approves a wine tasting area with sales for off-site consumption. Sales of alcohol for on-site consumption would require rezoning to an appropriate zoning district.
 - c. The square footage of the area to be used for retail sales should be noted on the plan.
- 2) Parking shall be provided on surfaced parking area shown on approved CUP site plan. Additional parking would require the submittal of a revised site plan for the Golf Course CUP.
- 3) Compliance with Douglas County Building Codes as determined necessary by the Director of Zoning and Codes prior to the release of the Conditional Use Permit.

Unanimously approved 9-0.

**Adjourn Joint Meeting
Reconvene LDCMPC**

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ITEM NO. 2 ANNEXATION OF 146 ACRES; NW CORNER W 6TH ST & K-10 (MKM)

A-3-1-12: Consider annexation of approximately 146 acres plus adjacent public right-of-way of property at the northwest corner of W. 6th Street (US-40) and K-10. *Initiated by City Commission on 3/27/12.*

STAFF REPORT

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Ms. Jane Eldredge, Barber Emerson, said the City was the applicant and she represented the property owner who consented to the annexation.

Mr. McCullough said the City Commission initiated the annexation with the consent of the property owner.

Commissioner Hird asked if the property owner had anything to add to what the applicant stated.

Ms. Eldredge said no.

PUBLIC COMMENT

Mr. Ron Schneider, attorney representing property owners in the area, said Thursday night they met with the City Manager and Planning staff for a presentation on the proposed annexation and related concepts regarding potential zoning and uses. He said neighbors were not necessarily opposed to the annexation but wanted to make sure issues, such as lighting, traffic flow, stormwater runoff, sound, buffering were addressed. He stated letters had been written by neighbors with concerns and suggestions. He was optimistic concerns could be worked out if the City and developer responds to those concerns.

Mr. Ron Crawford, nearby property owner, said they had a rare opportunity to do this development right. He challenged Planning Commission do to it right with quality and make it a signature for Lawrence.

Mr. Scott Robinson, nearby property owner, said the land being donated to the City hit him wrong because he felt strings should not be attached to a donation. He felt there was something wrong with the whole thing. He said if it was a donation then it should be donated without the contingency that the City should spend money on the rest of the land that the donor would benefit from. He said he would like to see some figures of what the City would spend in order to acquire the donation.

COMMISSION DISCUSSION

Commissioner von Achen inquired about the public/private cooperative plan.

Mr. McCullough said the details of the recreation center program were not solid yet so the public/private part of that was that it was looking like it would be elements of the City Parks & Recreation programming in a building that could have private elements to it. He said along with the land use process and approvals necessary to accommodate it there would be a number of different ways that City Commission and other bodies could make decisions about the details of how that public/private partnership would look for the project.

Commissioner von Achen asked if the 50 acres for the recreation center was on the north end of property.

Mr. McCullough said that was correct. He said there had been discussions about a feasibility study and the City was likely to commission a study to help address some of those things. He said there was quite a bit to analyze about the merits of the proposal. He said the area had been planned for urbanization and that annexation would be prudent to serve the property. He said the area had been in the works for a number of years to develop into some sort of urban intensity and development.

Commissioner Burger inquired about the nodal plan setting aside a significant portion of acres to be open space.

Mr. McCullough thanked neighbors for their time last week and said it was a productive meeting. He said one of the concerns was the transition between the Northwood Subdivision to the north and the new proposed facility. He said he did not have detailed answers because the site planning process was not underway yet. He said the neighbors were asked to participate in addressing that. He said it could take different forms such as berming, intense landscaping, and distance.

Commissioner Burger asked if there would be findings of fact that would deal with the fact that the nodal plan has the characteristics that it has.

Mr. McCullough said that was correct. He said they were not trying to ignore what the nodal plan was saying to do at that location. He said the City was cognizant of the fact that the transition between the recreation center and the neighborhood to the north needed to be addressed.

Commissioner Blaser asked if changes to Hwy 40 were discussed at the neighborhood meeting.

Mr. McCullough said it was discussed a little. He said there were recommended changes to Hwy 40 as urbanization was made in the area. He said they talked a little bit about the frontage road which was planned regardless of how this land develops. He said the frontage road needed to be moved away from the interchange of K-10 and US-40 for reasons having to do more with the interchange itself and not how the land develops.

Commissioner Blaser said flattening the hills on Hwy 40 would improve a dangerous situation.

Mr. McCullough said it was planned to be a signalized intersection and at least a seven foot reduction in the hill.

