



City of Lawrence

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CITY COMMISSION

MAYOR
ROBERT J. SCHUMM

COMMISSIONERS
MICHAEL DEVER
HUGH CARTER
MIKE AMYX
ARON E. CROMWELL

September 18, 2012

The Board of Commissioners of the City of Lawrence met in regular session at 6:35 p.m., in the City Commission Chambers in City Hall with Mayor Schumm presiding and members Amyx, Carter, Cromwell and Dever present.

A. RECOGNITION/PROCLAMATION/PRESENTATION

1. Proclaimed the week of September 17 – 23, 2012 as Constitution Week.
2. Proclaimed the month of September, 201 as Leukemia, Lymphoma & Myeloma Awareness Month.

B. CONSENT AGENDA

It was moved by Amyx, seconded by Dever, to approve the consent agenda as below. Motion carried unanimously.

1. Received minutes from various boards and commissions:
Community Development Advisory Committee meeting of 04/12/12
Homeless Issues Advisory Committee meeting of 08/14/12
2. Approved claims to 332 vendors in the amount of \$1,424,747.57.
3. Approved licenses as recommended by the City Clerk's Office.
Class A Club License for Mount Oread Aerie 309, 1803 West 6th and the Retail Liquor License for Myers Retail Liquor, 902 West 23rd Street.
4. Approve appointments as recommended by the Mayor.
Appointed Katherine Simmons to the Lawrence Cultural Arts Commission to a position that expires 01/31/13 and Grace Peterson to a position that expires 01/31/14.
5. Bid and purchase items:
 - a) Approved the sale of surplus property on Gov Deals.



- b) Approved as a sole source purchase and awarded the bid for three light poles and fixtures on ball diamond #8 at the Youth Sports Complex to Musco Sports Lighting for \$30,000.
 - c) Awarded the bid for 70 golf vehicles for the Parks and Recreation Department to E-Z-Go for \$56,714 per year for the next four years.
 - d) Authorized a change order in the amount of \$75,000 for milling and overlay and associated curb repairs to Crestline Drive.
6. Adopted on second and final reading, the following ordinances:
- a) Ordinance No. 8788, allowing possession and consumption of alcohol on the public right-of-way on October 6, 2012, 10:00 a.m. – 11:00 p.m. in the 900 block of New Hampshire Street and the 200 block of E. 9th Street during events associated with the Color Run.
 - b) Ordinance No. 8748, for Comprehensive Plan Amendment (CPA-6-5-09) to Horizon 2020 – Chapter 14 to include the Northeast Sector Plan. (PC Item 4; approved 7-2 on 4/23/12)
7. Approved a Temporary Use of Public Right-of-Way Permit allowing the closure of a portion of the 900 block of New Hampshire Street for the Arts Center Final Friday event from noon to midnight on Friday, September 28, 2012, and adopted on first reading, Ordinance No. 8792, allowing possession and consumption of alcoholic liquor on the public right-of-way in conjunction with the event.
8. Approved as “signs of community interest”, a request from the United Way of Douglas County to place temporary signs in various rights-of-way throughout the City from September 15 – November 21, 2012.

C. CITY MANAGER’S REPORT:

David Corliss, City Manager, presented the report.

D. REGULAR AGENDA ITEMS:

1. **Conduct public hearing to consider the vacation of a holding basin and part of the bicycle/pedestrian easement at 3400 & 3401 Aldrich Street as requested by property owner Grand, LLC.**

Chuck Soules, Public Works Director, presented the staff report.

Moved by Cromwell, seconded by Dever, to open the public hearing. Motion carried unanimously.

Kenneth McKenzie said it was his understanding that they would vacate the trail out to the sports complex and dam area.

Soules said it was the rec path along Kasold near Eldridge. The sidewalk would be replaced closer to the street.

McKenzie said we used to have a sidewalk off of 27th connecting with the sidewalk on the opposite side of Kasold. With the reconstruction that has been removed. We would like to see a crosswalk either at 27th or 28th. We do have some handicapped people living in the subdivision.

Schumm said we could refer that to Public Works to look at those possibilities.

Soules said we could talk about that with the commenter and maybe refer it to Traffic Safety Commission.

