



City of Lawrence

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CITY COMMISSION

MAYOR
MICHAEL H. DEVER

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

March 24, 2009

The Board of Commissioners of the City of Lawrence met in regular session at 6:35 p.m., in the City Commission Chambers in City Hall with Vice Mayor Chestnut presiding and members Amyx, Hack and Highberger present. Mayor Dever was not present.

RECOGNITION/PROCLAMATION/PRESENTATION:

With Commission approval, Vice Mayor Chestnut proclaimed March 24, 2009 as "Friends of the Park/Friends of Stretch Day; April 2, 2009 as "KVC Celebrates 1,000 Adoptions"; and, the week of April 19 – 25, 2009, as "Lawrence Pride Week."

CONSENT AGENDA

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to approve the City Commission meeting minutes of March 3, 2009 and March 10, 2009. Motion carried unanimously.

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to receive the Public Health Board meeting minutes of January 12, 2009; the Sister Cities Advisory Board meeting minutes of November 12, 2008, December 10, 2008 and January 14, 2009; the Lawrence Cultural Arts Commission meeting minutes of January 14, 2009, February 2, 2009, and February 26, 2009; the Board of Zoning Appeals meeting minutes of December 4, 2008 and February 5, 2009; the Community Development Advisory Committee meeting minutes of February 26, 2009; the Community Commission on Homelessness meeting minutes of February 10, 2009; and the Board of Electrical Appeals meeting minutes of February 4, 2009. Motion carried unanimously.



As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to approve payroll from March 15, 2009 to March 28, 2009, in the amount of \$1,748,827.88 and claims to 544 vendors in the amount of \$2,982,586.13. Motion carried unanimously.

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to approve the Drinking Establishment License for Jade Mongolian BBQ, 1511 West 23rd; La Familia Café & Cantina, 733 New Hampshire; Krause Dining, 917 Delaware; Chili's Grill & Bar, 2319 Iowa; Ixtapa, 2016 West 23rd Ste: B; Yacht Club, 530 Wisconsin; Papa Keno's, 1035 Massachusetts; Yokohama Sushi, 1703 West 23rd; and the Class A Club License for Columbus Club Association, 2206 East 23rd. Motion carried unanimously.

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to authorize the issuance of a purchase order to Johnson County for \$70,875 for payment of continuing education classes for Lawrence licensed contractors who will attend training during the 2009 program year. Motion carried unanimously. (1)

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to authorize the purchase of computer laptops for the Fire/Medical Department including the connectivity and maintenance/subscription agreements for ePCR and Firehouse Mobile Fire Inspection Software from various vendors for a total of \$60,245. Motion carried unanimously. (2)

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to waive bidding requirements and authorize the purchase of ESRI software maintenance from ESRI through the State of Kansas contract for \$35,584.38. Motion carried unanimously. (3)

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to waive bidding requirements and authorize the sole source purchase of Intellution Software maintenance for GE Fanuc Intelligent Platforms, Inc., c/o Industrial Network Systems for \$38,320.55. Motion carried unanimously. (4)

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to set a bid date of April 7, 2009 for City Bid No. B09022, Project No. PW0907, 2009 Overlay Program, Phase 1. Motion carried unanimously. (5)

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to adopt on first reading, Ordinance No. 8381, allowing the temporary possession and consumption, of alcoholic liquor at the Lawrence Public Library during the Lawrence Public Library Foundation fundraiser on Sunday evening April 19, 2009. Motion carried unanimously. (6)

Ordinance No. 8379, establishing the quorum of the City Commission at four (4) members, was read a second time. As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to adopt the ordinance. Aye: Amyx, Dever, Chestnut, and Highberger. Nay: None. Motion carried unanimously. (7)

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to approve a one year extension request for a site plan (SP-03-25-06) for Carnegie Library at the northwest corner of 9th and Vermont Streets. Motion carried unanimously. (8)

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to approve text amendment (TA-1-2-09), amending Section 20-1301 (t) to specifically identify the Director of Planning and Development Services as the Administrative Official Charged with Interpreting and Enforcing the Development Code and adopt on first reading, Ordinance No. 8376 for text amendment (TA-1-2-09 to amend Section 20-1301 (t) of the Development Code. Motion carried unanimously. (9)

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to authorize the Director of Legal Services, Toni Ramirez Wheeler, to certify expenses in excess of \$1,500 by the Lawrence Firefighters Relief Association. Motion carried unanimously. (10)

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to authorize payment to Jeanette R. Denton and Norma M. Jantz for acquisition of permanent sanitary sewer easements for \$17,759. Motion carried unanimously. (12)

As part of the consent agenda, **it was moved by Highberger, seconded by Hack**, to receive and approve the Administrative Policy Manuel for the Lawrence Cultural Arts Commission as recommended by the Lawrence Cultural Arts Commission. Motion carried unanimously. (13)

Hubbard Collingsworth, Lawrence, requested the item to authorize the Mayor to sign letters of support for a federal earmark request of \$600,000 for a homeless shelter relocation submitted by the Lawrence Community Shelter, Inc. be pulled for separate discussion.