Commissioner Blaser said there would be some major improvements to create a safe route.

Commissioner Liese said he appreciated the participation of the community in the annexation. He asked staff what criteria Planning Commission should look at for approval or non-approval of the annexation.

Mr. McCullough said they should think about if services were reasonably available to extend to the site and has the area been planned to urbanize at some level and has property owner consent. He said development was a linear process with annexation being the first step, then rezoning, platting, and site planning. He said while they need to know the full breadth of the proposal, each part of the proposal would have its own set of analysis and findings to make sure each part of the process was appropriate for the criteria. He said staff finds that it meets the policies of Horizon 2020 for annexation.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Blaser, to approve the requested annexation (A-3-1-12) of approximately 146 acres plus adjacent right-of-way located in the northwest quadrant of the intersection of US Hwy 40 and K-10 Bypass subject to the following condition:

1. City shall comply with state law requirements in relation to Rural Water District No. 1 pursuant to K.S.A 12-527.

Commissioner Finkeldei said he did not like a condition that says they will comply with the law but that he would vote in favor of the motion.

Commissioner Hird said he appreciated the concerns of property owners in the area and hoped this process gave them the information and access they needed to effectively participate. He hoped the neighbors concerns would be addressed as the process moved forward and hoped it turned out to be a win-win situation for the neighborhood and community.

Unanimously approved 9-0.

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ITEM NO. 3 INVERNESS PARK DISTRICT PLAN (DDW)

CPA-2-1-12: Consider revisions to the Inverness Park District Plan. *Initiated by City Commission on 1/17/12. Deferred by Planning Commission on 3/26/12.*

STAFF REPORT

Mr. Dan Warner presented the item.

PUBLIC HEARING

Ms. Candace Cobb, representing Inverness neighborhood, said they recommending the map stay the same as it was before. She said the owner built the max on the acreage and it was up to the owner to maintain the additional five acres. She said changing the map could be confusing for people who look at it. She said it was built medium density and needed to stay that way.

COMMISSION DISCUSSION

Commissioner Britton asked staff about the League of Women Voters letter about whether they should be concerned about fixing someone else's mistake and incentivizing builders. He asked when Remington Square was originally developed what the plan showed for future zoning.

Mr. McCullough said it showed as undeveloped open space.

Commissioner Britton asked about any plans that showed what the zoning would be in the future.

Mr. McCullough said it was low density, then zoned to RSO, and then rezoned to the current zoning RM15.

Commissioner Britton asked if there was any indication at that time that this would be zoned high density residential.

Mr. McCullough said no.

Commissioner Finkeldei said leaving the map to show medium density went a long way to help show the intent. He said there was an adopted plan that said one thing and City Commission directed Planning Commission to make an amendment to use the undeveloped portion of the property to be future non-residential use. He said the neighbors did not want it to be used for anything in the future. He said City Commission directed the plan to say something and Planning Commission was trying to come up with the best way to say it so it could go back to them for approval. He felt the change improved the language and accomplished the intent of City Commission. He said they had done the best they could do in following City Commission direction.

Commissioner Britton thought the concern about incentivizing or fixing someone's mistake was a legitimate one. He felt the property should be developed in some way and this was a way to least negatively affect the neighbors. He said he echoed Commissioner Finkeldei's comments about the language improvements and what they were trying to accomplish from the direction of City Commission. He said he would support the amendment.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Culver, to approve the comprehensive plan amendment (CPA-2-1-12) to *Horizon 2020* by amending Chapter 14 – Inverness Park District Plan – to revise the Inverness Park District Plan for the City of Lawrence and

unincorporated Douglas County and recommends forwarding this comprehensive plan amendment to the Lawrence City Commission and the Douglas County Board of County Commissioners with a recommendation for approval.

Commissioner Hird thanked staff for their work. He said having City Commission direct something for them to consider helped improve the focus He agreed with Commissioner Finkeldei's comments and said he would support the motion.

Unanimously approved 9-0.

Motioned by Commissioner Finkeldei, seconded by Commissioner Culver, to approve and sign Planning Commission Resolution 3-2-12.

Unanimously approved 9-0.

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ITEM NO. 4 NORTHEAST SECTOR PLAN (DDW)

CPA-6-5-09: Reconsider Comprehensive Plan Amendment to Horizon 2020 – Chapter 14 to include the Northeast Sector Plan. *Approved by Planning Commission 5-4 on 9/20/10. Referred to Planning Commission by the Board of County Commission and City Commission for consideration of specific issues. Deferred by Planning Commission on 1/23/12.*

STAFF REPORT

Mr. Dan Warner presented the item.

