

**ITEM NO. 9 AMENDMENTS TO DEVELOPMENT CODE (MKM)**

Revisions to **TA-12-27-07**: Consider revisions to multiple sections of the City Development Code to maintain consistency with proposed language recommended for approval in TA-12-27-07 (Sections 20-1101 & 20-1701, Environmentally Sensitive Areas) by Planning Commission at their July 2008 meeting.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

Commissioner Harris asked staff to respond to the League of Women Voter letter regarding the percentage of environmentally sensitive features.

Ms. Miller said the sensitive features need to be protected with a maximum of 30%. She said she hesitated to set a minimum because if the minimum says 10% of the site must be protected and only 5% of the site has environmentally sensitive features. Areas without sensitive features are required to be protected. Staff wants all of the environmentally sensitive features to be saved, up to 30% of the site.

Commissioner Harris inquired about wording that talked about the proposed changes to cluster housing projects.

Mr. McCullough said it refers them to the Planned Development regulations which may allow some increase in density. He said if it is a straight RS district you cannot include more than 35 dwelling units in the cluster housing project unless environmentally sensitive areas are present. If there are not environmentally sensitive areas and someone wants to do more than 35 dwelling units in straight RS zoning with a cluster housing project, they would have to include a PD overlay with that and justify the increase in density.

Commissioner Harris complimented Ms. Miller on her work for the Big Springs Quarry project.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Rasmussen asked if they should wait until after the environmental Horizon 2020 chapter is complete.

Mr. McCullough said that City Commission has been waiting for the changes due to issues with loopholes that have been encountered with development.

**ACTION TAKEN**

Motion by Commissioner Singleton, seconded by Commissioner Carter, to adopt revisions to multiple sections of the City Development Code to maintain consistency with proposed language recommended for approval in TA-12-27-07 (Sections 20-1101 & 20-1701, Environmentally Sensitive Areas) and forwarded to the City Commission with a recommendation for approval.

Unanimously approved 7-0.

**ITEM NO. 18 AMENDMENTS TO DEVELOPMENT CODE (MKM)**

**TA-12-27-07:** Consider amendments to Section 20-1101 and 20-1701, Lawrence City Land Development Code, relating to environmentally sensitive lands.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item. Since the June Planning Commission meeting, Staff has received comments on the proposed text amendment language from various individuals. Stan Rasmussen, Planning Commissioner, met with Staff to discuss language which may be unclear. The amendment has been revised based on his suggestions to clarify language and to reformat the amendment so that standards and guidelines are clearly listed in a separate section and not distributed throughout the amendment. Frank Norman of Norman Ecological Consulting provided information on the native prairie remnants as well as other ecological issues. The text amendment has been revised to include the language and reformatting as a result of these discussions.

**COMMISSION DISCUSSION**

Commissioner Dominguez asked for information on the revised standard for historical properties which includes those which are 'eligible' for listing. He asked how eligibility is determined.

Ms. Lynne Braddock Zollner, Historic Resources Administrator, stated that the State Historical Preservation Office has a database of properties that are eligible for listing and there is a set of criteria that must be met in order to be eligible for listing. Utilizing the database and the criteria, she would determine if the property was eligible for listing.

Commissioner Dominguez asked how long the determination would take.

Ms. Braddock Zollner responded that it takes a short time to make the determination, usually within one day.

**PUBLIC HEARING**

Ms. Betty Lichtwardt, League of Women Voters, said that several months ago the League was encouraged by Mary Miller examining the proposed revisions for loopholes. A key provision in the draft is the following excerpt (i) under the new Section 20-1109 which is a source of their concerns.

(i) Ranking and Required Protection of Environmentally Sensitive Areas

All protected areas together shall not be required to exceed 30% of gross land area unless critical sensitive areas exist.

She said that the term "gross land area" was not clear. It could be interpreted in two different ways: (1) the gross land area of the sensitive features or (2) the gross land area of an ownership tract. She was assuming that it means the ownership tract, but it should be made clear. Second, the amount of environmentally sensitive land required to be "protected" by the new draft they believe would be a major source of trouble. The arbitrary limit of "All protected areas together shall not be required to exceed 30% of the gross land area." they view as a major problem. She went on to say that the draft also states that 100% of "protected areas" must be preserved. However, except for the category of 40% slopes and stream corridors on USGS Quad maps this is not over and above the amount of land that would, under other laws be required to be preserved anyway. If 30% or more of a tract constituted all "protected areas" features, everything else that might exist on a tract would be lost regardless of what other features might be present. She said that the League has mentioned this several times in letters. Some sensitive features commonly exist in combination such as streams, wooded slopes, rocky outcroppings, and even prairie. In the case of a major stream existing on a tract coming up to or exceeding the 30% preservation allotment, the wooded slopes, rocky outcroppings, and prairie would be sacrificed because they exceeded the 30% maximum required for preservation. She said that this did not make sense. In the near future, besides the other many environmental benefits, trees are going to be worth money in the form of carbon credits and they should be protected. She said that it would make

more sense if there must be a limit on how much is protected, to add the 30% allotment over and above the mandatory protected areas when they also exist on a tract. She said that there are many other problems that by setting arbitrary allotments. The land itself should dictate what is to be preserved and not the size of an ownership tract. However, the most serious issue of this code that we see is its method of enforcement. Mitigation requires only replacement of what would have been required to be preserved. This is an invitation to destroy everything else before submitting a Sensitive Areas Site Plan with a challenge to the City to prove the damage. The enforcement would require taking the perpetrator to court. We suggested in previous communications on this code that the City extend the Development Permit requirement to all land in the City, not just in Floodplains where they now are required. She said that they have also asked that the City and County institute a program of Transferrable Development Rights or similar program to better preserve environmentally sensitive areas and agricultural lands.