Moved by Cromwell, seconded by Amyx, to close the public hearing. Motion carried unanimously.

Moved by Cromwell, seconded by Carter, to approve the order of vacation. Motion carried unanimously.

2. **Consider adopting on first reading, Ordinance No. 8780, regarding sidewalk dining and hospitality license regulations.**

Jonathan Douglass, Assistant to the City Manager/City Clerk, presented the staff report.

Mayor Schumm called for public comment.

Dan Dannenberg said he didn't know if the new proposal addressed it, but one of the things that needs to be addressed is umbrellas. The sidewalks aren't designed for sidewalk dining. Tonight passing one sidewalk dining area I had to lower my head to get by. I once saw a tall man that had to lower his head because of umbrellas sticking out. I once was walking by Esquina and an umbrella hit me in the forehead. There should be a regulation that prohibits any shading device extending beyond the rail. This business of umbrellas sticking out should be eliminated. Any aesthetic value doesn't outweigh the safety hazard. I have written about this before to an assistant city manager and Downtown Lawrence. Shading devices or awnings shouldn't be allowed to extend.

Schumm said the man has a point. How about a minimum height standard such as the same as doorway heights.

Amyx asked if there are site planning requirements.

McCullough said yes, but the height isn't addressed strongly. We could look at the code and pick a reasonable standard.

Amyx said we could check all the sidewalk dining areas against the site plans to start.

Douglass said we have code enforcement staff inspect all of the sidewalk dining areas as part of the renewal process.

Moved by Amyx, seconded by Carter, to adopt on first reading, Ordinance No. 8780.

Motion carried unanimously.

3. **Receive update on proposed City recreation center and Sports Village and receive annexation requests for two properties containing approximately 110 acres total (approx. 19 and 89 acres each), located on property generally bounded by E 902 Rd on the west, George Williams Way extended on the east, N 1750 Rd on the north, and what would be Wakarusa Drive extended on the south. Refer the requests to the Planning Commission for review and authorize the City Manager to notify Rural Water District No. 1 and Atmos Energy of the City's intent to annex the subject property.**

David Corliss, City Manager, presented the staff report.

Amyx asked if KU is the applicant for this request.

McCullough said the application was submitted on behalf of Fairway LLC.

Corliss said KU Endowment was pursuing ownership.

McCullough said once you refer this to Planning we schedule it and send out proper notices.

Mayor Schumm called for public comment.

Thomas Johnson said he represents Jack Graham, an adjacent property owner. He believes this is premature. The city is just beginning to study this. The endowment association letter says they don't have the deal worked out yet. The athletic director's letter invites the city to conduct an investigation. We believe more time for that investigation is needed. The structure of

the project is not firm for various issues. Zenger's letter also states that there is a lack of neighbor concerns, but Mr. Graham has concerns. The lights at Free State High affect his property, and these lights will have more effect. The application says that additional uses may also be allowed. The only discussion we have heard is for athletics and city recreation. We believe that creates an ambiguity. We don't know what those uses are, and the city needs to defer annexation until more details are known. Annexation is not a necessary step at this time.

Schumm asked Johnson to point out where his client is located.

Johnson pointed it out on a map.

Chris Brown said his boys were ball players. It is crunch time right now for players and coaches to find gym time for practices. Kids are starving for more time in a basketball town. There are hundreds of parents and kids eager for a new rec center.

Jane Eldredge representing the Schwadas and the entities they control. They are in support of a regional recreation facility. They are in support of it not only because it would meet recreational needs but also economic development goals. You have commissioned some studies. They pointed out some significant things. In addition to the rec center there needed to be support activities including commercial and hotel space. This generates property tax and bed tax. Those things bring about new jobs. The economic spur of a regional rec center is important and the Schwadas fully support it.

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Carter said regarding the annexation, similar to what we did at the other tract, we do have plenty of time to work through issues as we get there. I wonder if it is necessary to defer annexation to work through those issues.

McCullough would see this in mid-November and it would come to the City Commission in December, so we have that time.

Schumm said there was reference to annexation on the west side. For one reason or another this land is going to be annexed, it is the zoning that will be the question eventually.

Corliss said we annexed 46 acres between those two tracts already. We want to be good neighbors and I am certain the Endowment and KU Athletics want that also.