PUBLIC HEARING

Ms. Barbara Clark, Citizens for Responsible Planning, said they were in favor of option 3. She stated there were numerous other choices available for industrial development in the county, far better suited than development in the northeast sector. She expressed concern for public safety, risk of loss of life and personal property, infrastructure cost and maintenance, and the misuse of the term multi-modal. She displayed maps on the overhead and discussed class I and II soils in the northeast sector. She discussed the U.S. Geological Survey about the high plains aquifer that she included in her communications. She said the high plains aquifer was composed of 175,000 square miles of soils that represent 25% of agricultural production for the nation and it was in extreme peril as far as sustainability goes. She said it pointed to the value of the northeast sector soils which have a river for an irrigation source.

Mr. Jerry Jost showed flooding pictures on the overhead. He discussed public safety and felt it was necessary to have emergency services throughout the northeast sector. He said a lot of the roads were low and had overflow. He said in order to prepare the area for industrial development there would need to be five miles of road improvements. He expressed concern for the consequences, in terms of cost and public safety.

Mr. Charles NovoGradac spoke in favor of option 3. He felt the best use for this agricultural soil was the industry of agriculture.

Mr. Ted Boyle, North Lawrence Improvement Association, was in favor of option 3. He said there was already close to 300 acres of undeveloped industrially zoned property in North Lawrence. He said an additional 125 acres would contribute to the stormwater problem that North Lawrence suffers from. He said the pump in North Lawrence could not handle anymore water. He expressed concern about the excess cost of infrastructure. He thanked Planning Commission for their time and effort.

Mr. John Naramore said he represented residents on E. 1250 Road. He provided his credentials. He provided justification to remove both snowflakes from the Grant Township area using wording from the chairs of the umbrella group from which the snowflakes were born.

Mr. Michael Almon, Sustainability Action Network, initiated the peak oil plan for Lawrence. Mr. Almon read the following letter:

"Because of energy depletion, the economic development model for the 21st Century differs from that of the 20th Century. The exponential growth rate of the 20th Century was highly dependent on abundant, cheap petroleum. But everyone monitoring global energy flows, including the Pentagon, the Geological Society of America, the Congressional Research Service, Shell Oil, the International Energy Agency, and many more, has acknowledge that the supply of conventional oil from all major oil fields can no longer meet the growing global demand for oil. What remains is the difficult and expensive oil. That is the essence of peak oil. The record petroleum price of \$147 per barrel in 2008

triggered a temporary drop in demand and prices. But as emerging economies demand more oil, recent prices have reached \$110 per barrel, and oil-derived products such as pavement, plastics, and fuels are costing more. Most troubling, however, is that agricultural energy accounts for 17% of total U.S. energy use, about half being petroleum, for fuel, hydraulics, pesticides, fertilizers, processing and transport. By now I imagine the Commissioners have read the Lawrence peak oil plan entitled "Solutions to Peak Oil Vulnerabilities", from which this data is sourced. Planning for energy depletion in the 21st Century is critical, the impact on our ability to feed ourselves being paramount. Already we are seeing two major trends in agriculture prompted by rising energy prices – local and regional food, and organic food – both with considerably lower energy profiles. As noted in the Staff report for the N. E. Sector Plan, the top solution in the peak oil plan for local food vulnerability is to "Redraw the City's Urban Growth Area boundaries to preserve high quality soils for agricultural uses". Omitted was the rest of the statement, "Encourage brownfield and infill development as alternatives to nonagricultural development of high quality soils". The key here is location. Located in the N. E. Sector are Capability I & II soils with inherent fertility that needs minimum energy inputs. Given future energy cost inflation, it would be insanity to urbanize this world class treasure. Industry should be located elsewhere. Furthermore, it is a 20th Century anachronism that "flat terrain promotes industrial uses" as staff said. Industry was historically located in bottom land simply because it was served by rail which required no more than 3% grade. Whereas today, most freight trucks can handle up to 7-8% grade and navigate hillier sites in Lawrence. A more compelling case can be made for flat terrain being used agriculturally, because the bottom land is where the best silty loam soils have accumulated, and the water table is more accessible. Another fallacy that persists is that the N. E. Sector is served by multi-modal transportation. The space constraints of the Lawrence Municipal Airport prevent it ever developing on par with the New Century AirCenter or Forbes Field. And Union Pacific has rail sidings only at the bankrupt Schmidt Lumber and at Midland Junction, 1 and 2 miles north west. Potential new sidings are just one more of the unaccounted infrastructure costs to urbanize this farmland. Finally, it is unfair that a handful of landowners in the valley insist that the larger community upzone and appreciate the value of their land, simply because they want to maximize their asking price. They have no legal basis for such demands, because numerous U.S. Supreme Court decisions have said that reasonable, uniformly applied land use regulations designed to secure the common welfare do not constitute legal takings. The Court narrowly defined taking: "When the owner of real property has been called upon to sacrifice all economically beneficial uses in the name of the common good, that is, to leave his property economically idle, he has suffered a taking." For these few landowners, the agricultural status quo has not stripped the value of their land, so if they sell it at agricultural valuation they are not suffering a taking. But were the larger community to devise a plan by which these few landowners could apply for upzoning, they would be the last to admit that such would constitute a "giving". If our community feels compelled to assist these landowners, it would be more constructive to create a "Local Farm Link" program similar to the Pennsylvania Dept. of Agriculture program that links young prospective farmers with retiring farmers who want to sell their land. Likewise, Lawrence should adopt Transfer of Development Rights (TDR) for Capability I and II prime soils specifically. In such a program, lands containing these soils are so designated, and farm owners can sell the development rights to a publicly managed fund, thus continuing to farm while realizing a financial gain. Land developers who plan to urbanize other second tier farmland would pay to buy the development rights, the proceeds going into the publicly managed fund. Therefore, the Sustainability Action Network requests that the version of the N. E. Sector plan that you adopt be the one designating zero acres for additional industrial/commercial uses."

