



City of Lawrence

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CITY COMMISSION

MAYOR
MICHAEL H. DEVER

COMMISSIONERS
SUE HACK
ROBERT CHESTNUT
DENNIS "BOOG" HIGHBERGER
MIKE AMYX

February 10, 2009

The Board of Commissioners of the City of Lawrence met in regular session at 5:30 p.m., in the City Commission Chambers in City Hall with Mayor Dever presiding and members Amyx, Chestnut, Hack, and Highberger present.

STUDY SESSION

City Commission and Community Development Committee will meet in a study session from 5:30. The City Commission meeting will begin at approximately 6:35 p.m.

CONSENT AGENDA

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to approve the City Commission meeting minutes of January 27, 2009. Motion carried unanimously.

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to approve the Community Development Advisory Committee meeting minutes of January 8, 2009. Motion carried unanimously.

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to approve claims to 519 vendors in the amount of \$3,514,107.48. Motion carried unanimously.

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to approve the Drinking Establishment License for J.B. Stouts, 721 Wakarusa No. 100; Eldridge Hotel, 701 Massachusetts; and Free State Brewery, 636 Massachusetts. Motion carried unanimously.



As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to award RFP No. R08018, design and installation of a cooling system for the Computer Server Room in City Hall, to P1 Group in the amount of \$61,370.00. Motion carried unanimously. (1)

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to approve Final Change Order to King's Construction in the amount of \$66,902.87 for additional work added to the 25th Terrace, O'Connell Road to Franklin Road, Street, Storm Sewer, Waterline Improvements project, Project No. 12-Cp2-407(BD), City Bid No. B08065. Motion carried unanimously. (2)

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to authorize payment of \$30,040 for additional architecture services to Treanor Architects for the Carnegie Building rehab project. Motion carried unanimously. (3)

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to waive bidding requirements and authorize two payments for an audit of the Utilities Management System. The first payment, for the Biosolids portion of the audit, must be sole source purchased through the Water Environment Federation, who contracts with KEMA – Registered Quality for the other two portions of the audit, for the remainder of the cost; authorized payment to Water Environment Federation for the NBP EMS for Biosolids audit in the amount of \$6,000 and payment to KEMA – Registered Quality for the ISO 14001/OHSAS 18001/ISO 9001 audit in the amount of \$25,000. Motion carried unanimously. (4)

Ordinance No. 8364, for Text Amendment (TA-10-17-08), amendments to Section 20-804, 20-805, 20-807, and 20-815 of the joint Subdivision Regulations revising standards for Build Out Plans, was read a second time. As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to adopt this ordinance. Aye: Dever, Chestnut, Hack, Amyx, Highberger. Nay: None. Motion carried unanimously. (5)

Ordinance No. 8368, an ordinance providing for the amendments to the 2006 International Building Code (IBC), International Residential Code (IRC) and International Plumbing Code (IPC), specifically recommending that drinking fountains not be required in occupancies with an occupant load less than 30 and initiating a recommendation to reduce the amount of insulation for basement walls in on-and two-family dwellings, was read a second time. As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to adopt the ordinance. Aye: Dever, Chestnut, Hack, Amyx, Highberger. Nay: None. Motion carried unanimously. (6)

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to approve Site Plan SP-10-86-08 for a new restaurant and sidewalk dining for Noodles and Company, to be located at 8 W. 8th Street. Motion carried unanimously. (7)

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to receive the 2008 Lawrence Police Department Racial Profiling Report. Motion carried unanimously. (8)

As part of the consent agenda, **it was moved by Chestnut, seconded by Amyx**, to authorize the Mayor to sign a Subordination Agreement for Daryl Jones, 2732 Maverick Lane. Motion carried unanimously. (9)

CITY MANAGER'S REPORT:

During the City Manager's Report, David Corliss said the City was paying the new Westar electric rates effective February 3, 2009. The Climate Protection Taskforce Report included avenues to be environmentally conscious, fiscally conscious and showed the significance of the street light program.

The City Manager then referenced additional information in the Report.

Commissioner Amyx asked, regarding Westar electric rates, if staff looked at recreational facilities outdoor lighting in terms of moving those games to an earlier time in the day, especially in the summer when it was light until 9:00 p.m.

Corliss said scheduling events involved a number of different considerations, but staff could look at that idea.

Commissioner Amyx said he noticed last summer that the lights in the area of those recreational facilities were on for a fairly long time, after the games were over, and was sure that was not cheap. (10)

REGULAR AGENDA ITEMS:

Consider adopting on second and final reading, revised Joint City Ordinance No. 8283/County Resolution No. _____, for Comprehensive Plan Amendment (CPA-2004-02) to Horizon 2020, Chapter 7.

Amy Miller Brown, Planner, presented the staff report. She said the County Commission subsequently adopted a Resolution during their January 26, 2009, meeting that repealed the previous Resolution adopted and rescinded their previous vote for approval for an item taken back in November 2008. The City Commission received an additional update memo that outlined that language that was being suggested by one of the County Commissioners. The item was scheduled to be considered by the Board of County Commissioners again at their March 2, 2009, meeting.

Vice Mayor Chestnut asked whether the County Commission could consider both versions on the 4th if this amendment was to move forward with the alternate language the County Commission was proposing.

Brown said yes.

Mayor Dever said if the City Commission approved this item and subsequently the County approved the revised language, he asked what would be the means to insert that additional language if the City Commission voted to do that.

Brown said ultimately, the City and County had to agree. If the County inserted additional language or changed anything other than the Planning Commission recommendation at their meeting, the City Commission would see the item again.

Mayor Dever asked if that new language would be considered a substantial change.

Brown said at this point the Planning Director had made a determination based on the language staff provided in the update memo which was the language was a minor change and did not override the Planning Commission's intent, which meant it would only require a simple majority vote.

Mayor Dever called for public comment.

Tom Kern, Lawrence, said he was speaking as a resident of Douglas County and not as the President of the Lawrence Chamber of Commerce. He said he was also a County Commissioner in Grand Traverse County, Michigan which was an agricultural county in Michigan with over 14,000 acres of prime agricultural property dedicated to the growing of cherries. That community faced the same issue of preserving pristine agricultural property. He had made this presentation to the County Commission a couple of weeks ago and felt like he had the obligation to provide the City Commission with that same presentation.

He said what Grand Traverse County was able to do to resolve this issue was by the development of a regional land conservancy and protect agricultural property through a TDR, or Transfer of Development Rights concept, versus placing language in land use documents that put a restrictive overlay on someone's property. The experience that was seen if researching literature was that system created an adversarial relationship between parties who believed in personal rights and personal property rights in individuals who wanted to protect the overall rights and benefits of the community. The creation of a land conservancy resolved that issue because it provided a mechanism by which development rights could be purchased by a community based organization to property that the community as a whole felt was in the best interest of the community and not put as a different use. It also eliminated the issue and consternation that occurred between parties regarding private property rights. If the community chose to conserve a piece of property, the property owners were compensated. He said he would strongly encourage, as he had with the County Commission, that as a community to begin to look at the development of land conservancy as a way to protect, not only agricultural

property but environmentally sensitive property from development in the future and not consider or look at the alternative of placing restrictive languages in ordinances and land use documents that restrict an individual's private property use of their property. He said there were alternatives out there that worked. He said he personally represented that township in Michigan and over the last nine years that township had preserved over 5,000 acres of agricultural property from development. It was a better alternative, in his opinion, than placing restrictive language in ordinances that invaded people's private property rights.

Jane Eldredge, Barber Emerson, Law Firm, said she hoped the City Commission would approve the action on its agenda this evening and complete the work of this Commission. She said she hoped they did not have the same problem following the City Commission election as they did with the County Commission election in terms of rescinding policies that were recently enacted.

She understood the County would be discussing this issue again and appreciated Brown's memo. The posted agendas on the county only went through February 18th when they were not meeting and the fact that one commissioner asked for language to be considered and it would be a public discussion certainly meant that there might be other ideas that surface between now and that meeting. She said it would be too bad to wait and see all the ideas that might surface and then decide what to do. This had been before the City Commission several times and knew it was a difficult decision. When the City Commission flipped it to the County Commission asking for their recommendation, they received a unanimous recommendation that was supported as a Planning Commission action. She hoped that this amendment would still meet the City Commission's approval.

Commissioner Highberger said he wanted to respond to Eldredge's suggestion that this issue did not change out to the next City Commission election. He said this issue was resolved before the prior City Commission election and was revisited after the election changed the composition of the Commission. He was not sure this was anything new and hoped they could

resolve this in the best interest of the community and what that interest was would change from election to election.

He said he appreciated Kern's suggestion of transferable development rights and had encouraged the City Commission to look at that idea for a long time. The way the zoning process worked was essentially a lottery because everyone wanted their land zoned at the highest use that would get the most money back. As a result, the City was pressured for zoning based on that, rather than looking at the best use. The Kansas Land Trust had already held quite a bit of conservations easements in this area already.

He said the proposed language supported by the County was an improvement but he would still vote against the ordinance for the reasons stated before and did not think the protections were strong enough in absence of the mechanism of transferable development rights.

Vice Mayor Chestnut said he appreciated Kern's comments. This language was not real dispositive, but thought that it might have some intent they all had to figure out going forward. At this point the preponderance of the document was ready to move forward and made sense and based on the process now, they did not know the County's position on this language and the County had two different versions to consider in one night.

He said he agreed with Transfer of Development Rights concept, but did not necessarily agree that zoning was a lottery. If looking at what happened over time, prime agricultural farmland became an important issue in the community recently and in the long term documents, it was not considered 10 years ago and identified for industrial development were those very plots, they wanted to try and preserve. They needed to have a meeting of the minds of really starting to set aside those lands for agricultural purposes so they could move forward with some sort of structure and expectation on how to do industrial development because that was what it was coming down to.

He said he appreciated the Commissioner's indulgence in deferring, but they had the language now and did not see much difference. If the County was talking through this issue, the County would make a decision on the 4th about which way to go and if the City Commission adopted this ordinance on second reading, the County Commission would have two options to choose.

Commissioner Amyx said as a former County Commissioner, at the time of discussions concerning East Hills Business Park, he remembered hearing comment that that park was not prime agricultural property and not bottom ground. He said he would not change his mind regarding prime agricultural property. He said if ending up with a split between the City and County, TDR's might be something to consider over the next year or so. Until specific language was adopted by both boards, there might be split decisions on two different ordinances or end up with one ordinance, but it was time to decide.

Mayor Dever said he was comfortable that if the language was passed as it existed today, there would be an opportunity for the County to make either decision and if the County opted for additional language, the City Commission would have an opportunity to amend their language and move forward.

Ordinance No. 8283/County Resolution No. ____, a revised Comprehensive Plan Amendment (CPA-2004-02) to Horizon 2020, Chapter 7, was read as second time. **It was moved by Chestnut, seconded by Hack,** to adopt the ordinance. Aye: Dever, Chestnut, and Hack. Nay: Amyx and Highberger. Motion carried. (11)

Consider approving Text Amendment TA-12-27-07, revisions to multiple sections of the City Development Code to revise the Protection Standards for Environmentally Sensitive Areas and to provide more precise definitions. TA-12-27-07 with revisions to Sections 20-1101, 20-1109, and 20-1701. TA-12-27-07 with revisions to Sections 20-701 and 20-702 to maintain consistency throughout the code. Consider adopting Ordinance No. 8304 on first reading TA-12-27-07 for revisions to multiple sections of the City Development Code to revise the Protection Standards for Environmentally Sensitive Areas and to provide more precise definitions.

Mary Miller, Planner, presented the staff report. She said this text amendment revised the Protection Standards for Environmentally Sensitive Areas in the Land Development Code for the City of Lawrence. Text amendment, **TA-12-27-07**, was initiated in December of 2007 and was considered by the Planning Commission several times in 2008. The item was presented to the Planning Commission in May, but no action was recommended due to the scope of the amendment and the amount of public comment received. The item was returned to the Commission in June and deferred until July to allow staff to make revisions. The PC voted to recommend approval of the amendment at the July meeting. In September the text amendment was returned to the Planning Commission for approval of additional language to other portions of the Code to provide consistency with the proposed language.

Staff provided notification to the members of the development community that had been involved in projects with environmentally sensitive areas; however, there was little development community involvement at the Planning Commission level. Staff made an extra effort to notify more of the development community prior to the consideration by the City Commission.