Amyx said we are acting on a request of a property owner to start a process. We will work through the required process and notifications and hearings. At this point we are evaluating all properties and options we might have. At the same time we have a responsibility to start the process as we normally would.

Schumm asked for an explanation of the zoning process.

McCullough said the development rights accrue with the zoning, not the annexation. Annexation and zoning would be on track to submit for November consideration of the GPI district. It requires an institutional development plan, essentially a site plan. That has not been submitted yet but could be considered in December or even January.

Schumm said it doesn't hurt to initiate annexation. We would consider the zoning later.

Corliss said it would be good to have direction to send the notices, refer the annexation to the Planning Commission, and authorize me to negotiate contracts with architects and engineers.

Amyx asked what the architects and engineers would do.

Corliss said site planning and infrastructure, parking and other issues that would require work. We have a pretty good program and design already. Those are the general elements we want to work on and report back to you.

Amyx said several weeks ago he asked for information on the 29 acres we own near Wal-Mart, so we can make a comparison between that site and others. Is that still coming?

Corliss said we will do that.

Moved by Amyx, seconded by Dever, to refer the annexation request to the Planning Commission; authorize the City Manager to provide written notice, pursuant to K.S.A. 2011 Supp. 12-539 and K.S.A. 66-1,176, to Rural Water District No. 1 and to Atmos Energy of the

City's intent to annex approximately 110 acres of land owned by Fairway, LC, and located west of George Williams Way and north of West Sixth Street/US Highway 40; negotiate engineering and architect contracts; and continue to work on information regarding the 29 acre site. Motion carried unanimously.

4. **Consider Comprehensive Plan Amendment, CPA-4-2-12, to Chapter 6 of Horizon 2020 to create CC600 District policies and to Chapter 14 Specific Plans, to revise the West of K-10 Plan and A Nodal Plan for the Intersection of West 6th Street & Kansas Highway 10 (K-10) designating the node of 6th Street and K-10 as a CC600. Initiated by City Commission on 4/10/12. Adopt on first reading, Ordinance No. 8740, for Comprehensive Plan Amendment (CPA-4-2-12) to Chapter 6 of Horizon 2020 to create CC600 District policies and to Chapter 14 Specific Plans, to revise the West of K-10 Plan and A Nodal Plan for the Intersection of West 6th Street & Kansas Highway 10 (K-10) designating the node of 6th Street and K-10 as a CC600. (PC Item 5; approved 7-1-1 on 5/21/12) (BoCC approved 3-0 on 7/11/12)**
5. **Consider a Text Amendment, TA-4-3-12, to the City of Lawrence Land Development Code to create a CC600 zoning district. Initiated by City Commission on 4/10/12. Adopt on first reading, Ordinance No. 8741, for Text Amendment (TA-4-3-12) to the City of Lawrence Land Development Code to create a CC600 zoning district. (PC Item 6; approved 7-1-1 on 5/21/12).**
6. **Consider a Text Amendment, TA-4-3-12, to the City of Lawrence Land Development Code to create a CC600 zoning district. Initiated by City Commission on 4/10/12. Adopt on first reading, Ordinance No. 8741, for Text Amendment (TA-4-3-12) to the City of Lawrence Land Development Code to create a CC600 zoning district. (PC Item 6; approved 7-1-1 on 5/21/12).**

Scott McCullough, Planning and Development Services Director, presented the staff reports for items 4, 5, and 6.

Amyx said we had initiated the items and could withdraw them.

McCullough said yes.

Amyx asked if the commission could refer the rezoning to the Planning Commission.

McCullough said yes, after withdrawing the application.

Mayor Schumm called for public comment.

Steven Kahle said city representatives had emphasized two things. Development of the site was inevitable, and having the city and university as neighbors was better than a faceless

corporation. The withdrawal of KU from the original site changed things. We had protested the rezoning for various reasons. If we support the rezoning to CC600 we could face those faceless corporations but if we oppose it we might get something worse. He hoped the city would be thoughtful. He could support CC600 if major utilities were removed as an option.