Mr. Lane Williams advocated for option 3. He said it was misleading to propose rail access was achievable without significant and prohibitive cost. He said information from the Kansas Department of Transportation indicated it would require approval by Union Pacific railway.

Ms. Julia Mangutz asked Planning Commission to consider and approve option 3.

Ms. Natalya Lowther, Pinwheel Farm, said her property was rezoned from industrial to agricultural in 1997. She supported no new industrial.

Ms. Nancy Thellman said she was speaking on behalf of Mr. Ron Seibold, owner of Pines International, a soil conserving agri-industry wheat grass health supplement manufacturer. She said he wanted the snowflake removed from over his business. She said they could not afford to piecemeal develop that area parcel by parcel.

COMMISSION DISCUSSION

Commissioner Belt inquired about removing the snowflakes.

Mr. McCullough said they could make that revision to the plan and follow up to remove the snowflake from Chapter 7 of Horizon 2020. He said option 3 did not have either snowflake.

Commissioner Britton said he was impressed with everyone respecting the process. He thanked the public for their presence. He said he heard the community express three main concerns. The first concern was a safety issue with water and how the land would react to rain. He said the second concern was that this was a conservation issue and that class I and II soils were valuable and important. The third concern he heard was that there were plenty of industrial opportunities in Douglas County. He said he also heard concerns that it was not really a multimodal district. He did not feel the bar had been met that was necessary to go down the path of industrial for the northeast sector. He said he would support option 3.

Commissioner von Achen said there were compelling arguments on both sides. She said the northeast sector might be a good location for industry but not a good land use for industry. She felt they needed to look at the land and the history of the land. She said she supported option 3. She thanked the public for their persistence.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Burger, to approve the Northeast Sector Plan with option 3.

Commissioner Finkeldei thanked the public for their input. He said there had always been drainage issues in North Lawrence and that there was uniform agreement among many folks that the drainage issues in North Lawrence should be worked on. He said a pump station was in the works to be built. He said if Planning Commission could waive a magic wand to install a pump station they would have done it years ago. He felt they needed to be able to fund the drainage study and one way to do that was to have proposals for North Lawrence that participate in that. He disagreed that there was enough industrial in Lawrence. He said there was a big difference between a planned industrial area and industrial zoning. He said the 1,500 acres were planned for industrial at some point in the future, not zoned for industrial. He said the Inverness Park District Plan was passed by City Commission but they denied the rezoning application that was supported by the plan and now they were amending the plan. He said the way the Northeast Sector Plan started was by amending Chapter 7 to include the snowflakes. Then they directed staff to create a sector plan consistent with the snowflakes. He said they had been working on the plan for three years to implement the snowflakes but now before the plan was even adopted they were going to take out the snowflakes that were put in in 2007. He said they would have to amend Chapter 7. He said it seemed the northeast sector was either a large area to support the infrastructure necessary for industrial growth or it was option 3 with no future industrial at all. He said marking the area purple on the map was