She said in her presentation she would show the following:

- a) The need for the revised standards;
- b) Illustrate the changes/improvements being made with the revised standards; and,
- c) Illustrate the types of resources being used which would eliminate the need for a property owner, developer, or City office to hire an outside specialist to determine if environmentally sensitive areas are present.

The 2006 Development Code contained requirements for the protection of environmentally sensitive areas in Section 20-1101. Through the implementation of these requirements, staff has identified several issues which this text amendment was designed to address. The principal issues associated with the current language were the following:

- Some environmentally sensitive areas were omitted from the list of protected areas;
- The definitions of the environmentally sensitive areas were not precise; which resulted in difficulty in determining where those areas were present.

She said one example, was the Exchange development at 31st and Ousdahl. Staff identified a stream corridor and mature stands of trees and notified the applicant they would need to develop as a planned development. Currently, the only development option for multi-family developments on properties with environmentally sensitive areas was to develop as a Planned Development.

The applicant hired an environmental consulting firm to survey the area to determine if environmentally sensitive areas were present. Based on the current definitions, the property did not contain a stream corridor which required protection, as the stream was an intermittent rather than a permanent stream; and the property did not contain stands of mature trees. The current definition of a stand of mature trees was, “an area of ½ acre or more covered by densely wooded growth of mature trees having a minimum height of 25 feet.” The terms ‘mature’ and ‘densely’ were not defined; therefore based on this definition it was determined that the trees on the site were not stands of mature trees.

She said development options were limited. If environmentally sensitive areas were present, development could occur only as a cluster or planned development. At times this limitation might act as a deterrent to development or as an impetus to remove the sensitive areas. In the Exchange example, the developer protected the stream corridor and some areas of the mature trees; but had not wanted to develop as a ‘Planned Development.’

The Exchange development would have been required to develop as a planned development, if environmentally sensitive areas were found to be present, as they were a multi-family development.

She said another example was the University Park development which was a single dwelling development that had recently been before the Commission. This development would also be required to develop as a Planned Development. Currently, the Code provides 2 development options which were:

- 1) Develop as a cluster development if it was a single-dwelling development with 35 or fewer dwelling units; and,
- 2) Environmentally sensitive areas are located on less than 15% of the property.

As the development proposed more than 35 dwelling units and sensitive areas were located on more than 15% of the property a planned development was required. She said a list of environmentally sensitive areas which were currently protected in the development code which were Floodway, floodplain outside the floodway, jurisdictional wetlands, stream corridors which only permanent streams and intermittent streams which were specifically noted in Horizon 2020, and stands of mature trees, individual significant trees which were not defined and prominent geographic features with rocky outcroppings, and Archaeological and historical sites.

The following changes were made to the areas which were considered 'environmentally sensitive', those changes were jurisdictional wetlands were replaced with 'wetlands'—with distinctions made in the degree of protection between jurisdictional and non-jurisdictional wetlands.

The wording "stream corridors" were replaced with 'streams and their corridors'. Streams were defined as, "a stream shown on the USGS Quad Map as a solid or dashed blue line and a 200' vegetated buffer area, which is centered on the stream. When a Stream Ordinance establishing a corridor or buffer width for each stream in the City has been adopted, the width of each stream corridor will be as set out in the ordinance." The current language did

not protect intermittent streams. Stream corridors were required to be 200' wide, centered on the stream until the stream ordinance has been adopted. The City's Stormwater Engineer might approve a lesser stream corridor if necessary prior to the adoption of the stream buffer ordinance. The stream buffer ordinance would list the corridor width for each stream based on the stream's characteristics and the anticipated flow of the stream.

"Stand of Mature Trees" were replaced with the term 'woodland areas'. The text amendment lists the maps which would be used to determine if a 'woodland' was present and included a precise definition of 'woodland' which could be used by a property owner if they wish to conduct a survey of the property to determine the exact location of the woodlands. The definition of a woodland area was an area of 1 acre or more which was denoted as 'woodland' or 'forest' on the City Woodland Baseline Map. The definition of woodland was, "a tract of land with a contiguous wooded area not less than 1 acre and containing not less than 100 trees per acre that were 2 inches in diameter or greater measured at diameter breast height. This definition could be used if a developer wished to survey the property and determine that a woodland exists and delineate the boundary more exactly.

It was determined that the presence of environmentally sensitive areas would be determined from the resources available at the time of the adoption of this resolution. The removal of Environmentally Sensitive Areas which was not in compliance with this text amendment would be subject to the provisions in Section 20-1109(g).

Prairie remnants were added as a protected feature. While they were unlikely within the City limits, they may be present within the UGA. The definition of a prairie remnant was, "Prairie areas that have remained intact on undeveloped, untilled portions of properties and containing Prairie Remnant of one acre or larger. Prairie areas that have remained primarily a mixture of native grasses interspersed with flowering plants. These areas have not been planted, but are original prairies."

Steep slopes were added and were not a protected feature. The slopes had been added as an environmentally sensitive area and divided into different grades which require differing levels of protection. She said the provisions which were being proposed with this text amendment, she would compare those provisions with the existing language. She said currently the protection standards apply only to development in residential districts. The text amendment would expand the scope so the protection standards would apply to development in all zoning districts. Lands with less than 500 sq. ft. of environmentally sensitive areas did not have to provide a sensitive area site plan. Properties with environmentally sensitive areas on less than 5% could develop as a cluster or planned development or through traditional site planning or subdivision. Exemptions were included for infrastructure, but the plans would need to address the presence of the environmentally sensitive areas, trying to minimize their impact.

She said existing single and duplex dwelling units and existing single and duplex subdivisions. The proposed standards required an SASP if any sensitive areas were located on the property. An SASP could be as simple as an aerial with a tree marked. A woodland area was defined as 'one acre of wooded area'; therefore, at least 1 acre of woodland would be required to be present before protection would be required.

The interpretation and implementation of regulations were made much easier if a clear purpose of the regulations was provided. The current language did not provide a purpose statement. The proposed language lists the following as the purpose:

- 1) to protect environmentally sensitive areas/features as the City meets its urban development goals;
- 2) to provide flexibility in the development process and design in order to use land efficiently and to preserve environmentally sensitive areas; and
- 3) to allow modifications.

She said the current language lists the amount of features which must be present and requires a corresponding development type (cluster or planned development) and made no

provisions for unique circumstances surrounding each application or property. The proposed language stated that the specific circumstances surrounding each application should be taken into account. The current language required a Sensitive Area Site Plan; but offered no guidance as to what the plan should include, or the processing of the SASP. The proposed language required a SASP and outlined what was to be included in the plan.

The plan would be administratively reviewed and the Planning Director's determination could be appealed to the City Commission. The plan could be submitted prior to a development proposal or concurrently with it. The amendment recommended that the plan be submitted prior to the development proposal itself, to avoid having to make revisions to the development plan; however, in many cases, the features to be protected would depend on the design of the development and it might be better for those features to be submitted concurrently.

Non-compliant development activity was not currently addressed. As mentioned previously, there were limited options which were currently available for development on properties with environmentally sensitive areas which could, in some cases, serve as an impetus for the destruction of the environmentally sensitive areas. The proposed language included more options which it was hoped would remove "that impetus"; However, in the event that Environmentally Sensitive Areas were removed, or construction damages environmentally sensitive areas that were designated for protection the text amendment contained provisions for restoration.

An error was pointed out in the draft language for this provision regarding the restoration plan [Section 1109(g)]. The draft language stated that the Planning Director would determine the restoration plan; a restoration plan would be submitted to the Planning Director for approval. This error would need to be corrected in the Incorporation by Reference Document.

She said as mentioned before, one of the principal issues identified with the current language was the limited options for development on lands which contained environmentally sensitive areas. If environmentally sensitive areas are located on more than 5% of a property,

development must occur as a Cluster or Planned Development. If more than 15% of the site contains environmentally sensitive areas, the development must occur as a Planned Development. The proposed language would allow development through any of the development options available.

The current language lists the minimum area which must be protected: for a cluster development the amount of area that must be set aside as common open space was greater than 10% of the total area or the sum in the difference in lot sizes, those in the base district, and those provided with the cluster development. For a planned development: the amount of area that must be set aside as common open space is 20% of the total area or 300 Sq Ft for each proposed dwelling unit in the PD. It was possible that the minimum area required to be protected could exceed the amount of environmentally sensitive areas present on the site. The proposed language sets a maximum area which could be required to be preserved, rather than a minimum. If less environmentally sensitive areas were present, smaller areas would be required to be preserved. If site constraints or other considerations precluded the preservation of the maximum amounts, less area may be required to be protected at the sensitive area site plan stage, or through modifications to the SASP by the PC or through appeals to the City Commission, particularly in cases where critical areas were present.

Mitigation was not currently an option; but with the proposed language mitigation could be permitted if a review of the sensitive area site plan indicates that it was not possible or reasonable to protect the required amount of sensitive area. For instance, if three individually significant trees were present on the site, but they were located in such a way that development was not possible, it would be possible to remove the trees and plant trees elsewhere.

Currently there were no provisions for modifications from the protection standards, but with the proposed language, the applicant might request a modification from the area required to be preserved or a change in the ranking of the protected features from the Planning

Commission, except for features which were ranked 'critical' in which case the modifications from requirements for 'critical' features had to be approved by the City Commission.

Currently there were no provisions for appeals regarding the protection standards. The proposed language would allow appeals to the City Commission from:

- 1) The Planning Director's decision on the sensitive area site plan; and,
- 2) The Planning Commission's decision on mitigation or modification requests.

Modifications to critical sensitive areas were possible only as an appeal to the City Commission.

Critical features contained primarily areas which were protected by other city, state or federal regulations: floodway, jurisdictional wetlands, stream corridors, archaeological or historical sites, and slopes with greater than 40% grade. 100% of those areas must be protected, unless a modification was obtained from the City Commission. The City Commission might approve a modification allowing up to 15% of a critical feature to be developed.

The important features included non-jurisdictional wetlands, slopes between 25% and 40% grade, regulatory floodway fringe, 100 year floodplain outside the floodway, native prairie remnants, woodlands that were contiguous with other off-site woodland areas that might function as wildlife corridors, and 2 or more environmentally sensitive areas, other than those listed as 'critical areas' occurring together. Environmentally sensitive areas occurring together would be of higher priority than those occurring singularly. Desirable features were areas in which the following occur singularly: slopes between 15% and 25%, isolated woodland areas, individually significant trees.

The presence of environmentally sensitive areas would be determined from maps and resources which were available to the public either from other agencies or at the Planning Office. It was suggested that a layer should be added to the City's Interactive Map which indicated if environmentally sensitive areas are present on a property. The City GIS Analyst indicated that he could combine information from the different maps and create a 'potential

environmentally sensitive area' layer for the City Map. This layer would provide 'general' information and would notify property owners that environmentally sensitive areas are present. More precise information would be available from the more specific maps.

Woodlands would be determined from a collection of maps which were:

1. The Baseline map for woodland area is the woodland layer contained in the planometrics layer of the City GIS map. This layer had not been developed for the urban growth area; therefore additional maps had been identified for use;
2. The NAIP (National Agricultural Imaging Program) map showed tree cover during the growing season which will help in identifying tree canopy and contiguous coverage. This map was county-wide; in addition, the satellite land cover imagery from DASC could be used.

Wetlands could be determined from the Army Corps of Engineers, for jurisdictional wetlands, or from the US Fish and Wildlife Service National Wetlands inventory Map, for non-jurisdictional wetlands.

The USGS website overlays the maps onto aerials, which clarified the position; streams were shown as blue lines (solid or dashed) on the USGS quad maps.

Slope information was available from the City GIS maps. Currently, there was a layer which shows slopes with a grade greater than 15%. If the text amendment was adopted, layers could be created to show the slopes with grades between 15 and 25%, 25 and 40%, and those with grades greater than 40%. She said examples of a Sensitive Area Site Plan using the Links property, west of the intersection of Wakarusa Drive and Queens Road was:

1. Stream corridor which was an 'intermittent stream' so it was not protected under the current provisions. The stream and a 200' corridor-centered on the stream would be considered a 'critical' feature and would require 100% protection, unless the City Stormwater Engineer approved a waiver. In this case, sanitary sewer lines were to be laid along the stream. The Utility Department would obtain an exemption, and the areas

which would be impacted by the installation of the utility would not be noted as 'protected'.