Scott Robins said he was a neighbor to the north. When the idea of the rec center going in came up we met and had mixed emotions. Having the city and KU as a neighbor held better prospects than some other options. He signed the protest petition for one reason. Not that he opposed CC600 but we got counsel to help us and they suggested that signing that and putting it forward would help force some open communication to give us some real voice in what was being planned. He has signed a document to withdraw himself from the protest petition now. He supported CC600 zoning.

Thomas Johnson on behalf of the Crawfords said they don't support CC600 and they would like to be involved. They would like the Commission to withdraw their application and remand it to the Planning Commission.

David Reynolds said he signed the protest petition because he thought it was such a major issue that it should have a supermajority vote. The need for rezoning at this corner doesn't change with the move of the rec center. Zoning it CC600 takes a great amount of mystery out of what could go there. He asked that major recycling center and truck stop be removed from the possibilities. Leaving the land without zoning designation creates anxiety and frustration.

Jane Eldredge, representing the Schwadas, said they supported rezoning. Scott's indication that you can withdraw is incorrect. At the request of the owners of the property, they consented to the CC600 and agreed to join the city in initiation of the rezoning. The property owners paid a substantial fee for rezoning. If you withdraw you would have to have consent of the property owners, and I can tell you they do not consent to that. Neither the comp plan nor the text amendment was turning on the rec center site. She said that the staff report said it

would be useful to have a designation for sq footages between 400,000 and 1.5 million.

Changes to the comp plan were needed to accommodate a rec center. The CC6000 and the revised nodal plan keep an open space buffer. The expansion of the area would provide new opportunities for the community as a whole. Nothing has changed regarding the analysis of use of CC600. For all the reasons mentioned we need to proceed with this CC600. We also must ask the question, if nothing has changed, why change your response? No one has identified a reason to change those plans. If you don't zone this, where will commercial to support this go? The proposed change to the plan expands commercial at all four corners. The idea might be to go to Mercato and use that commercial. That is appropriately planned already. Right now there are 359,000 square feet of retail, most of it taken up with two big boxes. This is the only place we have two big boxes planned. If the rec center moves that will certainly be an impetus for the big boxes and the residential. The only place a hotel could go was at 6th and George Williams, which is a less desirable location. If the first uses wanted were a gas station and fast food, that would soak up all the square footage. The only other place is the CC600 on the west side. We believe the only opposition to the CC600 is the Crawfords and apparently some City Commissioners. She was confident the Commissioners were not prejudging it. In the name of economic development let's make the regional rec center successful. We need to do it right.

A man said it was implied in the news that the neighbors in Northwood objected to the rec center. That was not true. We are here to say we thought everyone involved was operating in good faith.

Schumm said he had been at meetings with the neighbors and they had been good productive meetings.

Eldredge said on the zoning application the owners agreed with removing utilities from the allowed uses.

Gwen Klingenberg said she was sure the Schwadas would support the 200 foot buffer no matter what ended up there. Hopefully the JDEC would look at what kind of primary jobs we

need. This corner already has commercial on the south side. There is a wonderful place for the hotel if we need one. That corner is close to I70, SLT, K10, and KU. Our community is more information and service industry than anything and that is what Horizon 2020 stipulates. It is important to take a step back. Without the rec center, which was the driving factor, the retail wasn't needed. The industrial is needed. Step back and take a look at what we need. What substantial difference, how much, if the thing is dropped now. We can stop now and do whatever we want. We were told we would step back if the rec center wasn't approved but now the developer wants to move forward anyway. Even if it is industrial, IL still allows a hotel if that is needed.

Bill Cowgill said he thanked the Commission and Planning Commission for their continued efforts in hearing us and our neighborhood. The term good neighbor was used in good faith and was appreciated. He said he supported CC600. He thought we had a good neighbor in Steve Schwada. He understands the reasons we live out there in the area we do. Being a gateway, industrial uses would be an eyesore. He supported CC600.

Kirk McClure suggested that the commission deny or withdraw the issues before you. They are premature. You lose negotiating position by rezoning prematurely. Look at the history. Nothing has happened. We have been years with no demand for retail space at this intersection. Rezoning before demand creates problems because you are asked to extend infrastructure. The recent past ought to suggest there is danger in overbuilding. We built housing and retail way beyond our demand. Adding spaces does not add jobs or sales tax. More consumers add those things. It does not add property taxes because the aggregate buying power does not increase. The oldest rule of zoning is plan first and zone second. What you need to do know is ask how much retail we can support in the future and here. Your own CSL study said the sports complex will support 25,000 square feet of retail and 40 hotel rooms. We don't have demand for space now. He recommended withdrawing all three items.