not going to change flooding or drainage issues in North Lawrence. He said that was not what would change the flooding issues in North Lawrence. He said the question becomes when a project is built in the future if it would hurt or help the issue. He said some projects could improve flooding with such things as a pump or raising 24/40. He said those decisions could be made with a zoning application. He believed having purple on the map may create a situation where some entity could come along with money and invest in North Lawrence to solve drainage issues. He said he would oppose a zoning application for a 10 acre warehouse with concrete around it because it would cause problems for North Lawrence. He said having purple on the map does not say he would support a 10 acre warehouse, but it does say he supports a project that could solve the problems. He said he would vote against the motion. He said he would support option 1 and support the plan he voted for two years ago, as well as the snowflakes he voted for six years ago. He said the color on the map would not cause negative impacts, it was the zoning application that comes later that could either improve or hurt those impacts. He said he would oppose 125 acres because he did not think it was big enough to solve the problem. He said he would support 300 acres.

Commissioner Blaser said what had changed was the audience. He said the first two times they heard the item there was a full crowd of farmers and large land owners wanting their land to be their 401K. He agreed with Commissioner Finkeldei that zoning was what would change the land. He said he used to have the firm belief that they had to have industry in Lawrence to survive. He said they were not going to solve the North Lawrence issues with small parcels. He said he would support option 3.

Commissioner Culver said originally when they looked at this with 300+ acres it made more sense but as he has learned more from the community it made less sense. He felt there were potential ramifications for public safety, class I and II soils, and he also agreed that agriculture was industry in some ways. He said it was hard for him to say they did not need industry but he felt with this plan the detriments outweighed the potential positives. He said on a lighter note he wished they could relocate the airport. He said it was hard to weigh all the different competing values. He thanked the public for sticking with the process. He said he would support option 3.

Commissioner Belt agreed with Commissioner Culver. He felt this location was a poor choice. He was concerned about the economic risk in terms of infrastructure and how much it would cost the community. He said he would like to consider agriculture not only as economic development but as an economic driver for the county. He said he would support option 3.

Commissioner Liese said the color purple on the map was harmless by itself but had the potential for opening the floodgates.

Commissioner Hird said he would probably vote against the motion. He said his original position was to support the plan that had 300 acres of industrial development. He felt removing the industrial snowflakes created a conflict with Chapter 7 that they had not even addressed. He felt that if industrial was put there it should be a larger area and master planned. He said there could not be 10 acres of development with warehouses and concrete. He thought they were creative enough that there was a way to have an industrial designation for the area and still support class I and II soils. He felt they could encourage soil conserving agri-businesses to develop there and have the best of both worlds. He said his concern with option 3 was that it lessened the incentive to deal with the flooding issues in North Lawrence. He said the only way to solve flooding issues in North Lawrence was for someone to come in and spend the money to deal with the problem. He did not like the fact that option 3 removed the neighborhood commercial center. He felt that North Lawrence needed more commercial to support the residents there. He stated option 3 removed the snowflake at

Midland Junction and they had not had any discussions about what it meant to take the snowflake off that location. He thanked neighbors for their participation in the process.

Motion carried 7-2, with Commissioners Finkeldei and Hird voting in opposition.

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ITEM NO. 5 VARIANCE FOR NORTH LAWRENCE ADDITION NO. 17 (MKM)

Variance associated with Minor Subdivision for North Lawrence Addition No 17 (MS-3-3-12), from the frontage requirement in Section 20-810(b). Submitted by Tenants to Homeowners, Inc, property owner of record.

STAFF REPORT

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Ms. Rebecca Buford, Tenants to Homeowners, said the property was made available because it was in foreclosure and they were able to access about \$450,000 in federal neighborhood stabilization funds to acquire the property. She said the requirement with the funds was to build at least three units. She said it allowed them to create affordable housing and bring dollars from outside the community. She stated with those funds they were able to set aside a maintenance account. She said the Lawrence Community Housing Trust never intends to let go of the properties. She said the concept of the trust was to put those properties in community trust where they intend to steward them forever to insure they are maintained affordably. She said Tenants to Homeowners leases the land and the owners purchase the home on top of the land and they have a resale restriction formula. She said Tenants to Homeowners owns the land to ensure they are sold affordably to other income eligible home buyers. She said if there was a problem with the shared access driveway Tenants to Homeowners would address that and it would not be a health or neighborhood concern. She said the idea of affordability was getting four units on a huge lot for the cost of one lot. She said the savings would be passed on to the homebuyers.