2. With steep slopes, the area contained slopes greater than 15% with the new layers, the slopes could be further identified as to degree of slope. Slopes with greater than 40% grade were considered 'critical' and 100% must be protected. Slopes with a grade between 25% and 40% were considered 'important' and were included in the required protection area up to a maximum of 30% of the property. Slopes with a grade between 15% and 25% were considered 'desirable' and were in the 3rd tier of protected features. If the critical and important features had been protected and the protected area had not reached 30% of the total area; desirable features might be protected.

Woodlands, taken from an analysis of the NAIP data and the land cover satellite imagery as planometrics were not available in this location. Woodlands were considered 'important' features if they were in combination with other features or if they were part of a larger contiguous woodland. Woodlands occurring alone are considered 'desirable' features. She said in summary, the changes/improvements being made with this text amendment were:

1. More options for developers to provide greater flexibility;
2. Clearer standards for identification of environmentally sensitive areas including more precise definitions and the use of standard maps for the identification;
3. The sensitive area site plan process was clarified and a ranking system was developed for the environmentally sensitive areas;
4. Provision of modifications and appeals, which was part of the increased options;
5. Measures for non-compliant development activity—anticipated that the greater options and flexibility would reduce the intentional destruction of environmentally sensitive areas; however, in the event sensitive were damaged through the construction process or for any other reason and restoration provisions were included.

6. Exemptions were listed. Utilities/infrastructure were exempt, but they must consider the protection of the ESAs in their plans.
7. A statement of purpose and objectives to provide guidance in the interpretation and implementation of these standards.

In addition, the scope of the protection standards was being increased from residential zoning districts only, to development in all districts: including commercial, industrial, and general public and institutional.

Commissioner Highberger said he was reading the Code a little differently than it was being presented. He said on the protections required in the planned development currently, the chart required protection of 20% of the total area of environmentally sensitive areas, but the way he read the code, it required 20% common open space and the new language was not the same it was in the slide.

Miller said that was one of the issues of the planned development. They were required to set 20% aside as common open space and then required to develop 50% of that as open recreation and not leave it as natural.

Commissioner Highberger said the common open space did not necessarily have anything to do with sensitive areas.

Miller said correct. If there were 20% of environmentally sensitive areas on a property and the property was developed as a planned development and only set aside the 20% of common open space, half of that space would need to be developed, unless receiving a variance. She said it would require a variance to not develop half of the environmentally sensitive areas in the current language.

Commissioner Highberger said he would like to take a look at the section of the City Code, 20-701(l)(5).

Miller said there was a section that said in the planned development natural areas would be encouraged to protect as much as possible. It also stated that as a minimum, the

requirements of Article 10 apply. Article 10 was the landscaping section, which meant there was parking landscaping and buffer yard landscaping. That was the current minimum in that section. The proposed change would be to change it to 10% because that would be the minimum that would ever be required under a planned development. If setting aside 20% and developed half, 10% would be set aside which was greater protection than just relying on the buffer yard and parking lot landscaping requirements.

Commissioner Highberger said 20-701(l)(5) modified version read: "Environmentally areas listed in this section as important or desirable sensitive areas shall be preserved to greatest extent possible, at a minimum of 10% of these sensitive areas shall be preserved."

Miller said that was a revision to a specific section in the code. She said the code currently read, "Mature stands of trees or individually significant mature trees, vegetative cover, water courses and other natural site features shall be preserved to the greatest extent possible."

At a minimum, the standards of Article 10 applied. It has provisions for protecting landscaping, what had to be done to get credit for existing landscaping, but it did not set any requirement that any natural feature had to be preserved.

Commissioner Highberger asked if it was a substantially lower requirement than what was in the ordinance itself.

Miller said it was changed from being a buffer yard and parking lot landscaping to being a minimum of protected area. They chose the 10% figure because it was the minimum amount to be required of natural open space in the planned development.

Commissioner Highberger said under the ordinance today, if it was not a planned development then it was required to preserve up to 30%.

Miller said there was no minimum. If there was only 2% of land contained in environmentally sensitive areas, you would only protect 2% and would not be required to protect 10%, but that was in the planned development and the planned development required setting aside 10% of natural open space, regardless.

Commissioner Amyx asked what the back log of applications was that would be affected by this proposed change.

Miller said there were currently no properties in the process that would be affected by the proposed change.

Commissioner Amyx asked if staff looked at a piece of property that had sensitive areas to see what the development would look like.

Miller said they could look at it if there were no modifications requested. In some cases, the developer had the say in what they would like to be included, but primarily, in the case of the Link's slide, it was the red and blue areas would be the areas they would designate for protection.

Commissioner Amyx asked about the possible impact of a development like the Terrace Road development on North Iowa Street. He said if this amendment was in place and the application was being made on that piece of property, he asked how would the development be significantly different on that piece of property currently under this amendment change than what the application was made earlier.

Miller said one of the differences was they were proposing to change the requirement of having only 35 dwelling units in a cluster development, so they could have developed as a cluster development, made smaller lots, and put them together to protect a larger area. They also could have developed as a planned development, just like they did, or developed with a site plan or subdivision. They would show the building envelopes, but would be protecting whatever was critical.

Commissioner Amyx asked if they would have ended up with a better development plan.

Miller said they would have had more options and flexibility to look at the different ways to protect the areas.

Commissioner Highberger said he did not want to seem too critical before because he said this was better than what the City had currently. He was concerned about the way this

worked with the planned development area. He asked that after public comment, he asked that Miller explain how the 10% worked as opposed to a cluster or traditional development.

Vice Mayor Chestnut said as to the exemptions, as far as going through the process, he was interested in that they were exempting residences, subdivisions, he was assuming RS 5 and RS 7 zoning, and duplexes, but not anything else. He asked what the idea was behind the exemption versus the non-exemption as far as discerning what zoning districts would be exempted and would not be exempted.

Miller said basically the fact that single family homes and duplexes did not site plan. If wanting to put up a garage, a site plan was not needed and she was not sure they would ever have a mechanism to tell them to do a sensitive area site plan if they had already been divided and their land already designated as buildable and retroactively go back and say it was environmentally sensitive.

Vice Mayor Chestnut said he wanted to make sure that in a case they just had in residential zoning that was going for a change in zoning that would probably trigger a site plan so it would not be exempt. They would be looking for a sensitive lands plan, for example on the Doolittle Farm property.

Miller said yes. If there was anything sensitive there they would be expecting along with the preliminary plat something that would protect the environmentally sensitive areas.

Vice Mayor Chestnut asked, given the site plan that was going to come, if staff would ask an applicant to produce a sensitive area site plan if in fact there was no sensitive land.

Miller said an applicant would provide a sensitive area site plan if there were sensitive areas. She said there were requirements for the applicant to talk to the planning office before making a site plan and it would be a good time to identify sensitive areas. A sensitive area site plan was not needed if there were no sensitive areas.

Vice Mayor Chestnut said he was concerned about how open ended the individually significant trees determination was. Essentially if there was a situation with an existing

residential development where they were looking for a change in zoning or looking to resubmit a site plan because they were going to change in some way versus what was existing approval and determine there were sensitive lands, they would be looking for a sensitive lands plan.

Miller said yes, and it could be something as simple as an aerial with a tree circle.

Vice Mayor Chestnut said essentially residential was not exempt in that case.

Miller said existing subdivisions were exempt. If replatting it and it became a new subdivision, they would not be exempt.

Commissioner Hack said one of the things staff had been working on since they worked through the Matrix Report was making the planning process efficient and in a timely fashion and adding additional costs associated with development that were passed onto the homeowner. In realizing all the conditions in terms of protecting environmentally sensitive land, she asked if there was any conversation with staff or the Planning Commission regarding additional costs that could incur on a development.

Miller said no. She said for instance, if there was an industrial property and were going to plat it or develop it, they were required to keep 75% of that pervious and impervious on 25%. With the new regulations, everything with environmentally sensitive areas and that was the pervious area, they would be increasing what they would have to do by 5%, unless it happened that it was not near the setbacks. The additional site plan did not need to be done by a professional and could be done in the Planning office so it should not have additional cost.

Mayor Dever called for public comment.

Bob Lichtwardt, Lawrence, expressed concerns with the proposed text amendment. He read a prepared statement. There were so many reasons for preserving environmentally sensitive land from destruction which included the vital functions of forested areas, especially on slopes and protecting watersheds, the function of streams for stormwater management, the importance of our heritage of archeological and historical sites.

Preserving woodlands was now recognized as vital in carbon sequestration as a function in modifying the progression of global warming. Because of the many vital functions of environmentally sensitive land forms, they were appealing to the City Commission to adopt effective regulations. Their main criticism of the current version of the text amendment was that they believed it would not be effective enough or enforceable. From his personal perspective, they needed a zoning regulation that would protect environmentally sensitive land form being destroyed either before a development or in the process of development.

Having lived in the area, the Commission was already familiar with the country side and probably noted the areas that contain streams and steep slopes and heavily wooded areas. So many of the environmentally sensitive areas were extensive and the different sensitive land types often existed together. Some areas would be difficult to develop in any event; therefore, they believed it was unrealistic to reduce the maximum amount of environmentally sensitive land that must be preserved to only 30% of each ownership tract. The worst approach by far was to reduce the amount to be preserved to 10% as had been done by planned development in Section 20-701(l)(5). They supported many features of the text amendment but their main objections were that it would not preserve enough environmentally sensitive land and had too many loopholes, especially in the modification section, and in many cases might be unenforceable. The City needed an ordinance now that would prevent further destruction of environmentally sensitive land. He said their letter suggested two methods, mainly to adopt a land development permit or adopt the requirement for an environmentally sensitive area site plan.

As a method for accommodating land owners who owned environmentally sensitive land that should be preserved, there was a third option they encouraged the City Commission to seriously consider which was to adopt a system of transferable development rights. In the February 8th letter, they listed some general and specific changes they believed should be made to the text amendment. They asked the City Commission to give serious consideration to those

changes. Should the City Commission decide to accept the text amendment tonight, they asked the City Commission instruct in their motion the issues presented tonight and their letter be addressed and appropriate changes be incorporated into the text amendment in the very near future.

Hank Booth, representing the Lawrence Chamber of Commerce, said he joined at least three Commissioners in being confused about the proposed process. He said he disagreed with one thought that was presented which was the development community had been thoroughly informed about what was involved with this particular text amendment. From what he understood and what he heard, that was not the case and the development community should be given an opportunity for more access to understanding not just the text language, but the intent. He was not sure they had the opportunity in what they were going to go forward with here. There was a lot of difficult language to understand and begin with. The Planning Department did an excellent job in making a presentation in terms of that language, but most of them were not able to bring it back to the table and understand what it meant. While this amendment had been before them, things had changed not just for the development community, but City government. He said what the proposed amendment meant and what would it cost. He said he was not sure it had been answered for the developers, the potential development user. They had not heard what it would cost the City government of Lawrence to add this much to what they were already doing. He said those two questions such as what it meant to all people involved and how much it cost needed to have more specific answers. Without those two specific answers, they really needed to send this back to the Planning Commission for more consideration and more detailed analysis about what it would cost the City government.

Betty Lichtwardt, Lawrence, said she would like to speak to two points. The first was what the representative of the Chamber of Commerce said about costs. She pointed out that when they developed environmentally sensitive land because it was rough and tree covered

generally and involved difficult drainage problems, it was actually more difficult and costly to develop. In the long run, it would cost the City a lot more to develop this type of land than to preserve it and use it as an asset. She wanted to speak supporting the proposed text amendment with the exceptions expressed in her letter. She wanted to show the City Commission with their land what they were talking about in terms of the percentage both for planned development and the general maximum that was required. She said she had an example and showed the City Commission. She said most of the tree cover in the area was land she purchased in order to save it from being destroyed. Because the owner wanted to sell it and there were developers who wanted to buy it, on an emergency basis they bought it. The whole area protected the neighborhood from Meadowbrook. She said one of the tree covers was going to be destroyed with a development that was coming with the University Park. She said if they sold the land to a developer, all of the land which was considered as one tract, so the amount that would be saved on the basis of only one third would not leave much. She said this had history in it and would be considered a critical area. If it were developed as a planned development, much less could be saved by this method. Their point always had been with a planned unit development, the interpretation did not take into consideration Section 1101(D). It offered not just cluster development, planned development, but also using building envelopes. There were three alternatives, not just two. In the case of The Links, they developed that as a planned development, but could have also used the third alternative, which was that sensitive land that was not preserved by either planned development or dedication to the City or protection privately through an association could be built as building envelopes. What happened was that in The Links, the interpretation was based strictly on the Planned Development Ordinance, not on that other provision that was also a possibility and a dictum in Section 1101(D). Because of what they called this misinterpretation, they felt the 10% had continued on the present ordinance and they thought the intention of using the Planned Development in this ordinance did not establish the minimum of the base or sensitive land at

10%. It either established it at the minimum amount that was required by the overriding ordinance, which was 1109. It came up as a staff interpretation and this was something that should be made clear, but if they were to choose or ask for a specific amount of land to preserve, they would stress that it would depend on the land itself. There were some areas that should never be developed, whether critical or not. She said 30% slopes were so extreme that they could not walk down them because you would fall. She had done a lot of research on this and communities in general start at a minimum of 20% slopes that were protected. The reason was manifest because of the tree cover, the erosion problems, and the need for protecting watersheds. If they went through the list of deficiencies in the letter she sent. In addition, they thought the City had to establish at this time a method for preventing further land destruction. They needed to extend something immediately if they decided not to pass the ordinance tonight. She was asking the City Commission to pass the ordinance and that the City make reservations about certain issues with the idea the Planning Commission would look at those issues further. The City needed this ordinance, but it was very imperfect.