Collingsworth said he supported sending the letter for a federal earmark request, but wanted to know the timeframe and what contingencies were made to house the homeless. He asked if the money would be available to help the Lawrence Community Shelter (LCS) immediately or after January 1, 2010.

David Corliss, City Manager, said it was his understanding that LCS's request was for federal fiscal year 2010, which would start October 1, but sometimes it did not mean the money was available at that time. Staff was continuing to enforce and ensure compliance with various UPR requirements on the property.

Loring Henderson, Director of the Lawrence Community Shelter, said there was an annual report due sometime in the first quarter.

Vice Mayor Chestnut said staff was continuing to pursue the text amendments to make sure there were options and were now almost 2 years into that 3 year SUP. He said LCS was working very hard at fundraising and alternate locations and hopefully it would all come together quickly and this federal earmark request would help jumpstart that issue.

Scott McCullough, Planning/Development Services Director, said staff targeted April 21 as a likely Commission date to consider the LCS portion of the text amendment. He said staff set up a meeting to discuss issues with Henderson.

It was moved by Amyx, seconded by Hack, to authorize the Mayor to sign letters of support for a federal earmark request of \$600,000 for a homeless shelter relocation submitted by the Lawrence Community Shelter, Inc. Motion carried unanimously.

Rod Kutemeier, General Manager, Sunflower Broadband, requested the right-of-way agreement with Freenet for the use of City right-of-way near the intersection of 23rd and Harper Streets be pulled for separate discussion.

Kutemeier said this item was to address the agreement between the City of Lawrence and Lawrence Freenet for right-of-way at the intersection of 23rd and Harper. This public right-of-way was set to be considered for \$10.00 per year. That amount indicated a very steep discount and mirrored the other existing agreements between the City of Lawrence and Freenet over the past four years. He said his concern was that Freenet indicated they charged 90% of the customers they had for their internet service and one in ten receive free service. It also seemed that 90% of their revenue, based on their financial statements was also going to a for-profit company, Community Wireless Communications. Functionally, there seemed to be little distinction between what Freenet and other for-profit providers in the City were currently offering. He said he was present to ask the City Commission some philosophical questions about those agreements and what it meant for current providers as well as future providers.

He said Community Wireless seemed to own all the equipment that Freenet used, therefore was getting the benefit of the right-of-way access. He asked if his company, Sunflower Broadband, could subcontract their service with another provider to place their equipment in the right-of-ways for Sunflower without having a separate agreement for the City. In the agreements, he did not see anything that prevented Community Wireless Corporation from using their equipment placed in those right-of-ways to sell service directly to customers.

He said every other entity in the public right-of-ways in the City of Lawrence that charged customers for service were currently paying for those easements or public right-of-ways and were compensating the City at a much steeper rate than the low cost of the \$10.00 that was seen in most of the agreements between the City and Freenet. He said that included gas, electric, and other telecommunication providers. He said what the criteria were to qualify for such low cost compensation for the right-of-ways. In the agreements the justification was listed as providing a low cost or free internet service to Lawrence residents. He said his company also provided internet to residents as well as over 550 locations throughout the Lawrence community that were either free or low cost today. The majority of those locations, including several non for profits and also the 40 wireless hot spots Sunflower had for free for 8 years now were all in existence prior to Freenet's existence.

He said back in 2007 based on feedback from community help agencies, Sunflower Broadband was approached to offer service to people who needed high speed internet access to apply for jobs, to be able to help their kids do school work and take care of those types of activities by help agencies in the area that said Freenet was not able to provide the number of accounts that were essentially needed in the community.

Sunflower Broadband launched their service in December 2007 and since then, served over 150 families with that free service today. If the City's position was to discount right-of-way access for community service, then Sunflower Broadband would respectfully ask they receive equal treatment in the way they offered their service. This agreement and prior agreements did not treat all providers equally in Lawrence and requested the City Commission review the existing agreements between the City and Freenet to determine if they were treating all providers equally.

Kris Adair, Lawrence Freenet Treasurer, said she read the letter that Sunflower Broadband sent to the City Commission and would be happy to answer any of the questions brought up about their agreement with the City and what Freenet provided and tried to do for

Lawrence residents. They were currently providing between 200 and 250 Lawrence residents with free or reduced services each month and felt that if they had to pay for this access, they would not be able to provide that service to those residents. Freenet charged just enough to be able to provide the service to those who could not afford internet and did not charge any more than that amount. It was the lowest amount they could go to provide those services. They were currently working with other providers inside of Douglas County and other local areas. CWC was not the only and would not be the only provider. They were certain they would be able to work out agreements with other wireless providers. Freenet wanted to be able to continue to provide services to the 200 – 250 residents each month. They did not think they would be able to financially provide that service to those residents if they were required to pay for the right-of-way, but if that was the City Commission's consideration, then Freenet would understand.

Commissioner Amyx said regarding the equipment to be placed in the right of way at 23rd and Harper, he asked if Freenet was trying to sell to other businesses.