Amyx asked about the information presented tonight. The signatures we have, do they make everything null and void on the protest petition?

Randy Larkin, Assistant City Attorney, said we looked at that issue and we did not find any statutory authority for withdrawing a signature after a petition is verified by the county. We believe this petition is still valid.

Dever said we still have a valid petition.

Larkin said yes.

Amyx asked about the question of the Commission being the applicant.

Larkin said the City could withdraw it.

Schumm said we could withdraw without the land owner consent.

Larkin said yes.

Schumm said this is pretty clear cut for him. We said we weren't going to rezone it without the rec center. We don't have a rec center there so he didn't see reason for CC600 and the rezoning. He said you've got to wait and see what happens on the zoned land. There isn't need to rezone more. He said he didn't see much room for debate on that.

Cromwell said he agreed with that. He would love to entertain a project at that site and we could look at rezoning then, but the intention here was with a particular project and without that the zoning falls off as well. We should resort back to what Horizon 2020 called for, for the time being.

Amyx said there was a full faith effort to look at a center on the property and he thanked the owners. Since day one he said he had concern with the site west of K10. As a community we aren't ready to move across K10 in terms of infrastructure or services. He has not given up on the idea of a city stand alone site on property we own near Wal-Mart. He said as we look at retail development a lot of his concerns were the effect on other parts of the community. The addition of CC600, he was not in favor of at this time. As one of the members of the applicant, he was in favor of withdrawing all the applications.

Dever said there were a couple things that didn't make this cut and dry for him. This is an area that will be developed and needs to be planned, especially if we are building a rec center. We owe it to the neighbors to carefully zone the annexed land. Annexing it but leaving it unzoned leaves a lot of uncertainty. We need to talk about how we would approach that land. He said he saw need for CC600. He was not convinced we should just move away and not have a plan of action for that land. He said he would hate to walk away from this and leave the adjacent landowners in limbo.

Amyx said one of the items recommended from staff, is if there was a withdrawal then we could refer it back to Planning Commission to have discussion with neighbors about what it should be in the future. He said he thought that might take care of a little of the concerns, if we referred it to Planning Commission.

Dever said the first step was to plan, then zone. The neighbors have clearly stated their support for CC600. The comp plan work was not rushed. I am not disagreeing with your comments, but I do see the merit of moving forward with planning and zoning. I think we studied it and had good reasons given for why we might need it. I am open to considering a comp plan amendment and giving it back to the Planning Commission to take a look at it. If a facility is built there may be need for services out there.

Carter said it was good work by staff and the planning commission and the neighbors. It has been a good concept brought forward and there could be a use for it somewhere. He would go back to Eldredge's comments about if nothing has changed why change our response. We have been crystal clear with the neighbors and others that we wouldn't move forward with the rezoning without the rec center. As far as retail, jumping K10 is a stretch but the Schwadas brought something good. The additional retail was a condition of getting that land. The additional retail and hotels would benefit the community. It would spur more things. Right now do we need it though? Probably not. It comes back to being crystal clear that we wouldn't

rezone without the rec center and we need to stick with that. He said if we initiated CC600 we wouldn't be tied to this area.

McCullough said to have CC600 in Horizon 2020 may be prudent.

Carter asked if that is what we were doing with number 5.

McCullough said it does that in the development code. The comp plan amendment does a few things, employing policies in specific sector plans. I believe what would be most prudent would be to detach the sector plan from that and bring back a separate ordinance.

Carter asked if that would be a separate action.

McCullough said it could.

Carter said he would probably support that.

McCullough said the comp plan has been approved by the county commission already. We do a joint city/county ordinance. There has to be alignment between the commissions.

Eldredge said that was the information she thought you needed, that the county already approved the amendment.

Amyx said as we look at the comp plan amendment, withdraw tonight and come back with a new one spelling out how to create CC600, it wouldn't be location specific?