Commissioner Highberger asked Miller a hypothetical questions. He said hypothetically, if he had 100 acres and 30% was environmentally sensitive land and none of it was critical and he wanted to develop it as a planned unit development, what would the minimum be that he had to preserve.

Miller said according to the planning development, it was either 20% of the site or 300 square foot per dwelling unit.

Commissioner Highberger said the common open space did not relate to the environmentally sensitive area. He asked why he could not say he was putting 20% of common open space in one place and houses on the environmentally sensitive area except for 10% of it which was required to be preserved.

Miller said in a sensitive area site plan it should include that, even though it was not explicitly stated in the code, the site plan would show the areas that needed to be protected. The common open space should include the environmentally sensitive areas.

Commissioner Highberger said even if that was clarified then the minimum required in the PUD was 20% rather than 30% under the other types of development.

Miller said it would probably be a less desirable means of development. In the current code, if the applicant wanted to develop a PUD, the applicant needed to provide a letter indicating how that was going to be an advantage and if the applicant could not show it would be an advantage they would not be allowed to develop a PUD.

Commissioner Amyx asked if they added a greater percentage in the average Miller gave.

Commissioner Highberger said no. He said Miller suggested this could be addressed through the site plan process but his concern was that it was not explicitly stated. With a planned development, they had to have 20% common open space, but it was not explicitly stated that environmentally sensitive areas had to be in it, so he thought it was a less requirement than other types of development. He said he also thought the environmentally sensitive areas requirements was a dramatic improvement over what they had now. He said at The Links, the developer preserved quite a bit of forest area by building a golf course on it, which defeated the whole purpose of the ordinance. He said he agreed with Betty Lichtwardt, given the poor shape of our existing environmentally sensitive land requirements, he preferred to move forward. He said he saw the potential loophole with the planned development areas. In terms of the 30% of the maximum that would be required, although it should be clear that if a developer wanted to preserve more than that, it would not be prohibited. He said 30% was a reasonable compromise and what they would have to compromise was the desire to preserve land that was wooded or desirable in its natural state against the problems of sprawl. If they required everything under the environmentally sensitive definition be preserved, the

development would go up and take development on the outside of town, which was what they were trying to work again. Although it was not perfect, he was willing to go with the 30% preservation maximum and would like to see this clarified so there was no exception for planned development.

Vice Mayor Chestnut said this topic was complicated. He said he wanted to take a step back and talk through what had happened from the sensitive areas language to where it was now. It appeared that the scope of this topic expanded exponentially. With the 5% exemption, there was a recognition that if there was a minimal amount of sensitive areas, and they were focusing a lot on The Links and The Exchange, which were the very big, large tracts of land, quite honestly, those were people who could afford to hire environmental consultants to go and do the research. He was very concerned about the cost but also the single property owner who had a two acre tract of something that was not residential that found out by a GIS map that they had a clove of trees that might be considered to be environmentally sensitive land, regardless of the percentage. They did not know and could say to overlay the GIS and know what tracts they were talking about, but at this point they had no idea if that represented 90% of all the tracts of land in the City of Lawrence. He thought that was a radical number, but they really did not know at this point. There was a possibility of the site plan submissions the City had, that over half of those submissions required some kind of remediation. This has changed significantly relative to the scope of how large this issue was. Again, whether they disagreed or agreed on some of the larger tracts those were situations where they had the planning meeting, a lot of interaction between the property developer and staff, went through the process that took time and investment, and were talking about large lots. Here, they did not know how many tracts would be exposed or fall under this, which was a significant change of what was there before.

He said he wanted to talk about non compliant activity. Essentially, if a property owner had no intention of developing anything but happened to take out a couple of trees on their piece of property and somehow three years from now went in for a site plan, the City might ask

the property owner to remediate that situation, even though they had no idea of what they had done. The unintended consequences of this language were huge and he agreed from a standpoint of a different example, but did not know how they would enforce this. They were talking about 10% of the property or 60% of the property in the City of Lawrence. There was some language about other features individually significant trees, a lot of things that were incredibly ambiguous and put a significant amount of interpretation in the hands of the Planning Director. He said not that he did not think Scott McCullough, Planning and Development Services Director, was incredibly competent, but thought it created a very uncertain outcome as to how this was going to go, because they have not gone through this process. This came through with the new development code and ran into one situation where they realized there was some work to do to create definitions. He said the process issues were very good and created a very structured part of the appeal process and some of the mitigation plans, but expanded it to possibly cover more land. Again, he was not concerned about the large development tracts, but more concerned about the individual property owner who might or might not understand what they were getting into. It seemed like in some ways they have focused in developing good process in this language and staff ought to be complimented, but in doing so the scope of this had expanded significantly where he was not sure they could enforce it all. He said without the GIS overlay and understanding looking at the map of City of Lawrence he had a hard time moving forward because he did not know what they were talking about.

Commissioner Hack said her preference at this time would be for the amendment to go back to the Planning Commission with some guidance as to what the City wanted. She said this was a significant change from the original amendment. She said The Links project showed that there was work to do and The Exchange showed it in reverse order. She said from her comments, she was not trying to undermine the significance of preservation of sensitive land, but they were right on the door step of trying to control property before any development

thoughts occurred on that property, because then a serious imbalance of property rights versus the rights of the community to protect the land was being looked at.

She said she was still not convinced they answered the cost question and that was born by the community in terms of increased housing costs. She would like to see some conversations with the stakeholders. She said they had property owners and people in the development community who had some thoughts about this. There was no viable incentive to go ahead and do this preservation or work with land that had environmentally sensitive land to protect it. She did not see any reasons for someone not to go scour a piece of property, which was what they were trying to avoid by working on this amendment. In some cases they might have done the opposite. They had to look at balancing the rights of property owners and the preservation interests. She would like to move it back to the Planning Commission.

Vice Mayor Chestnut asked Commissioner Hack if she was talking about property that was in the UGA that was in the County now.

Commissioner Hack said yes. She said she agreed there were protections in the City, but they would eventually fill up the UGA and did not think anything precluded that.

Commissioner Amyx said to go back to 2006 with the adoption of the Development Code. He said the City Commission knew that when the Development Code was adopted, there would be changes. He said staff and the Planning Commission did a good job to try to recognize and identify some of those changes that had to happen. In talking about the environmentally sensitive areas, one concern was the confusion on the understanding of how this would work. He said one question was if they were adding percentages of property that had to be maintained and was not sure that was answered. He said they could do one of two things; they could vote on this document or send it back to the Planning Commission with specific direction to make it clearer. They could bring stakeholders in again. He said one of the biggest things for him was a clear understanding of how this particular amendment worked for everyone involved.

Mayor Dever said he was in favor of the concept of what they were trying to achieve but he had concerns about the specific process. He said he went through the document and tried to highlight things that jumped out at him, but there were so many left to question including the cost of whether or not this plan needed to be done by a professional, what that would cost and what would be involved. He said assuming that was clarified, that was a great opportunity to say the plan could be done by anyone and the tools and resources were available. He saw a lot of overlap with existing regulations from wetlands and flood plain to historical resources. There was a lot of regulatory oversight in many of those already and they were adding an extra layer to that, which concerned him. Some of them needed to be included and if they narrowed the scope to what was not regulated and important to Douglas County, it would be more effective and less confusing to people. For him, he would like to see this reviewed and spoke to Planning Commissioners who would want to readdress some of those. Planning Commission comments were very brief and did not get a lot of insight as to how they came to their vote, but would like to be involved in future discussions on this and would like to invite the development community to that discussion because it sounded like someone mentioned they were not a party to this.

He said generally speaking he would like a motion to refer this to the Planning Commission and let it be vetted one by one. If there was some emergency change they needed to make, he would be willing to consider that if there was something provided to them because this would take a while.

Commissioner Highberger said he first wanted to address a couple of Vice Mayor Chestnut's comments. He said even when he disagreed with Vice Mayor Chestnut, he usually agreed with the analysis, but this time he was not sure he did. The cost issue he thought Miller addressed pretty well and maybe it should be clarified in the language that it did not have to be done by a professional engineer, but given that he did not see it adding significant costs in the development process. In terms of interpretation, this went a lot more toward adding under the current ordinance by specifying what maps to look at.

The question Commissioner Hack mentioned about interfering with land owner rights or people scouring the land, he thought this was precisely what they needed to prevent that. The minute they adopted this amendment, it would not be easy to enforce but there were penalties for destroying sensitive lands for private gain. He would prefer to adopt this amendment now and then fix the things in it that needed to be fixed because that would be a step forward for this community. He was surprised the development community felt like they did not have a chance to participate in this process. He certainly wanted the process to be open and available, but felt like there were chances to participate.

Vice Mayor Chestnut said it seemed like in every instance where the public in general felt like they had not been part of the process and commented on it, they respected that. Now they were saying the development community got their shot, so be it. He was not sure they agreed with that. Ultimately they wanted the stakeholders in total to have some agreement on this and secondly it was important to understand his intent. They had to figure out a way, especially in the UGA, to preserve land. They had seen some bad examples, even now, and thought there were unintended consequences. What he was concerned about was some of the natural resources were evident and everyone knew they wanted to protect, but what about the plot of ground that had one half of 1% that was in a sensitive area that was on the corner of a property line and its owner who had two acres that wanted to look at rezoning or replatting, they would be subject to this process. He did not have a grasp on how big that issue was. It was his biggest concern that it was not the obvious, but the unintended consequence of interpretation of staff saying they had to go through the process. For a lot of people, that could prove to be inhibiting to infill development. There was enough he did not know about that made him nervous without seeing the map overlay and what percentage they were talking about. He would like to see it before they moved forward. He said if there was a motion, they needed to make it clear on what they were directing Planning Staff to respond to. He agreed with

Commissioner Amyx that it would be nice to see a before and after. He thought that would highlight some of the issues.

Commissioner Hack said if they want to discourage sprawl and encourage infill development then they have to make the infill development process less cumbersome. It did not mean they had to make it so all sensitive land was wiped out to make it less cumbersome, but there had to be a balance. They were sending the wrong message if they would continue to make infill development more costly, more process, and more difficult for someone to do and at the same time say they did not want sprawl.

Mayor Dever said if you apply the rule, the majority of the flat and level ground in Douglas County has been developed and encompassed in the City right now. There were rules they talked about applying where they were protecting category 1 and 2 soils which were flat, highly irrigated, and dissected planes which were values and also protecting 15% slope and so on. He said they were narrowing their ability to easily develop on land that was narrow in scope because it was regulated on one end of the spectrum and regulated on the other end leaving sloped soils that were roughly equivalent to 25% of what was left because the rest of Douglas County became hilly and sloped. He said he wanted to make sure they understood what they were doing because as they worked in one process they were creating a strict ordinance. Part of the problem was with some of the slope definitions and what they were allowed to protect because there was a lot of protection and oversight. He said he was okay with some regulatory oversight, but going a little bit too much in one direction and too specific in others. He said they needed to take a look at what areas in the UGA it would affect and what it would look like. He said that was an example where they had regulated both the flat surfaces and now regulating anything that was sloped and what was left was something in between which was not a lot.

Commissioner Amyx said he supported Class 1 and Class 2 properties. He said one thing that needed to be looked at was if taking out the other section and if they were going to protect the land environmentally, they needed to know what was left, what could be developed,

and draft ordinances that would protect either end of the scope. He said they would be making a statement of how and where that development could occur.