PUBLIC COMMENT

Mr. Ted Boyle, North Lawrence Improvement Association, felt the houses should be RS7, at least 7,000 square feet. He felt the project would benefit North Lawrence by keeping them eligible for Community Development Block Grant (CDBG) funds.

COMMISSION DISCUSSION

Commissioner Finkeldei said he was a big supporter of Tenants to Homeowners and would vote in favor of the item. He inquired about other possibilities if it wasn't common ownership.

Ms. Miller said a planned development with the RS7 base district would be a possibility.

Mr. McCullough said there may or may not be other avenues to get to that. He said Tenants to Homeowners was unique because they own the land and have control to get any issues resolved. He said it was not a precedent they were looking to set for any typical private development.

Commissioner Finkeldei inquired about a variance in the Burroughs Creek area.

Ms. Stogsdill said it was five lots with the one big one in the back. She thought they had flagged lots so every one of them had frontage but had common driveways.

Commissioner Finkeldei asked if this lot had enough to do that.

Ms. Stogsdill said no.

Commissioner von Achen inquired about the Tenants to Homeowners organization. She also inquired about fire and safety vehicles being able to access the site.

Ms. Buford said Tenants to Homeowners was a 501c3, non-profit, and local to Lawrence. She said they create affordable housing. She said they have 50 rental houses that serve low income families and 55 homes in trust that are first time ownership opportunities. She said Tenants to Homeowners stewards those and they are \$30,000-50,000 below market value which locks the subsidy in so when sold they can't be sold at market value. She said they sell them to people under 80% median income.

Mr. McCullough said the Fire Department reviewed the width of the easement and found it met their Code requirements.

Commissioner Finkeldei said he supported the variance in large part because it was for Tenants to Homeowners. He said the way the program runs can assure them that the common access would not be a hindrance. He said the drainage issue in North Lawrence and more new houses was a tough balance. He said he has some reservation but felt because it was Tenants to Homeowners another greater good was being applied here.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Belt, to approve the variance from Section 20-810(b) to allow the creation of 2 lots without frontage on a public street subject to the following condition:

Addition of the following note to the Minor Subdivision: "In the event that a transfer of ownership should occur, a home-owner's association or other entity shall be formed to take responsibility for the ongoing maintenance of the shared drive and access easement."

Commissioner Hird said he also had some reservations but the things that tipped it for him was the organization requesting the variance, the determination that it met fire safety, and the fact that there was a provision of continued maintenance of the road. He said he would support the motion.

Unanimously approved 9-0.

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ITEM NO. 6 VARIANCE FOR PRAIRIE WIND ADDITION NO. 2 (MKM)

Variances associated with Minor Subdivision for Prairie Wind Addition No 2, MS-3-4-12, from the side yard setbacks in Section 20-1007(E)(3) of the Pre-2006 Zoning Ordinance, and from the right-of-way requirement in Section 20-810(e)(5)(i) of the Subdivision Regulations. Submitted by Grob Engineering, for Tenants to Homeowners, property owner of record.

STAFF REPORT

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Ms. Rebecca Buford, Tenants to Homeowners, said Tenants to Homeowners did not realize till later that they could not use their lease mechanism under the State Townhouse Act. She said it would allow each home owner to have a yard.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

Commissioner Finkeldei asked if a fence would be built.

Ms. Buford said yes, there would be a fence on Haskell Avenue.

Ms. Miller said a fence around the entire development was not required and the neighborhood wanted the project to be more integrated.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to approve variances associated with Minor Subdivision for Prairie Wind Addition No 2, MS-3-4-12, from the side yard setbacks in Section 20-1007(E)(3) of the Pre-2006 Zoning Ordinance, and from the right-of-way requirement in Section 20-810(e)(5)(i) of the Subdivision Regulations.

Mr. McCullough said the Code allowed one lot to be divided into four lots without going through the major plat process. He said there was a timing issue with clients wanting to get into the homes so the most expedient way to get these three homes up and running was to do a minor subdivision to get four lots. He said next month the entire plat would come before Planning Commission.

Commissioner Liese thanked Ms. Buford for her work with Tenants to Homeowners.

Unanimously approved 9-0.

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ITEM NO. 7 VARIANCE FOR WAL-MART ADDITION NO. 4 (MKM)

Variance associated with Minor Subdivision for Wal-Mart Addition No. 4, (MS-2-2-12), from the right-of-way requirement in Section 20-810(e)(5). Submitted by Davidson Architecture and Engineering for Wal-Mart Real Estate Business Trust, property owner of record.