McCullough said that was what he was hearing tonight. There wouldn't be zoning in the community until a sector plan identified it.

Schumm said he was somewhat perplexed. The only reason we got to CC600 was because of the rec center. Now we aren't going that direction but we are talking about having that option somewhere in the city and exploding the commercial in the city. There is nothing even out there. On all this zoning, this isn't a 10 or 20 year process. This land was brought through the process in 90 days. If someone came forward with something it doesn't take too long to process it. There is somewhere between 5-8 million dollars of infrastructure work, so just to designate it commercial was way premature. What I have heard the neighbors say is that currently part of it is industrial. They want assurance that it will be something they can live with. I

think it is a planning more than a zoning issue. Being a gateway to the city he didn't see it industrial. He didn't think the neighbors wanted that. It seems like we are spinning out of control with the zoning, commercial application.

Carter said he couldn't think of an area where we needed it, but we've done the work. He said he favored just withdrawing the items tonight and have the other discussions later.

Amyx said if there is going to be consideration of a CPA for CC600 we need to do that away from these issues tonight. That would be the right way to do it. Withdraw these three and discuss later the other issues.

Schumm asked what happens to the County Commission if we withdraw.

McCullough said we would have to determine that.

Schumm said our counsel's opinion was that we could withdraw without the owner.

Larkin said yes.

Carter said he didn't want to leave out there the issue with the developer. We could deny it and not leave it open to the question of whether we needed their consent to withdraw.

McCullough said our opinion is that if you deny the CPA and TA the rezoning would become moot. There would be no district to rezone to.

It was **moved by Carter, seconded by Cromwell**, to deny the Comprehensive Plan Amendment and Text Amendment, rendering the rezoning application moot. Motion failed 3-2 (needed four affirmative votes because motion was contrary to Planning Commission recommendation), with Amyx and Dever in opposition.

Schumm asked if the withdrawal took the land out of play in terms of rezoning, what happens with the county?

McCullough said we would have to study it.

Schumm asked if we should continue this while we study that.

McCullough said he thought we could vote and then study that.

Moved by Amyx, seconded by Carter, to withdraw the Comprehensive Plan Amendment, Text Amendment, and Rezoning. Motion carried 4-1 with Dever opposed.

E. PUBLIC COMMENT:

Leslie Soden said she had a hard time hearing some of the speakers and asked if the sound could be cranked.

Corliss said we were still transitioning.

Michael Kelso said he was intrigued by the proposal to come over and join the city. The more we talked with the city the more I became interested in the project. Now that the neighborhood is in support, I am in support of it. With all the enthusiasm present before, what happened? As a consumer and neighbor it seems we moved fast and the people opposed now were in support. I thought we were sold on the old one and a new one might take a year or more.

Schumm said KU felt that they needed additional space to address Title IX deficiencies. They felt like the other side gave them the ability to do that. We have said all along that we want to be in conjunction with them. For the city it may also give us some space for tennis courts, as well as a linkage to nature trails and a cross country site.

Kelso asked who paid for all the surveys and studies at the other site. Someone had to pay for all that and now we are going to go through that again.

Corliss said the neighborhoods' efforts were not for naught. We have learned their concerns. The largest amount of time we have spent on the rec center items was spent on programming rather than land use aspects of the project. The bulk of that would translate to another site. We have paid for some engineering and sampling, maybe \$50,000 - \$100,000. It is all good information to have for eventual development of the site.

F. FUTURE AGENDA ITEMS:

David Corliss, City Manager, outlined potential future agenda items.

G: COMMISSION ITEMS:

None.

H: CALENDAR:

David Corliss, City Manager, reviewed calendar items.

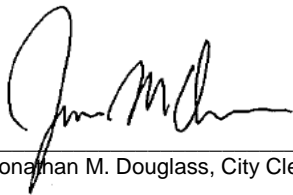
I: CURRENT VACANCIES – BOARDS/COMMISSIONS:

Existing and upcoming vacancies on City of Lawrence Boards and Commissions were listed on the agenda.

Moved by Cromwell, seconded by Carter, to adjourn at 8:53 p.m. Motion carried unanimously.

MINUTES APPROVED BY THE CITY COMMISSION ON 10/16/12.

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Jonathan M. Douglass, City Clerk