Mayor Dever said he would like to see what it would look like and do some overlays to show people what they were talking about. He said it did not mean they could not build, but seeking to protect them in some way and limit the development thereof. He said he was not ready to vote in favor of this, but also did not want to send the message the Commission did not want to move forward.

Moved by Hack, seconded by Chestnut, to send text amendment TA-12-27-07 back to the Planning Commission to review the comments as expressed in the minutes of this meeting and to review the comments to be provided by Mayor Dever. Aye: Amyx, Chestnut, Dever, and Hack. Nay: Highberger. Motion carried. (13)

Discussion with transit implementation specialist of the future of coordinated transit services.

Casey Toomay, Interim Transit Administrator, presented the staff report. She said Borne Associates and Olsson & Associates, members of the Transit Implementation Specialist Team, would brief the City Commission on the overview of the project to make sure that was consistent with what the City Commission's impressions of what that project would be.

Mark Swelp, Olsson & Associates, said they wanted to be sure the City Commission was seeing things the way they were in terms of the expectations of the study and the outcomes. He said they would be conducting a series of meetings with various groups, stakeholders and people who were interested in transit in the City of Lawrence. This effort was geared at developing some recommendations and strategy for better coordination between the two public transit systems that existed in this community, the City system, the T, and the University system, KU on Wheels. Their efforts toward that end were structured in three phases.

He said they were currently in the middle of the first phase which involved gathering data, understanding the systems and issues. Concurrent with this effort to educate themselves,

they were asked to develop some recommendations that could be advanced for August implementation and to accomplish that, they were asked to have those recommendations ready for review by March 1st. In about two weeks they had to come back to the City Commission and the University with some recommendations for adjustments to routes and services. It was probably nothing that would be sweeping and just minor adjustments initially, but was an effort to get the ball rolling.

The first phase would take them through the month of April and at that point, have a good understanding of where they were headed and what the issues were.

Phase 2 would involve the development of policies and standards for public transit services in the community. In some respects, in his opinion, it was the most important aspect of the entire study. It would guide them in developing recommendations for coordination of the two systems. They would work closely with the City Commission along with other stakeholders and constituents in the community as they develop those policies and standards.

As they agree on some concurrence on policies and standards they would move into the final phase which was the meat of the development. It was the recommendation of coordination between the two systems. There were some fundamental questions that needed to be asked and answered, and fortunately they had some time to work with the City to develop those answers. They needed to know the goals and objectives of the City and what they were trying to accomplish in the community.

He said they believed there were good opportunities for better coordination between the City and the University. They believed the result would be a much more effective and efficient system. They knew there were fiscal restraints and knew what funding was available to support transit, but believed with that available funding they would provide the recommendations that would provide a better transit system. He said he used the term "system collectively" because their view was there were two public transit agencies, but one system and that was the way it should be. They understood the two entities would continue to operate independently of one

another, but the coordination could create a singular system, at least from the view of the users and people that used public transit.

He said their other meetings were a little different than this and were meant to be workshops and were soliciting input from those stakeholders. Given the forum tonight, it would be better to brief the City Commission and would take any questions. They would take the City's input at any point during this process.

Commissioner Highberger asked what the timeline was for implementation of the new and improved system.

Swelp said January 15, 2010 was when their recommendations were due. That would initiate a review process and at that point they would become advisors to the whole process of developing an implementation strategy. In terms of putting it in motion, it began at the point they handed off their recommendations.

Commissioner Highberger said given KU's schedule, it was likely to be August 2010.

Swelp said yes.

Commissioner Amyx said they talked about a better transit system by coordinating the two systems they had to make a better system. He said their concern was to make sure the City buses had riders and hoped that was their goal in making sure there was a plan to ride both those systems.

Swelp said it related back to the effort of developing the policies and standards. They needed to make some decision about an acceptable level of performance. There were a lot of different aspects of transit service and that was what would guide the consultants and the city in terms of what they would do with a route. Right now, a decision could be made about a route, but needed a reason for that route. If there were adopted policies and procedures that was what a person would hang their hat on. It was an important effort and would work closely with the City to develop that.

Mayor Dever said it was important they read every line and comment from the public survey. Going through that survey he found some great ideas and common themes that needed to be addressed. Some were put down on paper, but heard those concerns hundreds of times. It was important the consultants knew that he felt like it was a good summary of feedback and the synopsis of the community. In general, the information was good and they needed to make sure the public was listened to thoroughly. Not the people who just show up at the meetings, but people who took time to fill out surveys. It was the public's system, the public was paying for it, and they needed to help guide it.

Mayor Dever called for public comment.

There was no public comment.

(14)

Receive minutes and recommendation from the Community Commission on Homelessness (CCH) discussion on homeless camping.

Katherine Dinsdale, Co-Chair of Community Commission on Homelessness, presented a letter to the City Commission. She said the letter presented to the City Commission was the majority opinion of the CCH that the ordinance banning illegal camping by individuals who were homeless should stand. At today's meeting, they again received public comment on the topic. Today marked the third month of discussion on the issue. Although the vote to uphold the ordinance stood, their Commission remained divided on this issue. Over three months, they studied how other communities across the nation and region dealt with the issue. They heard from the community and outreach workers, and understood what a difficult job they had. They understood that when campsites were demolished, outreach workers lost contact and relationships with isolated and alienated people who desperately needed their support.

They heard a report from the City's Parks and Recreation Department. That report included a litany of concerns of hygiene, public safety, trash collection, as well as staffing, liability and funding concerns if legal campsites for homeless individuals were established.

Everyone on the CCH acknowledged the complexity of this issue and their extended study and differing opinions on this issue highlight how people of compassion and goodwill can deeply respect one another, yet respectfully disagree on the proper responses. The CCH was strongly united in acknowledging the community did not have shelter beds for all of those who sought them. They acknowledged that many of those who camped were mentally ill and that appropriate facilities did not exist for individuals who were on the street that struggled with mental illness. They also acknowledged that there were individuals who chose to camp and many of those would not use emergency shelter space or even designated legal campsites if those were made available. Taking those into consideration, there was not adequate support on the CCH to retract the ordinance. She believed those on the CCH who voted to uphold the ban, did so believing it was not in the best interest of the community or those who camped to designate special camp grounds for those who were homeless. That said, upholding the ordinance proved their commitment and concern for vulnerable individuals by doubling their efforts to do the following. It was essential they maintain funding for the homeless. Outreach workers who spent their timing urging many alienated and mentally ill individuals towards services and shelter.

As a community and commission on homelessness, they needed to develop more creative and effective ways to better engage and support this population. Perhaps private groups in the community would be willing to work to provide transportation for individuals who were homeless and wanted to be transported from legal campsites that already existed at Clinton Lake and elsewhere. The City Commission needed to fully support the work of those who had stepped up to the plate and provided solutions to the housing for the needy in the community. They needed to do whatever it took to help the Lawrence Community Shelter move very soon to a facility that helped that organization do its job of emergency sheltering well. The City needed to do whatever it took to allow Family Promise to thrive in the churches of the community. They needed to fully back the Housing Authority as they worked to grow the

community's stock of emergency transitional housing with the e-housing connector. Those were three activities the CCH supported wholeheartedly and championed and hoped the City Commission would also support.

Mayor Dever called for public comment.

David Tucker, Homeless Outreach Worker, said he wanted to talk about what the CCH decided on. He had been speaking with the CCH and a number of other coalitions in the City about the issue of homelessness and camping. He saw a number of issues with this ruling, but wanted to point out a couple of issues. One issue was they had under 100 shelter beds in the City and had over 300 homeless people. That meant 200 people a night were looking for a place to stay, whether it was a car, camping or something like that. The biggest issue was that with the current ordinance it was illegal for those people to camp, sleep or lay down somewhere. They were not giving them adequate shelter so he strongly urged a campsite or something for those people because currently there was a lottery at the homeless shelters to determine who slept there and if your name did not get called, you become a criminal in the City and had to find somewhere to sleep or no one was going to find you. This led to a lot of moving and rotating campsites. In addition, the Parks and Recreation Department chased off campers when they found campers. Sometimes campers were arrested and it was a lot of burden on their system. Every time someone was arrested, the citizens paid for it with tax dollars for the jail. Every time they chased off homeless campers they also had outreach workers try to find them again and so they wasted hours trying to find them again while the Parks and Recreation Department were finding them and chasing them off. It was a constant rotating cycle which Parks and Recreation at a Commission meeting stated specifically that they were not accomplishing anything by moving those people.

He said he was trying to propose a camp ground where the homeless or anyone could stay free of charge in order to ease this problem. He understood the housing vision that was putting people in houses. That was great and he supported it 100%, but the national coalition

for ending homelessness stated that its first rule of ending homelessness was have a regular bed in the same place every night and was the first step in stopping someone's homelessness. If your name was not in the lottery at the shelter, they did not have that and did not know where they were going to sleep every night so they could not get a job, go to a doctor's appointment or see a counselor for the post traumatic stress disorder they were suffering from. What he was proposing would allow that and allow a place where someone could go every night and find a bed to be able to sleep. He had been talking with the Coalition and together with them they were trying to come up with some information for the City Commission to digest about other homeless camps that had succeeded. One of their own Lawrence case workers had recently left this area, went to Reno, Nevada, a year or so ago and created a successful campsite for the homeless. They would be looking into that and a number of other campsites. He urged the City Commission to give them some time and allow them to give the City Commission a real proposal with some actual information about what they could come up with to try and help those people. It was devastating to their mental health and sense of society. The homeless constantly felt like society did not want them instead of trying to help them and reintegrate them into society. He also encouraged any kind of critical questions or any kind of input the City Commission would give him. He was very easy to access and would be able to give out his contact information later. He really wanted to work together to make this into something that would help people. The Lawrence Community Shelter was very underfunded and was trying to move. They did not know when they were going to move or how that was going to happen. In the interim, they had a lot of people with no place to go and he was proposing they give them somewhere to go, even if it was temporarily until they could have enough shelter beds in the community for the homeless population.

Scott Mulryan, Homeless Outreach Worker, said first he supported the Housing First Model. He thought it was imperative to reduce the rates of homelessness and drastically reduce the rates of chronic homelessness. However, currently in this town they were not

developing the housing first model. That provided a lot of problems for the homeless outreach workers. For example, one of their programs was the Lawrence/Douglas County Housing Authority had a transitional housing program designated for homelessness. The City outreach team, due to changes, were no longer allowed to make referrals to that process. Again, the housing first model did not work for them at this moment. Processes were being made and they were looking into that. Therefore, he asked the City Commission not to look at the camping issue as a change in proposal as to what the City's goal was for housing first, but use it as a stepping stone towards the greater process of the housing first model. By doing this, they could create a spot in which they could start with. After, they could move on to where they would have a better housing model and move past the ordinance of camping into a more permanent housing, which they could all agree was a better plan. He urged the City Commission at this moment to take the necessary steps in that process so they could provide a better outreach to the homeless in the Douglas County area.

Matthew Faulk, Homeless Outreach Worker, said he completely supported David Tucker's proposition for the creation of some kind of campsite. His reasoning, along with what was already stated, was a cultural issue. At this point in time, if a person was not in a shelter, not moving continuously, and not spending money in an establishment, a person was in a position of illegality. In some sense sent the signal of castigating someone for their position of poverty. If the homeless were arrested, they incur a fine that was not only a tax on the City but a greater tax on the homeless position of not being able to get back up on their feet and sent the signal of not getting a hand out, which he did not support, but being pushed back down.

He said they talked about people who fell through the cracks. It was his experience often times that people did not fall in cracks, but live in cracks because that was the only place available for them to live. Covering over the cracks did not mean jostling around with the administration and things like that, but getting rid of the homeless all together and providing a meaningful place and empowering place for everyone in the community.

He supported the Housing First Model and did not think in any way a campsite should replace a Housing First Model. As an outreach worker whose goal and task was to go out and find the resources appropriate to house people, that task was very difficult because the resources were falling short. The Housing Authority had up to a two year waiting list, which meant that if a person was homeless today and did not have any family resources, a person would have to live in a shelter or somewhere for two years in Douglas County before you were even eligible for any kind of assistance. If Housing First was their true desire, then they needed to put their money where their mouths were and focus on doing that. It was not that they were doing meaningless work, but they were not taking care of the hard issues first. He said they could work around the other issues but the fact that people were displaced and the cultural around it was a negative cultural. He was not saying there were not problems and personal issues that were at play, but this was a divisive situation and something like a camping ordinance that made it even harder, made it even more divisive. They were not doing themselves a favor or anyone else a favor.