Adair said no. Lawrence Freenet owned that equipment and was used specifically for Lawrence Freenet use. It was not used by any other entity.

Brett Sayre, AT&T, expressed concerns over the proposed agreement. He said he did not have anything against Lawrence Freenet and was not trying to take away any discounted or free internet service to residents of Lawrence or Douglas County. However, he did have concerns over the agreement that Freenet had requested the City of Lawrence enter into. Basically, Freenet currently enjoyed virtually free access to City owned property and now were asking for almost free access, \$10.00 a year, for access to the public right-of-way at the intersection of 23rd and Harper. At the same time, AT&T and other service providers currently provided substantial compensation to the City for access to both public right-of-way and City owned property. In 2008, AT&T paid the City over a quarter of a million dollars in franchise fees for use of the public right-of-way for telecommunication services it provided in Lawrence. AT&T also planned to begin providing video services in Lawrence soon and would also pay the City a

video service provider fee equaling 5% of its gross revenues. Additionally, AT&T also compensated the City almost \$50,000, approximately \$24,000 per site for use of the City's property for its wireless network infrastructure.

Freenet claimed it should receive special consideration and treatment from the City because it was a not for profit company and provided discounts in some cases free service to a small percentage of its customers. He said he heard that Freenet now owned some of the equipment and was different than what he had heard them state before in other venues. In any case, it warranted the City Commission to investigate the relationship between Lawrence Freenet and Community Wireless Communications, its current for profit provider who owned at least part of the infrastructure that was now on City owned property and possibly in the public right-of-way.

AT&T was a for profit company and did not provide free service. However, AT&T did provide a deeply discounted lifeline telephone service to qualifying low income customers. Additionally, AT&T supported the United Way of Douglas County and provided numerous contributions and grants benefiting many citizens in Lawrence and Douglas County. In recent years, AT&T and its foundation made contributions in Lawrence and Douglas County exceeding \$1.5 million. He said it was important that he list a couple of the recipients that received technology related grants from AT&T, which included the Lawrence Public Library, who received a grant from AT&T to help provide increased access to both the computers and internet for all patrons of the Lawrence Public Library. The Lawrence-Douglas County Housing Authority received a grant from AT&T to help provide increased access to both computers, the internet and computer training for approximately 1,070 families in a low income housing development in Lawrence.

AT&T hoped that the City would investigate the relationship between Freenet and CWC and carefully review the terms of the proposed Freenet agreement including the proposed compensation to the City for use of public right-of-way. Additionally, AT&T believed it was

appropriate for the City to review its current agreements for Freenet for use of property owned by the City. Finally, AT&T respectfully request that the City adopt equal and equitable terms. Basically, they wanted a level playing field and have non discriminatory and equal access for all providers to the public right-of-way and City owned property.

Commissioner Highberger asked if the agreement is between Lawrence Freenet and the City.

Corliss said yes.

Commissioner Highberger asked whether Lawrence Freenet installed the equipment in the right of way.

Adair said CWC employees actually arranged to have the equipment installed but Freenet paid the installer. Freenet paid for the installation and the equipment and owned access to all of that equipment.

Vice Mayor Chestnut asked if Freenet owned just that equipment on the right-of-way which plugged into the network, but there was a combination ownership between CWC and Freenet.

Adair said correct. She said it was the first piece of equipment that Freenet was able to afford to purchase being a small non-profit. She said they had not been able to secure the funds in order to put together their own network. Freenet tried its best to get as much of that together as they could. That piece of the network connected Freenet to their backbone traffic in Kansas City which connected all their traffic in Lawrence and none of the traffic that went through that network was used by any other company beside Lawrence Freenet. She said they were trying to take positive steps to make sure that Lawrence Freenet was seen for what it really was doing, which was trying to provide equal access to everyone regardless.

Commissioner Amyx asked if CWC had an ownership interest in Lawrence Freenet.

Adair said no. They were simply a provider like any other non profit that did not specialize in any specific area they were able to come together with the idea but could not come

together with the funds. Freenet put out an RFP to get a company to provide the internet for Freenet. CWC already agreed to put together this network and they were able to come to an equitable agreement. They talked to a number of other providers for internet backbone and were not able to afford any of the major companies because those companies were outrageously priced. CWC put together the network and Freenet came up with a contract to be able to provide the services they provided.

Commissioner Amyx asked if the agreement allowed Lawrence Freenet to work with CWC to provide the internet service.

Diane Stoddard, Assistant City Manager, said there was a specific section in the agreement related to it not being able to be assigned to anyone else. The agreement was specifically with Lawrence Freenet and indicated that Lawrence Freenet was a not for profit. In one of the provisions of the agreement, it indicated their provision of internet services to people who were not able to afford internet services.