STAFF REPORT

Ms. Mary Miller presented the item.

APPLICANT PRESENTATION

Mr. Chris Hafner, Davidson Architecture & Engineering, was present for questioning. He said they had tenants ready to move into the pad site development.

PUBLIC COMMENT

No public comment.

COMMISSION DISCUSSION

Commissioner Finkeldei said this was a great infill project to put an empty parking lot to use.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Britton, to approve the variance requested from Section 20-810(e)(5) to defer the dedication of additional right-of-way for Iowa Street adjacent to Lot 1, Wal-Mart Addition No 4, to coincide with future development of Lot 1 subject to the following condition:

The plat shall include the following note: "A variance from Section 20-810(e)(5) was approved by the Planning Commission on April 23, 2012 to defer the dedication of right-of-way for Iowa Street for Lot 1 until such time as Lot 1 is further subdivided."

Unanimously approved 9-0.

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**ITEM NO. 8 TEXT AMENDMENT TO THE DOUGLAS COUNTY ZONING REGULATIONS;
SPECIAL EVENT PERMIT PROCESS (MKM)**

TA-8-10-11: Consider a Text Amendment to the Douglas County Zoning Regulations for the Unincorporated Territory of Douglas County to establish a Special Event Permit Process and associated Standards for certain temporary uses in various zoning districts.

STAFF REPORT

Ms. Mary Miller presented the item.

PUBLIC HEARING

Ms. Natalya Lowther, Pinwheel Farm, expressed concern about the language causing burdensome restrictions on the States initiative to promote rural economic development through agritourism. She inquired about the term 'similar events' and what was meant by that. She said the undefined term meant the agritourism event Planner would have to ask the Zoning & Codes administrator whether he considered any given activity similar to another for each event. She said a Conditional Use Permit requires notice within 1000' radius outside city limits and 200' inside city limits. She said the Special Event Permit process specified a flat 1000' radius regardless of jurisdiction. She suggested it include the same language as Conditional Use Permits of 200' within the city limits. She felt they should think carefully about setting conditions for events if those limitations might restrict the public constitutional right to freely and peacefully assemble. She said they should also be careful that religious events require approval, which could lead to the establishment of a county religion, and if only some permits are approved it might violate the Bill of Rights. She stated the Zoning & Codes administrator was already overburdened with permits and seemed unable to respond to applicant calls, information requests, and permit approvals in a timely manner.

COMMISSION DISCUSSION

Commissioner Liese thanked Ms. Lowther for her comments. He said she mentioned activities that sounded more like private gatherings.

Ms. Lowther said the events she mentioned were not necessarily for profit but were public events, not private.

Ms. Miller said that would be a public event. She said if she was a registered agritourism activity it would be exempt. She stated if she had more than four activities of the same type she would need to either amend her agritourism registration or the fifth one would require a Special Event Permit.

Commissioner Liese agreed with Ms. Lowther's suggestion for notice of property owners. He asked how it was defined.

Ms. Miller said it was from the property lines and the property ownership list is obtained from the County Clerk's office. She said the 200' notice for properties in the city was an oversight on her part and she would make that change.

Commissioner Finkeldei asked why four events were chosen.

Ms. Miller said the main reason that number was chosen was because that was the number that was used within city limits for Special Event Permits.

Commissioner Finkeldei asked if an event was not in the agritourism registration it would need to be amended.

Ms. Miller said if an activity was included in the agritourism registration than it was an exempt activity. She said Ms. Lowther would not need a Special Event Permit for activities listed in her agritourism registration. She said the registration could be amended with the State to add additional uses.

Commissioner Liese asked Ms. Lowther why she wouldn't put everything she thought she might do in the agritourism registration.

Ms. Lowther said she went through the agritourism registration many years ago and did not remember exactly what she registered for but she said the categories were fairly broad. She said she has had more recent experiences with lines being drawn very narrow by the County Zoning & Codes department about what does or does not meet the definition. She was concerned about the potential for her thinking that a potluck fit in category x with her State registration and the County Zoning & Codes department saying that it did not fall within that category. She said her operation was almost totally crippled two years ago because she thought her operation was covered under State agritourism regulations but the County Zoning & Codes department thought otherwise. She said a few years ago she went through the Conditional Use Permit process to lay out a plan to allow individuals traveling from out of state to take part in agricultural activities and camp on her property. She said she can't even pitch a tent in her own pasture to monitor the safety of her own sheep as part of her agricultural job. She said she had 6,000 hours of volunteer labor offered that she had to turn down in six months because she couldn't let them bring their van or camper to sleep in. She was worried about the same sort of thing happening with other regulations that go back to the same individuals that have made these determinations in the past. She said in 2006 she was cited in violation of using a tent camper on her own property. She said now she knows regulations allow her to do that but at the time she didn't fight a \$500 a day fine that she was going to be levied for pitching a tent camper on her own land.