Forrest Swall, Social Action Committee of the Lawrence Unitarian Fellowship, said he knew that there were some present and in the community who were sick and tired of the issue of homelessness in Lawrence and would love to see it disappear and go away. The reality was for those who had lived in Lawrence for a number of years and knew what the resources were and heard the comments that it was simply not going to happen. People were homeless and were going to be here. The nature of the economic system and the housing conditions made that a fact.

He said he wanted to review the recommendations that were included in his letter. They recommended that there be immediate as well as long range plans to create humane resources for people who were homeless. For example, for those who work with people who were homeless, they spoke to the desperate need for a detoxification and rehabilitation center, as well as supportive housing for the mentally ill. There was a critical need to continue to support

the outreach staff who represented, for many of the homeless, the only link they had to significant resources in the community.

A second one was the provision of needed sanitary facilities. Modifying City ordinances was necessary to permit the placement of sanitary facilities for people who were homeless congregate. For example, to create toilet facilities for people who were homeless and surly they could find ways to establish portable toilets that would make that possible for them.

The third one was to remove barriers that denied basic accommodations for people who were homeless and had no place to turn. It seemed strange to have this discussed because he knew they had the City ordinance with respect to camping in Lawrence, yet they knew that people were going to camp and the City ordinance would not prevent them from camping and no matter how effectively the law enforcement agency was in picking up people who violated that ordinance, people who had no place else to turn had to sleep somewhere and they would.

He said he wanted to respond to some of the observations that various people have made that he heard. One was that there was very little interest on the part of the public. Just recently in being in several meetings, there were some 700 volunteers working with the Family Promise program. Those were people, the public, who were concerned about people who were homeless in Lawrence. There were many churches and civic groups who participated in the Link Program and other feeding programs that served people who were homeless. There were hundreds of people in the community who were responding out of the goodness of their heart volunteering their time, money and casseroles for people who had no place else to go for nutrition.

He said for much of the public, people who were homeless in Lawrence were largely invisible, and that was the way many would like to see it. They would like to see it as invisible and go away, but would like to see it invisible because of constructive, positive and creative actions that the community could take. Even for those who were reasonably aware, they had little knowledge of their numbers or needs beyond some level of shelter and a place to sleep at

night. Many of them tend to share the sentiment that it would be nice if they could just magically disappear, but that would not happen.

He said he wanted to express appreciation to the City Commission for the continued funding of the outreach workers. Clearly, these remarkable people constitute a lifeline and having the outreach workers in the street, in the woods, in contact with the shelters, helped to put a human face on the people in Lawrence who were homeless. They could not help but face the reality of the cost of homelessness. As he thought about it and read about people who were homeless, it was as though they thought this was a cost they could do away with and eliminate the outreach workers and somehow that would relieve the City of funds to spend in other places where it was more needed, particularly in the light of economic situations that was facing City government as well as people across the community. However, there was going to be a cost to homelessness no matter what they did. They could either invest their money in staff and programs that served people who were homeless or they could pay those costs in other ways. In visiting with people related to the jail, he found that a substantial percentage of people who were serving time in jail were people who were fundamentally homeless. In one case it was cited to him that a person who was homeless had been in the jail for 6 months and costing the county \$250.00 a day because of the health costs associated. They knew that homeless people did not get health care, so when there was a critical health situation, they use the emergency room. He said it would be interesting to find out what the costs were for the hospital that they were paying for through taxes through their insurance programs, etc, which made it possible to provide an inadequate kind of health care for people that were homeless. There were significant costs associated with the homeless even as they tried to avoid and ignore the situation.

He said he wanted to put an emphasis on the human factor. People who were homeless were people. They were like us, except all too often they had no certainty of a place to go and sleep at night. They often had no place to turn for help and had mental health and physical

problems, but had no place to turn and no sure way to have those problems and needs addressed. He said he supported much of what was reported from the CCH and thought those were some excellent recommendations to begin to build on, but was confident they needed to move beyond that and find ways to make it possible for people who were homeless to have shelter and minimal healthcare in this community. He was pleased to see the City Commissioners responding, inviting, encouraging, and supporting this kind of commission and effort and those initiatives. He thought they could do more with what they had and had more of an opportunity to serve people who were homeless.

Janie Burgess said she sent the City Commission an e-mail. Her daughter was a social worker and passed onto her a story of a man who did not have a place to sleep and deliberately plotted himself in front of Weaver's knowing they would call the police, which they did and took him to jail so he had a place to sleep that night. She said if a camp were established, they would see perhaps less sleeping in the doorways, perhaps less panhandling, less loitering in the business district because then those people would have a place to go that they could say was their temporary home. She thought humanity could suggest no less than that.

Herman Leon, Lawrence, said he wanted to express his regrets that two of the City Commissioners were going to be leaving and hoped the other would get reelected. He said as to the other two, he welcomed them to a very difficult task. They all had sat through an exercise in sociological classification of formal organizations. He thought that would what would be the title to the course that would attempt to convey the intricacies of the regulatory process of land preservation that they sat through previously, which he personally thought students should be given credit for at the University level because as they all saw no one understood what to do but the City Commission acted wisely and shipped it back somewhere else.

He said he had the pleasure of appearing on the behalf of homeless people for a number of years and he wouldn't repeat everything they just heard. He said he wanted to see if they could reload themselves to broader issues of what was happening nationwide. What he

heard on the streets and what they read in the papers were true, there was liable to be a wave of many people who would find themselves homeless who had not been homeless. It was a trick of the trade to know how to survive as a homeless person. He did not know how many read the Change of Heart article written in the paper, but wanted to give it to the City Commission to read. This newsletter cost \$1.00 and was sold by people who received 75¢ from each newsletter sold. He said maybe what they needed to do with the impasse that formal organizations found themselves in when they attempted to deal with delicate issues was balancing safety needs with humanitarian needs, with land use needs with developer needs, but should step outside formal organizations. He said where he came from when they wanted a policy made, they started off by informing the Mayor that it would be a good idea that he told the Police Commissioner that the City Commission would like things eased up. He did not know if that was a legal term, but would convey a spirit. It would be something that might cause controversy in the town and bring attention to the viability of indigenous communities, which was what existed out by the river. He had personal experience and provided a couple of tents to people at the river and helped them survive and get through the night. He said out near the river there was human companionship, fire was built, and people would get drunk and fall asleep and did not fall into the fire. Somehow as the community indicated it was not bureaucratic, but maybe Change of Heart was what was going on in the community and society as they faced a much, much bigger crisis to come than very few of them knew anything about. Maybe it was time to try strange things.

Michael Tanner, Lawrence, said they had all spoke on this issue and knew that the idea of camping in the City had been shot down before for certain reasons. One of the reasons he heard was because they never approved a campsite that was unregulated. He said he agreed with that. He said the City Commission knew he had a little city down by the river, but they had problems with thieves and violence. He agreed that if they ever approved of camping in the City, there should be some sort of regulation and order.

He said he wanted to address the issue of housing. He was on Section 8 for seven years and came to Lawrence because in Kansas City, Missouri, he was on Section 8 for five years and could not find a place that was not contaminated whether it was rotten carpet or filled with mold spores. He came to Lawrence and found more problems with housing authority program. He said his experience was that he had a tyrannical landlord that did not want to follow City Codes. For some reason, the inspectors at the housing authority passed the inspection on this place that was in violation of City Codes. He could not get the City Codes enforced and was evicted for reporting the violations to the City. He said his landlord, James Dunn, was the head of the Landlord Association in Lawrence. As a result for supporting the City Code violations, he was not only evicted, but put on a computer blacklist that was a website that landlords had. Whenever he looked for a place and left his name and number on an answering machine, he never received a return call. He said he determined himself that there was a problem with the housing authority opposing rules. They failed to do that. They had people like him that were on a website that would prevent him from gaining housing in Lawrence, probably forever. He said it was okay because he accepted it and dealt with it down at the river in his own way by building his own shelter that was bulldozed down.

He said he heard the term several times tonight "tree removal". He knew it was on a different agenda item, but they all knew how he felt about tree removal. He wanted to bring up a problem or issue in a park. He had an issue with Parks and Recreation. There was a park on 11th and Massachusetts called the Friendship Garden. Parks and Recreation cut down a huge shade tree and was still trying to figure out why. He said it was a beautiful shade tree and if the City Commission approved camping in the City limits and approve of a specific site, they would appreciate all the trees they could get. As a homeless person in Kansas City before he came to Lawrence, they had a problem with finding a place out of the hot sun. They did not want a developed campsite that had been cleared of trees. The concrete pad down by the river had trees growing up over that pad and was sheltered from the sun last summer. Now, after the City

bulldozed all of the trees down, the trees did not cover that concrete pad anymore. He could not go down there anymore and practice his music because he would be in the sun.

Hilda Enoch, Lawrence, said the Community Commission on Homelessness, which was the official body the City Commission appointed to deal with homelessness had because of the division in their own ranks decided the issue of camping was not one they would deal with. The fact that there were those numbers of people who were homeless and out there, she thought they would try to expand their vision. She said the Coalition on Homeless Concerns, which was an advocacy and educational group, voted unanimously today that they would like to be involved in the issue of setting up a campground for people who had no place to go until the CCH could provide or make more arrangements to care for those people. She said for the Coalition on Homeless Concerns, it was an unacceptable answer to say that those people did not count and would prosecute them because they had no place to be. Their best thought on this was that David Tucker, who really established some rapport with them, should be their representative to the CCH and try to work with them and help set up a program that would take care of those people. It should not be a lawless place and have basic amenities like trash cans, portable potties, and picnic tables. It should be where it was hidden in the park and be with some control and patrol. She said Tucker had volunteered to continue his work with the homeless and help them establish the village and area that would be safe and provide at least temporarily and look at this issue every six months or year and re-examine it as more housing hopefully came into being. In the meantime, it was a serious issue that they leave people on their own when they had no solutions for them. This was at least an offer that all together, as a community, to try to make some difference with this population. She said if the City Commission would at least okay the possibility for Tucker to work with the CCH to bring before the City Commission a way to alleviate the situation for people of no place to go and criminalized for being. They had to do better than that and have tried to work with the City Commission and CCH to bring together the best ideas to have it safe, sanitary and give people a place to be.

Hillary Boucher, Lawrence, said she was present as a member for the Coalition of Homeless concerns and as an individual who cared deeply about the homeless situation in Lawrence. She worked at a social service agency in Lawrence and more and more people as the economy had worsened had contacted her agency. People have never needed assistance before in their entire lives were needing rental and utility assistance and coming to them with eviction notices. Without a doubt, the homeless population, nationally, was going to grow and Lawrence was no exception.

She said a campsite was not ideal and she would never say it was the ideal solution to this problem of homelessness, but would say she could not think of a better temporary solution. Considering the circumstances and housing situation, it was far off. She asked what they were going to do for the 200 plus people who did not have a place to stay now. She considered it a crisis when 200 plus people in the community did not have a place to stay. She thought in times of crisis, it was their responsibility as a community to come together and do something about it and proposed the City Commission reverse the ordinance and create a campsite for a place for those people to stay.

KT Walsh, Lawrence, said with the bankruptcies, rising foreclosures and evictions, she knew everyone in this community were running into people who had lost their jobs and people who were losing their houses. She read in The Economist this week that in Japan the situation was so rough and their homeless population was so huge that the supreme court ruled that every park would be opened to the homeless since there were no place for people to go.

Loring Henderson, Lawrence Community Shelter, said he wanted to confirm his support and clarify a bit on what others had stated. What they were proposing was that the City Commission give a period of time, a month, for Tucker and a committee of the coalition to come back with a proposal in some detail about how a camp would be run so they had something concrete to talk about. There were successful camps and the outreach worker mentioned was given an award in Reno, Nevada for successfully doing her camp, but the camp was closed

when they opened two new shelters. They were not saying this should be a permanent situation and were saying that it should be clearly provisional. There were ways to run it to answer the community's questions on safety, hygiene and other concerns. They were asking for time and had a committee from the coalition that was established to do this work. They would like to bring something back to the City Commission in some detail.

Michael Tanner said he had one more comment about the issue of personal hygiene. He thought this town was not as bad as some people made it out to be. There were places where people could take a shower, like at the community centers. There were a lot of other cities that did not even have that option. Lawrence had a lot of benefits for homeless people. If people had bad personal hygiene, it was probably because they were too lazy to go to the community center to take a shower.