Corliss said as staff had been looking at the issue and had a chance to read about it, it raised an issue with future agreements as all of it moved toward the internet, it was going to create an interesting issue for municipalities because the 1996 Telecommunications Act did not allow municipalities to collect fees for internet service providers. He said they did not pay a franchise fee on that internet service but paid for the cable TV. Technology was moving more and more to be provided over the internet as opposed to the copper wire. He said the City did depend on those franchise fees and pointed out it was not so much the companies that paid those fees, but the users of the service that paid those fees. He said this was following the existing template with Lawrence Freenet where they were using public right-of-way in compensation to the community for the free and reduced internet service whereas if it was just in the right-of-way they would ask for an application fee. Most of Freenet's use of public facilities has not been so much as the right-of-way, but the use of water towers. When a cell phone company wants to place a tower on the water tower, the City could charge a cell phone

company a reasonable lease rate. He did not know if this was the tipping point where the cable company and phone company had a legitimate claim and the City was being discriminatory. He did not see that because they were using the existing template but it might be an issue in the future.

Commissioner Amyx said he was under the impression that the reason they were doing this for Lawrence Freenet was so they could give free or extremely reduced rates for folks in the community that wanted internet service, but could not afford that service.

He asked if CWC was a for profit company.

Corliss said correct.

Commissioner Amyx asked if CWC was using the fiber optic cable that Freenet had placed in the right-of-way for a for profit business.

Adair said CWC received funds from Lawrence Freenet and were a for profit company. As to their business model, she would assume there was a profit margin, but they were not selling their services to any other organization other than Lawrence Freenet.

Commissioner Amyx asked if Adair would mind language in their agreement that CWC could not sell for profit to anyone else in the community.

Adair said Lawrence Freenet would not mind because it was something that was owned by their company. She said all they were interested in doing was providing the service.

Commissioner Hack said the request to look at the agreements with Lawrence Freenet was a fair request. No one could deny the original purpose of Freenet for reduced service was a good initial idea. She had been increasingly concerned about whether or not they were looking at equity and how much not for profit they were working with at this point with the introduction of the CWC portion of it. She said she could not support this agreement because in her estimation this was the tipping point and would like to ask City staff to look through the issues that had been brought up. She said it was not a question of how much they were paying, but if they were being equitable.

Adair said she would like to invite any members of the City Commission or City staff to speak with her about their budget and operation. She would like to introduce the Commission and City staff to the recipients of the free or reduced cost services. It had been brought up several times about the percentage of users they were asked by the City in compensation of this access. They were to provide 10% and were providing closer to 20-25% which was something they were doing at the expense of payroll. She was a volunteer for Lawrence Freenet and put aside her compensation to make sure other individuals get their services. She said if they had to pay for this access, they would not be able to afford to do what they were doing. She urged the City Commission to come speak with her about what they were doing and talk about the relationship between CWC and Lawrence Freenet.

Commissioner Highberger said he would be more comfortable with a policy addressing this type of agreement. The City Commission signaled to Freenet last week that the City Commission would likely approve the free to low cost arrangement and made him reluctant to change course at this point. He said they needed to address this issue in a policy way about who would qualify for preferential treatment from the City and those who did not. He said 250 might not seem like a lot of people, but compared to the people being served it was significant and it was significant to the people being served. He said he would approve the agreement with the amendment suggested by Commissioner Amyx.

Vice Mayor Chestnut said he voted against this issue the first time. He said he complimented Freenet because the digital divide was something that was increasing not only in Lawrence but in the country. The issue was not whether or not Freenet wanted to provide free or low costs service to people who really needed it, but a matter of equity and structure and without policy, some loophole, quite honestly with the path the City was taking, there was a possibility they could have any for profit organization, setting up a not for profit organization and have the same structure and have the same claims. He said this was a situation where he was not sure the playing field was level and was creating a process that might be exploited because

if a structure came that was similar and wanted access to right-of-way for almost nothing and had the similar structure as Freenet, he said the City would be in a corner where they set up the not for profit but as stated there was some kind of return for the for profit for the lease of that equipment. He said he was uncomfortable with this and that was why he didn't approve the item the first time. It was important to recognize the fact that they had providers in the community that were trying to get at this issue through grants or hotspots or other things. It was important to recognize that a lot of people were trying to get at this issue and this point he could not support moving forward without looking at the agreements in totality and see where they were at.

Commissioner Amyx said he had every reason to believe Freenet was trying to provide internet service to those who could not afford that service. He said there were questions about the level of involvement with CWC, but if Lawrence Freenet was paying the bill and continued providing free internet service, then Freenet met the goal that was originally set out and he could support the agreement with the changes that he suggested. He said if the agreement did not pass, then they needed to discuss a policy of some kind.

Moved by Amyx seconded by Highberger, to approve with change to the agreement that it is specifically with Lawrence Freenet and the service would be provided only by Freenet. Aye: Amyx and Highberger. Nay: Hack, and Chestnut. Motion failed.

Vice Mayor Chestnut said he needed more explanation of the history of all of the existing agreements.

Commissioner Hack said she believed they were at the tipping point in terms of reviewing the existing agreements and this relationship because it was fuzzy in a lot of people's minds and would be an opportunity to look at the goals of Freenet to see if the goals were the same as when they first began. She said her question had always been about the specific agreements and where to go from there. If the Commission could have a better sense, they might have more comfort with those agreements.