Commissioner Hird said regulations regarding camping was something they would have to tackle at some point in the future.

Commissioner Liese said he did not want to see Planning Commission decide to limit agritourism business through this process. He liked what staff had drafted.

ACTION TAKEN

Motioned by Commissioner Finkeldei, seconded by Commissioner Blaser, to approve the amendments to Article 12-319 of the Zoning Regulations for the unincorporated Territory of Douglas County, Kansas to establish a Special Event Permit Process and associated standards by adding Section 12-319-5, Special Events; renumbering the remaining sections, and revising Temporary Business Use Permits to remove activities which would be considered 'special events' and forwarding this recommendation to the Douglas County Board of Commissioners for approval, with the revision that property ownership notice would 1000' outside city limits and 200' within city limits.

Commissioner von Achen asked Ms. Lowther if she still saw this as restrictive to her business.

Ms. Lowther said the point at which it becomes restrictive is with the people administrating it by having different interpretations of the regulations. She said the County Zoning & Codes department imposes the restrictions they want on the people they want.

Mr. McCullough said today if a property is a registered agritourism use they will be registered with a specific use. He said for example, a non-profit organization having a fund raising event for three days, had no mechanism short of a Conditional Use Permit to do that. He said the intent of the Special Event Permit was that it would open the door for uses not registered as agritourism. He stated this provides the opportunity for a special event in the county one time or multiple times a year.

Commissioner Liese said he would vote in favor. He stated this may be a way for Ms. Lowther to do even more without having to get a Conditional Use Permit. He said he saw this as facilitating extraordinary events.

Ms. Lowther said she has been denied the right to do things on a regular basis that she is registered for as an agritourism use with the State. She said just because she was registered with the State as an agritourism use doesn't mean she's allowed to do it in Douglas County.

Commissioner Hird said County Commission was scheduled to hear the agritourism text amendment on Wednesday. He said they were working toward a mechanism to determine whether uses were legitimately an agritourism use. He said one of the issues that County Commission would likely struggle with is what is and is not an agritourism use. He said it was a good step forward and he would support the motion.

Unanimously approved 9-0.

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ITEM NO. 9A PRELIMINARY PLAT FOR RESEARCH PARK DRIVE; 1600 BLOCK RESEARCH PARK DRIVE (SLD)

PP-2-2-12: Consider a Preliminary Plat for Research Park Drive, located in the 1600 Block of Research Park Drive. Submitted by Paul Werner Architects, for Mabet #2, LC, Alvamar Development Corporation, property owner of record.

ITEM NO. 9B SPECIAL USE PERMIT FOR AN EXTENDED CARE MEDICAL FACILITY; 1600 BLOCK RESEARCH PARK DRIVE (SLD)

SUP-2-1-12: Consider a Special Use Permit for an Extended Care Medical Facility, located in the 1600 Block of Research Park Drive. Submitted by Paul Werner Architects, for Mabet #2, LC, Alvamar Development Corporation, property owner of record.

Items 9A and 9B were deferred prior to the meeting.

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**ITEM NO. 10 PRELIMINARY PLAT FOR NORTH LAWRENCE RIVERFRONT ADDITION;
401 N 2ND ST (SLD)**

PP-2-1-12: Consider a Preliminary Plat for North Lawrence Riverfront Addition, located at 401 North 2nd Street. This subdivision includes variances related to block length, right-of-way dedication for N. 2nd Street as a principal arterial, and connection of a local street to an arterial street. Submitted by Paul Werner Architects, for North Mass Redevelopment, LLC, Douglas County Kaw Drainage District, City of Lawrence, Kaw River Estates, LLC, HDD of Lawrence LLC, D & D Rentals of Lawrence LLC, Jeffrey W. Hatfield, Exchange Holdings LLC, Loosehead Investments LLC, and Riverfront Properties of Lawrence LLC, property owners of record.

Item 10 was deferred prior to the meeting.

MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

ADJOURN 10:21pm