Mayor Dever asked Corliss to comment on whether it would be legal to camp on private property.

David Corliss, City Manager, said it might eventually become a land use issue. Temporarily camping in someone's backyard probably happened now. Some of it might not be of the very serious nature that they were talking about tonight like shelter or housing, but was sure it happened in the summertime for recreational kinds of things. Obviously, if it moved toward a more permanent structure, then they moved to a land use building code type issue on private property. The City's regulations on this came from a number of resources. They talked about camping or occupying a public right-of-way which was something the City Commission addressed in 2005 regarding individuals who were occupying sidewalk area in the downtown area. Parks and Recreation regulations prohibited individuals being in parks after a certain hour and prohibit the uses of building structures. The Parks and Recreation regulations had been around for a long time. It did not have an explicit statement of no camping but did not allow people to be there after a certain time or to build structures, have fires, those types of things.

The other item was a legal nature when the City acquired the property immediately east of the Riverfront Mall, one of the conditions on that property that dated in the late 1980's or early 1990's when it was donated was a conservation easement on that property that gave the Wildlife and Parks Department enforcement authority. Essentially it prohibited any type of human structures on that property, which raised a good question of the concrete pad at that location, but thought that pad was in existence at the time the City acquired the property.

City staff concern had been liability, appropriateness from a land use standpoint and public property standpoint. It was not used to diminish significant concerns that the City Commission had wrestled with for public resources for homeless shelters. He thought there were concerns if it was to occur with the City's knowledge and acquiescence; they needed to make sure it was done at some level of appropriateness. He said they needed to be consistent on how they would enforce regulations on the City's property.

Mayor Dever said he was trying to figure out how they could address something like this on public property and was not sure they could with the existing rules. Some other cities had addressed the concern by allowing religious institutions to house the temporary camps. It was part of their right to provide that service.

Commissioner Amyx said if the Commission were to consider changing the current ordinance that would allow camping in public parks or publically owned land, it was probably going to take them five to six weeks by the time it was written and went through the readings to change any ordinances.

Corliss said it could. If they stressed the priority, they could use their resource.

Commissioner Amyx said they all had taken great pride in the appointments they made on the Community Commission on Homelessness and wanted to thank everyone involved on that Commission on the work they provided on this issue. Also, staff needed to place Family Promise and the Community Shelter on the City Commission's agenda for discussion.

Finally, the CCH met every month and he would suggest that Tucker make recommendation to Community Commission on Homelessness and let the CCH make their recommendation to this body. He said they should involve all other departments and agencies for something for the City Commission to consider; work with the City Manager's Office to determine if it was appropriate for areas to be considered for camping.

He said he did not think the City Commission was a pack of heartless people and when they looked at the downtown issue, they had problems on the sidewalks of downtown and on the rooftops. He knew at least three business owners downtown dealt with that issue. There had been change and a positive outcome, but the positives come from the commission and other individuals that deal with the homeless community. He said he was suggesting that Tucker's plan recommend it to the CCH and always had the opportunity to appeal to the City Commission.

Commissioner Hack said one of the things she appreciated by Tucker being at the meeting was so often people came with a complaint and did not like what the City Commission was doing or had done, but it was not solution based. She appreciated the opportunity that Tucker presented them with an opportunity to look at this differently than they had before. She had some serious concerns about the welfare of individuals that were camping and they were citizens of Lawrence who just happened to be homeless. If it was the City Commission's responsibility to take care of people in this community, it included the homeless population as well, which was hard to balance. She appreciated the opportunity to discuss this further and see what they could do. An unregulated campsite was something she could not support for the safety of all people involved, but there might be a creative solution that other communities had practiced, but agreed with Commissioner Amyx that it had to involve people from the City staff, City departments, and the coalition. She knew it had been a difficult thing to lose people who trusted the outreach workers to talk to them and knew it was a hard thing for everyone, but also understood that an unregulated campsite was something they could not support either because

there had been a lot of problems. When they had citizens of the community die, they could not have a situation where that would happen. Hopefully they could be more creative with how they deal with this issue.

Commissioner Highberger said he appreciated the work of the Community Commission on Homelessness. He did not want to derail the CCH's vision of transitioning away from homelessness, but temporarily they had a problem. He said what changed his way of thinking on this issue was thinking about being in the position of the individual who came down to a full shelter and the person did not have anywhere to sleep, what would they do. What they were doing right now did not work because they tolerated camping for a while and then the City tore down shelters, and it happened over and over again.

There were concerns from neighborhood associations where they did not want this activity happening in their backyards and was something that had to be taken into consideration. He would support the proposal made to study this issue and bring back options. He said he would like to see what other communities had done and was something they owe to the community to take a look at.

He said the regulations on the parks, applied to parks and was an open question. Parks were not defined in the code as he saw it and thought it was City property the ordinance did not apply to, but there was disagreement to that.

As far as the easement on the one particular piece of property, as part of this property it might be worthwhile to contact the grantor of this easement to see if they had any objection to the temporary use suggested. He said this needed to be approached as a temporary solution with finding adequate shelter space.

Commissioner Amyx said regarding the lifting of the easement, one thing to take into consideration was negotiations with East Lawrence Neighborhood Association as part of the settlement on allowing that structure to happen. If that was part of the deal, he could not do that.

Commissioner Highberger said neighborhood concerns were something the Commission needed to take into consideration.

Vice Mayor Chestnut said at this point he supported the recommendation of the CCH to not change the ordinance. He thought this had been a great process with the CCH because they had been involved with this for a number of years. They have come to the point where they have understood the needs of the community. It was a difficult issue. If the CCH chose not to change its position, based on whatever input they received from whomever made it, they needed to consider that as it came back to the City Commission. At this point, he would support their recommendation not to change the ordinances unless the CCH had a change of heart. The one thing he thought was important that was a concern was that there were people, for whatever reason, would not go to the shelters. If they moved to a camping situation with regulation, enforcement and order, it was a reasonable conclusion that there would be people who would not want to be in that kind of setting as well, and would move to other public property. It seemed to be an issue where they had a serious problem and housing was only one solution. The mental health services across the state had been eviscerated, essentially. Also, they knew that in this population that there was a significant issue of substance abuse and other things that needed programs to treat. They did not have those at the level they wanted to. They were looking at one issue that it was difficult to get their arms around. They had two deaths in October and when that came up in the last comment, he thought it was ironic or unfortunate that some of the comments were that it was not part of the group it was part of, but the fact was that there were significant public safety issues that needed to be addressed. There were problems with thieves and a lot of things in the site they had. This was a difficult issue and thought they had to take care because they lived in one of the most litigious societies on earth and had significant taxpayer protection to consider with this. It could take one instance of a significant case that could be damaging to the City. It all needed to be considered when looking at the proposal for potential risks because the health and welfare of the entire citizenry was at

stake every day they had to consider. This was one that had to be considered, but had to be considered in relation to the rest of the population.

He supported the recommendations and was excited about Family Promise. He wanted to look at the text amendments relative to how they really looked at viable sites for the community shelter, because it was the next big step to put the initiative behind.

Mayor Dever said there were good reasons why there were not a whole lot of cities that had enacted or enabled a public campground. He said while he was favorable of considering a public campground, he had to be sure there were no obvious hurdles to get past in order to accomplish a campground. He said it was great to be leaders and the vanguard of activities, but obviously, there were some risk. He said they owe it to the community to protect themselves from that. He said he had read other articles talking about how when Commissioners and Mayors wanted to do something then the communities get in the way and did not want them in their backyard or stop the development from happening. They might agree to do something, but then they move forward and the neighbors would have a say against it. If they were going to do something along those lines they needed to take an intelligent approach and they needed to get their act together first. He said they needed to get the CCH involved and get their support and needed to consider the religious opportunities and freedoms that existed for people to provide that service. He was not sure why that had not been investigated or brought up. He asked if they could do it for Family Promise, why they could not do it for this problem. There were two cities in Washington that do that and it was successful. He said safety was his most important concern and if they could safely administer this type of thing, he would not be opposed to it as long as the safety and residents would be protected.

Moved by Amyx, seconded by Highberger, to receive the minutes and concur with the recommendation of the Community Commission on Homelessness and asked David Tucker, Homeless Outreach Coordinator, to make a recommendation to the Community Commission on Homelessness. Motion carried unanimously. (15)

Brian Jimenez, Codes Enforcement Manager, presented the staff report. He said on January 20th, 2009, City staff came back with an update and at that time it was determined that what staff received was not what they had initially requested on November 11, 2008. City staff sent a courtesy letter to the owner advising that City staff would act on the order of demolition and also noted to remove any valuable items. When that memo was sent, City staff did not have the demolition bids received, but had received the bids last Wednesday and there were enough bids to proceed.

On January 29th, Ms. Denton, property owner, along with a licensed Lawrence contractor contacted him that morning in reference to a building permit submittal. He asked that the plan review staff accompany him in that meeting to review the documents and make sure that everything was addressed. At that time, City staff determined the submittal was not sufficient because they were not treating this submittal as any other normal building permit and needed more detail on what would be repaired, cost estimate, and so forth. The next day, the owner and contractor came back to City staff and presented that information. They met again at that time and conducted a quick review and determined there would not be any issues.

He said staff met with the contractor and asked about financing because it was a major concern at the onset. Staff was assured by Denton that financing would not be a problem. He asked the contractor if he knew what he was getting into, and the contractor replied yes. The contractor was confident he could get paid and that if the permit was released, he would start work the next day.

Jimenez said he also spoke to Daryl Graves, the attorney involved in this process, and the attorney also assured him on a phone conversation that he was confident that the financing could be worked out. The estimate on the building permit was \$51,000 - \$58,000, depending on some projections the contractor could not see right now because there needed to be a lot of debris removed from the inside. He said he estimated the total to be approximately \$50,000 for

the remodel even though he had no experience in giving estimates for remodels, it was a ballpark figure.

Commissioner Amyx said since everything was in place, he asked if Jimenez talked to the contractor regarding a timeframe for the work to be completed.

Jimenez said yes. The first thing the contractor wanted to do was to remove the debris from the structure and then address the foundation. In four months, the contractor wanted to have everything completed. He said he advised the contractor that if they went down that road to expect visits from him weekly or even twice a week. There would be every set of eyes on this remodel because of the history. During their second meeting, the contractor became more understanding of what City staff was dealing with. He said he informed the contractor they were going to treat this project with a different set of hands.

Commissioner Amyx asked if the contractor believed the property was salvageable and could complete this project with the total estimated costs of \$51,000 to \$58,000.

Jimenez said yes. The contractor broke down the estimated costs, specifically, and noted there could be additional costs. He said he asked Denton, her intention after going through this process and Denton indicated that she wanted to make the remodeled structure her home and had no reason to doubt Denton. He also asked if Denton understood the contractor's estimate could be on the low side and Denton indicated she understood. He said his memo stated that staff could issue the permit and the project could move along nicely, but then hit a bump in the road. Based on what was seen in the past and what had been discussed, he thought they could place a hold on the demolition and carefully monitor this project and if things were not running properly, do something different. He said he hoped, if issuing the permit, that the project would be significantly remodeled to be City code compliant and whether it was Denton or someone else, could occupy a habitable structure. He said depending on how much money the owner wanted to spend, everything could be salvageable. Saving the structure could be done, but it was all about the money.

Commissioner Amyx said the worst situation was getting halfway through this process and either running out of money, hit a major bump, and could not be finished which was his main concern.

Jimenez said that was the worst case scenario. It was getting further down the road and finding out the remodel could not be finished. He said he knew the City Commission did not want to take the structure down and personally would like to see every structure rehabilitated, but there was a point in time, where tough decisions needed to be made. He was cautiously optimistic this remodel could be completed, but it was not a guarantee.

Commissioner Hack said in saying Jimenez was cautiously optimistic, she asked if that was Jimenez level of confidence right now.

Jimenez said yes. Going back, staff spent a lot of time trying to work to get the property to some type of resolution and was repeatedly told there was no plan of action and there were no financial resources to proceed with some type of repair. He said staff put this project off as long as they could and at some point staff decided they could not go that route anymore. Staff has a contractor who would do the work and had a permit application that was sufficient for issuance of a building permit. He said staff could keep a close eye on this project. He said there were also other properties to address.

Commissioner Highberger asked if it was within the City's authority to ask for proof of resources available.