Commissioner Chestnut said they should not only talk about the Freenet agreements and history, but talk about franchise fees.

Corliss asked when the City Commission would like this item back on the agenda.

Vice Mayor Chestnut said not all five commissioners would be present next week and April 7th was election night.

Moved by Hack, seconded by Amyx, to defer until April 7th consideration of approving the right-of-way agreement with Freenet for the use of City right-of-way near the intersection of 23rd and Harper Streets and directed staff to address the questions raised regarding telecommunications in general and as discussed during the meeting. Motion carried unanimously. (14)

CITY MANAGER'S REPORT:

During the City Manager's Report, David Corliss said finance staff provided General Fund information from 2004 thorough 2008. The 2008 amounts were un-audited and were subject to change. He said staff believed there were good numbers regarding the balance of revenues and expenditures, in realizing it was an important Commission goal and priority. The City spent less money in 2008 than the money that was brought in, which provided for a small increase in the fund balance. He said staff would continue to look at sales tax revenues.

Other items in the City Manager's Report included the February Building Permit Report; an update on 617 West 4th Street; the progress of the accreditation of the Kansas River Levee by the US Army Corps of Engineers; maps of motor vehicle accidents and structure fires was completed; information on the downtown crosswalk replacement project; staff hosted a Comprehensive Rehabilitation Program; an Oread Neighborhood Plan update; and, ridership on the T was up in 2009.

He said other items since the posting of the City Manager's Report was that the City was the recipient of stimulus funds from the American Recovery and Reinvestment Act for the improvement of North 2nd and Locust Street, which was a \$3 million project.

He said finally, the Police Department was passing out information to the downtown drinking establishments and letting them know about the plans for celebration this weekend regarding basketball and possibly the following weekend. (15)

REGULAR AGENDA ITEMS:

Reconsider Joint Ordinance No. 8283/County Resolution No. approving CPA-2004-0-2, a Comprehensive Plan Amendment to Horizon 2020, Chapter 7: Industrial and Employment Related Land Use.

Scott McCullough, Director of Planning and Development Services, said it was staff's opinion that this meeting was about process. On February 10th, 2009, the City Commission passed on second reading Chapter 7 and in turn, went to the Board of County Commissioners on March 4th for their reconsideration of two words placed into page 7-8 in that chapter. The County Commission passed Chapter 7 with revised language that was not available to the City Commission earlier in the year. The County Commission passed the language, but the City Commission did not pass the language and the City Commission needed to make a decision on whether or not to reconsider the former adoption of Chapter 7.

He said John Miller, Staff Attorney, drafted an outlined of three options available which were the following:

- Do not change the City Commission's decision on Chapter 7. This action would result in the existing Chapter 7 of *Horizon 2020* to continue as the guideline for Industrial and Employment Related Land Use. If this is the course of action, a study session or other form of dialogue with the Board of County Commissioners to discuss Chapter 7 may be appropriate to help resolve language differences with the chapter.
- Approve Chapter 7 with the changes adopted by the Board of County Commissioners. This action would require a motion by a majority vote of the City Commission to reconsider the passed ordinance. The Commissioners that voted in favor of the ordinance approving Chapter 7 as recommended by the Planning Commission would make the motion to reconsider the ordinance and have the City Commission consider the Board's version of Chapter 7. Before considering the ordinance approving Chapter 7 with the Board's language, the City Commission will have to comply with the notice requirements of K.S.A. 12-743 and provide at least 20 days notice to all the Township Boards in the County prior to the City Commission's proposed action. The notice requirements would place the reconsideration of the ordinance adopting Chapter 7 in April 2009, at the earliest.

- Return Chapter 7 to the Planning Commission for further consideration specifying the basis for the City Commission's failure to approve. The Commissioners that voted in favor of the ordinance approving Chapter 7 as recommended by the Planning Commission would have to make the motion to reconsider the ordinance and then the City Commission would vote to return Chapter 7 to the Planning Commission.

Commissioner Highberger said at the last County Commission meeting, he asked if there was any discussion about the idea of using prime farmland as locational criteria.

McCullough said as he recalled, there was some general discussion about the various additions of the history of how this had been processed.

Commissioner Highberger asked about the County Commission vote.

McCullough said it was 3-0 to send that message to the City Commission.

Commissioner Amyx said under the last paragraph on page 7-8, he asked if the two word change was not a substantial change.

McCullough said in his position as the Planning Director, he had given that change of wording a great deal of consideration and did not believe it was a substantial change from the Planning Commission's intent, based on the discussion of the Planning Commission at that time. Staff believed that since the idea was centered on the soil itself and the prime agricultural land, to link it back to the soil was in keeping in the Planning Commission's consideration. It was also the determination of the County Counselor when the County Commission asked their counselor the same question.

Commissioner Amyx said when an application was made on a piece of property that contained prime agricultural property and when staff made a determination for recommendation to the Planning Commission regarding zoning to industrial and it stated, "soil conserving agricultural industry businesses," he asked McCullough to define that wording.

McCullough said that had been the big question throughout this process. He said because there was a wide range of what that meant it would be fact specific in terms of what application came to staff and the governing bodies.