**ACTION TAKEN**

Motioned by Commissioner Blaser, seconded by Commissioner Carter, to approve the proposed amendment [TA-12-27-07] to Section 20-1101 and 20-1701, Lawrence City Land Development Code, relating to environmentally sensitive lands, and forward to the Lawrence City Commission.

Motion carried 7-1-1, with Commissioner Singleton voting in opposition and Commissioner Harris abstaining.

**ITEM NO. 9 AMENDMENTS TO SECTIONS 20-1101 & 20-1701, DEVELOPMENT CODE (MKM)**

**TA-12-27-07:** Amend Section 20-1101 and 20-1701 of the Development Code relating to environmentally sensitive lands.

**STAFF PRESENTATION**

Ms. Miller presented the item and recommended that the Commission not take action this evening since there were a number of public communications which staff has not had a chance to look at.

Commissioner Lawson inquired about significant trees and tree species. He asked if native trees are something that would have been in existence in this geographical area prior to the time of settlement.

Ms. Miller said she assumed that native trees meant native to Kansas before settlement.

Commissioner Hird asked, in regard to prairie remnants, what relatively untouched or undeveloped meant.

Ms. Miller said that a prairie is managed by burning it and that managed was what they were talking about. Land that had been plowed would not be considered relatively untouched and would no longer be prairie.

Commissioner Hird asked if individually significant trees would mean there was one on the property.

Ms. Miller said that was correct.

Commissioner Harris asked what is the goal of saving individually significant trees.

Ms. Miller said that individually significant trees can be established big trees, which are old and sturdy.

Commissioner Harris inquired about harvesting trees.

Ms. Miller gave the example of harvesting trees on a Christmas tree farm.

McCullough said this was not about individual lots and homes, it is about development projects. If a property owner has 10 acres and they were not developing the property then they could use the trees as desired. Staff has identified some of the loop holes associated with development activities and this Text Amendment is trying to tighten those loop holes. Staff was not asking for recommendation, just guidance on where the thresholds should be in protecting the sensitive lands.

**PUBLIC HEARING**

Ms. Betty Lichtwardt, League of Women Voters, was concerned about preserving sensitive lands. She felt that the Text Amendment needed revisions and she gave suggestions.

Ms. Joyce Wolf, on behalf of Jayhawk Audubon, summarized the letter that was included in the Planning Commission online packet.

Commissioner Moore asked how she would define a mature tree.

Ms. Wolf said that it would depend on the species of tree and that an arbitrary figure for all species cannot be picked.

Mr. Bob Lichtwardt, property owner who owns several wooded lots, showed photos that illustrated the kind of land he discussed. He believed parts of his woodland do not qualify for preserving under the current code proposed. He felt that the Development Code should enforce the preservation of trees. He said that there are other areas of the city that have woodlands that need preserved.

### **COMMISSION DISCUSSION**

Commissioner Hird inquired about clear-cutting of trees.

Ms. Miller stated that the removal of trees in a three year period would be clear-cutting.

Commissioner Harris asked why the reasons for saving sensitive lands were not in the standards.

Ms. Miller said that staff deliberately omitted discussing the reasons for saving sensitive lands because different people may have different objectives for saving sensitive lands. It could be an area of argument. She thought that it might be better to include in the environmental chapter of Horizon 2020. A forester would be primarily concerned with tree species and health while a biologist's objective may be wildlife habitat.

Commissioner Harris was concerned about wildlife habitat.

Ms. Miller clarified that it was 20% of the site, not 20% of the woods that would be saved. If the site contained 20% of trees then all of the trees would be saved.

### **ACTION TAKEN**

No action taken.

**MISC. ITEM NO. 3:**

Consider initiation of text amendments to the Land Development Code identified by Planning Staff.  
**(MKM)**

**STAFF PRESENTATION**

Mr. Scott McCullough presented the item.

Commissioner Harkins gave the example of 25 acre land with walnut trees being a valuable asset. He wanted to know if this Text Amendment would prevent the trees from being cut down.

Mr. McCullough said that only a percentage of the land was require to be saved.

Commissioner Harkins felt that this was creating too strict of regulations.

Commissioner Finkeldei asked if Planning was looking at ways to encourage saving sensitive lands.

Mr. McCullough said that was correct.

**ACTION TAKEN**

Motioned by Commissioner Finkeldei, seconded by Commissioner Moore, to initiate the proposed amendments to the above-described sections of the Land Development Code for consideration at a future public hearing.

Approved 9-0-1 with Commissioner Harkins abstaining.