Jimenez said he spoke to Graves last week and told him that this item was going to the City Commission for reevaluation on February 10th and if he could give something in writing or come to the City Commission meeting to support that question, then that was what he recommend Graves do. Verbally it was told to City staff that it was not a problem and the money would be there for the completion of the project.

Commissioner Highberger said a bank statement showing a bank account that had \$60,000 would be reassuring.

Daryl Graves, counsel for the property owner, said he took some of the fault because he was giving information to Jimenez, but did not realize it was not quite sufficient. He had the feeling of no news was good news and it turned out that no news was bad news. Once he and Jimenez had significant conversations and he understood more clearly what was expected, he no longer left it in Denton's hands and took a more active position. He said he arranged for a contractor that he used himself and had a lot of confidence in that contractor. He and the contractor knew the property was in terrible condition, but believed that it could be completed. He said there were sufficient funds and they needed to come up with some of the funds before they were issued permit and prove to the City Commission, they would be able to do that. Coming up with the money would take a week or so, but had everything in place right now to move forward and finish up this job. Tonight, he was contacted about some additional funds available and right now there was \$60,000 earmarked for this structure repair.

Commissioner Amyx said if the structure would be allowed to remain, he asked when the rehabilitation work would start.

Graves said tomorrow. He said the contractor was ready to go.

Mayor Dever said he had received e-mails from neighbors around this structure who were impacted by the condition of the building and the neighbors were unhappy about the condition and wanted the structure demolished or fixed and questioned if anything could be done. He asked Graves what kind of confidence he could give the City Commission and what would he do if he was in the City Commission's shoes to make sure the neighbors' property rights were upheld and safety of the community was upheld.

Graves said he believed that the City Commission had been more generous than he would have been. The difference was right now that he had taken control. He said Denton was a wonderful lady, but was not aggressive. He said he was an aggressive person. He said Jimenez told him that he was going to be persistent and was giving the City Commission assurances that Denton had paid him and had talked to the contractor about finances. They

could start tomorrow and thought the neighbors would be pleased with the results. It was a nice neighborhood and when the structure was fixed up, it would be wonderful.

Commissioner Hack said it seemed every time they had come up to a wall and it was now or never, some other door opened up, which happened several times, and made her leery, but she also understood the change. The City Commission all received e-mails from neighbors who had been so disturbed about this issue. She had great confidence in Jimenez that he would be all over this project and if things went south, she would like to know about it immediately and the stay would be lifted. There was no reason for a home like that to destroy the properties all around it and to do that with the neighborhood. She said it was to the point where it was a serious problem.

Graves said he understood that and understood he had to be aggressive. It was not many times you get on your clients and they thank you. He said Denton understood and he would stay on this project. He and Jimenez had opened up a good line of communication now and understood more clearly what was wanted and would see it was done. He was working with a contractor he was familiar with and who had done projects for him personally.

Commissioner Amyx said he thought their goal was preservation of housing stock and they would do whatever it took. He said like Commissioner Hack, if this thing fell apart, he wanted to know because he would make a motion that they take care of it. He was willing to give Graves and Denton the time to do what was necessary to bring that house up to code. He suggested Jimenez visit them a couple of times a week. He said he wanted it understood that the goal was to make that structure safe and Denton could have a nice home there for years and be something the neighbors would be proud of.

Commissioner Hack said she would suggest a progress report be placed in the City Manager's Report.

Jimenez said staff could provide a report bi-weekly and conduct walk-through's once a week.

Moved by Hack, seconded by Highberger, to receive the staff report and directed staff to delay the demolition order and grant a permit to rehabilitate the structure located at 617 West 4th Street and requested bi-weekly staff updates. Motion carried unanimously. (16)

PUBLIC COMMENT:

FUTURE AGENDA ITEMS:

02/17/09

CONSENT AGENDA:

- Approve Special Use Permit, SUP-12-10-08, to allow *Light Equipment Repair* for Car Toys (stereo installation) at The Malls located at 711 West 23rd Street. Submitted by Murl Westheffer for Malls Investment Company, LLC, property owner of record. Adopt on first reading, Ordinance No. 8369, authorizing the Special Use Permit (SUP-12-10-08) to allow *Light Equipment Repair* for Car Toys (stereo installation) at The Malls located at 711 West 23rd Street. (PC Item 2; approved 8-0 on 1/26/09)
- Approve Rezoning, Z-11-18-08, of approximately 11,715 square feet located at 1245 Connecticut Street from RS5 (Single-Dwelling Residential) to RSO (Single-Dwelling Residential Office). Submitted by James Williams and Sara Hurd for Peaceful Rest Corp., Second Christian Church of Lawrence, property owner of record. Adopt on first reading, Ordinance No. 8370, to rezone (Z-11-18-08) 11,715 square feet located at 1245 Connecticut Street from RS5 (Single-Dwelling Residential) to RSO (Single-Dwelling Residential Office) (PC Item 3; approved 8-0-1 on 1/26/09)
- Approve Rezoning, Z-11-20-08, of approximately 140,090 square feet located at 2141 Maple Lane from RS7 (Single-Dwelling Residential) to RMO (Multi-Dwelling Residential Office). Submitted by Grob Engineering for Kansas Family & Children Foundation, Inc., property owner of record. Adopt on first reading, Ordinance No. 8371, to rezone (Z-11-20-08) 140,090 square feet located at 2141 Maple Lane from RS7 (Single-Dwelling Residential) to RMO (Multi-Dwelling Residential Office). (PC Item 4; approved 9-0 on 1/26/09)
- Approve Rezoning, Z-12-21-08, of approximately 37,500 square feet for 1740 Massachusetts Street from RM24 (Multi-Dwelling Residential) to CS (Commercial Strip). Submitted by Wally Storey Associates Inc, for Woodoc, LLC and Dillon Companies Inc, property owners of record. Adopt on first reading, Ordinance No. 8372, to rezone 140,090 square feet located at 2141 Maple Lane from RS7 (Single-Dwelling Residential) to RMO (Multi-Dwelling Residential Office). (PC Item 5; approved 9-0 on 1/26/09)
- Approve Text Amendment, TA-10-18-08, to revise Article 3, *Section 308(g) – Appeals* to be consistent with the adopted Downtown Design Guidelines and to revise the Ordinance No. in *Section 308(h)* to request the latest adopted ordinance. Adopt on first reading, Ordinance No. 8373, for Text Amendment TA-10-18-08 to revise Article 3, *Section 308(g) – Appeals* to be consistent with the adopted Downtown Design Guidelines and to

revise the Ordinance No. in *Section 308(h)* to request the latest adopted ordinance. (PC Item 6; approved 9-0 on 1/26/09)

- Approve Text Amendment, TA-10-19-08, for Article 3, *Section 308(h)* to add an Ordinance No. and reference for 8th & Pennsylvania Urban Conservation Overlay District. Initiated by the Planning Commission at their October 2008 meeting. Adopt on first reading, Ordinance No. 8374, for Text Amendment TA-10-19-08 for Article 3, *Section 308(h)* to add an Ordinance No. and reference for 8th & Pennsylvania Urban Conservation Overlay District. (PC Item 7; approved 9-0 on 1/26/09)

February · Receive staff report regarding text amendment related to homeless facilities.

- Discussion of panhandling issues.

03/17/09 · Conduct public hearing to discuss the condition of the dilapidated structure at 1207 E. 13th Street and to consider declaring the structure unsafe and dangerous and ordering its repair or removal within a specified period of time.

03/31/09 · Receive recommendations of Mayor's Climate Protection Task Force.

March · Discuss continuation or expiration of the quorum ordinance.

TBD · Receive 2008 TASER usage report and authorize expanded deployment of TASERs by the Police Department.

ACTION: Receive report and authorize the expanded deployment of TASERs by the Police Department, if appropriate.

- Utilities Master Plan

- Consider the following items associated with the Oread Hotel:

- a) Road closure schedule
- b) Final development plan revisions
- c) TIF redevelopment plan revisions to public improvements

- Approve Text Amendment TA-06-12-08, to Section 20-810 of the Subdivision Regulations to clarify the natural resources and environmentally sensitive areas that are to be protected or preserved. Initiated by County Commission June 23, 2008. Adopt Ordinance No. 8317 on first reading for TA-06-12-08, to Section 20-810 of the Subdivision Regulations. (PC Item 3; approved 7-0 on 8/25/08)

- Adopt on first reading, [Ordinance No. 8300](#), incorporating by reference, a Text Amendment (TA-04-03-08), to Chapter 20 of the Lawrence City Code (Land Development Code) to define and permit various homeless facilities. (Text Amendment approved by City Commission on 10/14/08).

- Rental Registration Program.

- Consider approving revisions to Downtown Design Guidelines and adopt Ordinance No. 8363 on first reading regarding revisions to Downtown Design Guidelines. (PC Item 6; approved 8-0 on 10/20/08)

ACTION: Approve revisions to Downtown Design Guidelines and adopt on first reading, Ordinance No. 8363, regarding revisions to Downtown Design Guidelines, if appropriate.

- This item was deferred from the January 6, 2009 City Commission Meeting.*** Consider the following items related to Maple Leaf Square.

- Consider Planning Commission's recommendation to approve a request to rezone a tract of land, Z-10-17A-08, approximately 6.14 acres from RS-7 (Single-Family Residential) to RM-12D (Multi-Dwelling Residential Duplex), located at 4145 Seele Way. **Note: The applicant has submitted a request to amend the application, using the Table of Lesser Change, to replace a portion of the requested RM12D zoning with RS5 zoning per the attachments.** Submitted by Landplan Engineering PA, for Doolittle Farms, LLC property owner of record. (PC Item 3A; approved 6-2 on 12/15/08). ***Because a valid protest petition has been received, a supermajority vote (at least 4 votes) is required to approve the rezoning approved by the Planning Commission. Applicant is requesting the City Commission act on an amended zoning request permitted by code under the lesser change table. Because the lesser change would be considered contrary to the Planning Commission's recommendation, approval of the applicant's amended request also requires a supermajority vote (at least 4 votes) of the City Commission.***

ACTION: Approve the rezoning of approximately 6.14 acres (Z-10-17A-08) from RS-7 (Single-Family Residential) to RM-12D (Multi-Dwelling Residential Duplex), located at 4145 Seele Way, and direct staff to prepare an ordinance, if appropriate.

- Consider approving a request to rezone a tract of land, Z-10-17B-08, approximately 3.57 acres from RS-7 (Single-Family Residential) to RS-5 (Single-Family Residential), located at 437 Seele Drive. Submitted by Landplan Engineering PA, for Doolittle Farms, LLC, property owner of record. (PC Item 3B; approved 7-1 on 12/15/08)

ACTION: Approve the rezoning of approximately 3.57 acres from RS-7 (Single-Family Residential) to RS-5 (Single-Family Residential), located at 437 Seele Drive, and direct staff to prepare an ordinance, if appropriate.

- Consider acceptance of dedication of easements and rights of way for PP-10-13-08, a Preliminary Plat for Maple Leaf Square, 10.24 acre subdivision consisting of 41 lots, located at 4145 Seele Way. Submitted by Landplan Engineering PA, for Doolittle Farms LLC, property owner of

record. **Note: The applicant has submitted an amended plat consisting of 42 lots that will need review and approval by the Planning Commission prior to acceptance of dedication of easements and rights-of-way** (PC Item 3D; approved 6-2 on 12/15/08)

ACTION: Accept dedication of easements and rights of way for PP-10-13-08, a Preliminary Plat for Maple Leaf Square, if appropriate.

- d) Consider approval of a waiver from the requirement in Section 20-811(c)(1)(i) of the Subdivision Regulations that sidewalks be constructed on both sides of the street for Maple Leaf Square Addition; a 10.24 acre, 41 lot subdivision which is a replat of Lots 1 through 29 in Block One, Lots 1 through 12 in Block two and Tracts A and B in Doolittle Subdivision; located north of Overland Drive between Monterey Way and Eldridge St. (PC Item 3C; approved 7-1 on 12/15/08)

ACTION: Approve waiver from the requirement in Section 20-811(c)(1)(i) of the Subdivision Regulations that sidewalks be constructed on both sides of the street, if appropriate.

COMMISSION ITEMS:

Moved by Chestnut, seconded by Amyx, to adjourn at 10:40 p.m. Motion carried unanimously.

APPROVED:

Michael H. Dever, Mayor

ATTEST:

Frank S. Reeb, City Clerk