Commissioner Amyx said for a consistency base, he asked McCullough what the definition meant to him.

McCullough said he it was an industry or project that had merits of conserving, using or preserving the class 1 and 2 soils within their project. It might mean that it was a seed research company that grew crops that had some portion of property that had a research facility, for example, in the buildings, parking lot and impervious area that went along with it, but were using a good portion of class 1 and 2 soils in their actual research of crop seed production. It could be a more conventional project that had demonstrated a preservation technique that helped preserve a portion of the property, so there were some conventional or traditional manufacturing industrial light or heavy, but was a partnership to preserve and use that agricultural land. There were a number of different ways this could be implemented. The other portion of this was they had to look and see how much prime soil a property had. He said he wished it was a clearer cut process in the planning document, but at this point, it was still left to interpretation.

Commissioner Amyx said they placed McCullough in a position because of the lack of the definition of “soil conserving” and McCullough needed to make a determination and decision on anything that came along.

McCullough said frankly that was done with every project that came their way in terms of the Comprehensive Plan policy and how that policy was interpreted and used depending on the prospective. He said this was an issue that would be helpful to receive direction from the governing body on what the governing body meant when offering this chapter. He said staff received County Commissioner Thellman’s perspective when staff was at the County Commission. Commissioner Thellman did not have any direct examples, but it was along the lines of using that prime agricultural land within the facility as part of whatever type of development project was coming forward.

Commissioner Amyx asked if defining “soil conserving” would be the job Planning Commission.

McCullough said ultimately the job of whatever governing body received the rezoning application. He said it was the job of the Planning Commission to make recommendations to the City and County Commission's on how the Comprehensive Plan was interpreted.

Commissioner Amyx said that under Chapter 7, if there were not enough votes to look at defining "soil conserving" by each Commissioner, he asked if it would be better to ask the Planning Commission to address this issue and help with the definition.

McCullough said that was certainly an avenue that could be taken. He said staff focused a lot on one paragraph of a pretty lengthy chapter. At the time, those particular paragraphs were not under the microscope like those paragraphs had been under the last few months. Staff typically tried to keep language in a specific concept, but broad and flexible enough so staff could react to creative development projects. Staff felt as though the original language did that, but this was an attempt to tighten it up more.

Vice Mayor Chestnut called for public comment.

After receiving no public comment, Commissioner Hack said the intent was not a concern to work and have the theory of "soil conserving" be a part of the language, but with the term "soil conserving," because it became a wobbling door. She asked if they were more concerned with the end product of a process. She said because this was a new possibility and did not know how to define "substantial change", but her definition was that it was substantial because it made critical change to that wording. She would like the Planning Commission to address this item again.

Commissioner Highberger said regarding the definition, he thought the intent was fairly clear as to focus on activities involved using the soils to grow food rather than a tractor factory or fertilizer plant. If the Commission was not able to wrap this issue up tonight, he was ready to vote against this item just on the fact of the lack of using prime soils as location criteria. He said he supported sending this item back to the Planning Commission.

Commissioner Amyx said he did not like placing the Planning Director in the position of guessing what “soil conserving” meant. When he first voted against Chapter 7, he felt there was a responsibility of protecting the class 1 and 2 soils, but he did not think that wording protected those soils. He said he thought the wording meant to use the soils at that location to grow crops and the industry that would prepare those crops, be at that location.

He said procedurally, the City Commission had voted for Chapter 7 and if the City Commission sent this item back, Chapter 7 would still be in place.

McCullough said the Chapter 7 on the books today was in place, but Chapter 7 had not been updated.

Commissioner Amyx asked if they would only be looking at a change in this language.

Vice Mayor Chestnut said no. He said the City Commission would need to send Chapter 7 back as the City Commission approved it.

McCullough said the City Commission would send Chapter 7 back to the Planning Commission with clear direction on what it was the City Commission was asking the Planning Commission to look at. Procedurally, if it Chapter 7 changed, staff would bring Chapter 7 back to the City Commission and then the County Commission for approval.

Vice Mayor Chestnut said this document was not dispositive, but was consistently tripped up over language that interpreted it as dispositive. Zoning was not being discussed or defining uses specifically, which was the intent of zoning. Regardless of whatever chapter was approved, any rezoning requests that came before the City Commission, had to hash through the interpretations of what Horizon 2020 and whatever projects and its merits. He said it was difficult in this document to get to the level of granularity as far as specifying what they wanted, did not want, and what they thought was good. As this was adopted, it would go through the process, time would pass, and 4 or 5 years down the line, future Commissions would need to define what specific words meant. In going back, in any consideration of rezoning or anything else, Chapter 7 had to be considered along with the introduction. There would be another

chapter that talked about the environmental chapter and other considerations. He said he agreed those words could be interpreted in different ways, but no matter what the wording, they would be moving around the issue of prime soils and any type of submission for rezoning or annexation was going to have a full discussion. He did not know if the Commission could pin point the community's desires specifically because there was some diversity in opinion. He said they were still dealing with the issue that there was a planning document, Horizon 2020, which was all over one plat of ground that still specified the intersection of 24/40 as an industrial development. That had not been repealed and was still in that document. Everyone realized that document was put together 10 years ago, was under another set of assumptions, and doubted they would move forward with that recommendation without considering prime soils. He was ready to approve the item with the changes, but there was a majority that would want to send this back to the Planning Commission specifically to define "soil conserving agri-industries." He wanted to be specific about what the City Commission was asking.

McCullough said if the City Commission was comfortable with the paragraph and concepts, but wanted more clarity on what soil conserving agri-industry was defined as, then that was clear direction and limited the Planning Commission's scope and the Planning Commission would not go to other sections of the chapter and start recommending other things.

David Corliss, City Manager, said one of the suggestions was that it might be helpful to have a meeting with the County and Planning Commissions to discuss the issue. If a governing body could not agree on an issue, it was staff's role to come up with language and in this case it was multiple governing bodies. If there could be a consensus as to what the City Commission wanted as far as industrial growth in the community and how it responded to desires to preserve soil and enhance agricultural uses, agree on that in concept and then talk about actual wording. A meeting of the minds could accomplish that better than sending it back. There might be value in having that discussion to ensure and write down what was intended by all the governing bodies.

Commissioner Hack said the City Commission should send it to the Planning Commission with the idea that a three group meeting would be held, prior to sending it back to the City or County Commission.

Moved by Hack, seconded by Amyx, to refer Chapter 7 back to the Planning Commission to define soil conserving agri-industries and how that works with the protections of Class 1 and Class 2 soils. Aye: Amyx, Hack, and Highberger. Nay: Chestnut. Motion carried.

(17)

Receive staff report regarding local purchasing preference policies.

Jonathan Douglass, Assistant to the City Manager, presented the staff report. He said staff's research of legal authority to establish a local purchasing preference found that the City Commission had the authority to establish such preference by ordinance. City staff had not provided a draft ordinance, but if the City Commission desired to have such ordinance, staff would draft the ordinance according to City Commission discussions. Staff found that a number of jurisdictions across the country did have local preference policies, none in larger communities in Kansas, but those types of policies exist in some smaller communities in Kansas.

The pros and cons of local purchasing preference policies boiled down to the potential multiplier effect of local purchases versus the potential of added costs of local purchasing. So far staff was unable to identify any robust academic research into that question. He said if increasing the amount of purchases made locally, he asked about the effect. The important question was whether the multiplier from increased local expenditures exceeded the negative multiplier resulting from increased taxes or reduction in other services. In other words, if spending \$500,000 more to make the local purchases, taxes had to be increased or decrease other services to provide that \$500,000 to cover the extra cost. The multipliers associated with the local preference could include the local property taxes paid by local businesses, the employment of local residents and expenditures to other local suppliers. The additional costs identified would be the cost of taking higher bids in some cases, due to the preference, and the

inability to participate in cooperative purchasing contracts. The City participated in at least 8 of those cooperative contracts for any number of goods.

There was a potential of reciprocity laws in other communities that would penalize Lawrence based businesses if having a local purchasing preference policy. He said while he could not identify any local communities that had those policies at this time, there were a number of states, including Kansas, that had such laws on the books. He said there would also be an administrative cost in identifying local bidders, if a bidder claimed to be local and their bid fell under the policy.

Vice Mayor Chestnut called for public comment.

Devin Waugh, Lawrence, said he had never attended a City Commission meeting, but because of this issue he wanted to attend. He said he did not have a resolution, but wanted to express his opinion.

In previous employment, he worked as a Minority Development Officer and Purchasing Manager on the Missouri side. The way Missouri handled purchasing was with dedicated percentiles to make sure there was representation of women, minorities and local talent. He said he wholeheartedly supported localized efforts in purchasing and could be balanced to make it work out. He said the way it was for minorities and women suppliers in businesses in Kansas City, Missouri was to give those types of suppliers a 3% window to encourage participation. He said there were models available incorporating that idea. He said he was in support of localized buying and to find a smart way to do it.

Tom Kern, Lawrence Chamber of Commerce, said the idea of trying to purchase goods and services locally was something they were encouraging all people in Lawrence to do. It became a little bit more relevant in the economic time everyone was in right now that the impact of citizens to purchase things locally had a different impact than one perceived in the late 1990's when the economy was a little bit different. He said he was also speaking as a former elected official in a community that had a local purchasing policy, which allowed the Commission, the

discretion to make those decisions up to a 3% variance. They found that to be a very workable item and as most things happened at the elected level, it was open to interpretation at times it was done and other times it was not done. It was what a person was elected to do, to make decisions on behalf of the community on the best interests of the community. The policy gave them the opportunity to make that decision. They had an interesting example about a police purchase and the item in dollar amount was insignificant. It was symbolic gesture and made a significant impact to that local supplier. In that sense, he would encourage the request to authorize the City Manager to develop a policy and debate that on the merits of whether it made sense for the community or not. The Chamber's efforts, especially with the Start Here Program, allowed people to purchase things locally and not go outside Lawrence and Douglas County if those services were here at a reasonable price.

Jo Scannell, Lawrence, said when they came to Lawrence 50 years ago, she did a lot of shopping in Kansas City, dollars were scarce at that time and they had four children. She said she was now older and wiser and it now appeared that real estate taxes hurt local businesses. She said there might be a way to negotiate the difference between a local and a lower bid, but that might be unfair to the lower bidder.

Commissioner Highberger said he had been a supporter of local purchasing for a long time. He said by spending locally it was great for the local economy, but if the City spent a little more on a purchase to buy locally, that money had to come somewhere which was out of the pockets of people who lived in this community. He said it might be the benefit of the local purchasing policy might be illusory after all.

Commissioner Hack said she would like to direct staff to develop a policy to allow for local purchases and bring it back for consideration. Part of the multiplier was if it allowed for a company to keep another employee because of those purchases then that employee would spend money and those sales tax dollars and that money would ultimately come back. She said she would like to see staff pursue this issue further to see if they could allow local purchasing.

Commissioner Amyx agreed with Commissioner Hack. He said if they had a policy in place that would allow local purchasing, that money would go a lot longer in this community than somewhere else. He said he supported directing staff to draft a policy, but it would take some creativity for the definition of the word "local." He said the City Commission received correspondence from LRM asking that construction be left out because of the sealed bid process and he suggested talking about that issue too. He said his main concern was protecting the taxpayer and at the same time helping businesses in this community.

Vice Mayor Chestnut said he appreciated the comments from Kern and wondered if there were limitations on state statute that might not allow the same flexibility. He said he would be supportive of investigating this issue, but the biggest concern was what Commissioner Highberger referred to as an "illusory benefit." If a local purchasing preference began to reduce the number of bidders, it was an invisible thing that happened. In this particular case, he saw the wisdom in the flexibility to award a bid with such a small difference and in this case, it would not have any material impact on what people would do going forward. He said he wanted to explore the issue because there were things they could and could not do because of the way the state statute worked, but he liked the idea to have that discretion. The City Commission had to be the ultimate arbitrators in when or when it did not make sense to take the local bid.

Commissioner Hack said philosophically, she asked if it was appropriate to tilt toward local businesses.

Commissioner Highberger said he agreed with exploring this issue more. He wanted to make sure that when they finally did something, they were clear it would create a net benefit for the City.

Moved by Hack, seconded by Amyx, to prepare a draft ordinance regarding a local purchasing preference to include Commission flexibility, appropriate legal authority, and threshold considerations. Motion carried unanimously. **(18)**

Consider awarding bid for nine (9) police cars for the Police Department to Shawnee Mission Ford for \$196,896.

Jonathan Douglass, Assistant to the City Manager, presented the staff report. He said this item was deferred from the March 10th agenda pending the discussion on local purchasing. In the absence of a local purchasing preference ordinance being in place at the time of this bidding, staff recommended awarding this bid to the low bidder, deferring or rebidding this item might also result in the City missing the production year of those vehicles and the City might need to wait until next spring.

Commissioner Hack asked if the City had a policy or ordinance that required the City to take the low bid.

David Corliss, City Manager, said the City Commission adopted the purchasing policy by motion. The purchasing policy did not have the affect of law and could grant an exception to that policy. It was staff's role to enforce the policy, but if the City Commission indicated that it was not meeting their goals, staff would work on other options. He said taking the low bid was the policy they had taken to date. He said staff thought it was appropriate to proceed with this item at some level.

Commissioner Amyx asked Steve Stewart, Fleet Manager, if Ford would run out of this model.

Steve Stewart, Fleet Manager, said no. It was not a matter of Ford running out of it but when the date was cut to start the new model run. He said when those changes were made prices would go up on new models. Right now, the model year ended May 15th unless filling the order banks first. That decision was made by the accountants at Ford.

Commissioner Amyx asked how long this bid was good.

Stewart said right now the cut off date was May 15th. It meant staff needed to have the bid approved and a purchase order cut no later than the 14th of May. It was not his

recommendation to wait that long because as the order banks were filled, they might move the date up.

Vice Mayor Chestnut called for public comment.

Commissioner Amyx said if making a change in local purchasing policy, they should award the bid after making that change and not now.

He said if there was any flexibility in State law that allowed the City to look at another bid based on the criteria.

Corliss said the City Commission had not adopted the City's purchasing policy by ordinance and if the City Commission wanted to waive the bid, it could be done. The state laws staff reference were regarding a Charter Ordinance where the City had chartered out of a certain state law about how acquiring construction projects. He said other than the state laws that referenced state purchasing policies, there were not any other laws that govern purchasing for cities. If the Commission wanted to adopt a local purchasing preference at this time, it could be done, but staff would prefer spending some time articulating and looking at definitions issues.

Commissioner Amyx said the Commission could place this item on the April 7th, City Commission's agenda as well as the bids.

Corliss said correct. He said there was a bidding process under one set of rules and it seemed fair the City would allow bidding under a different set of rules as opposed to changing the rules on this particular acquisition. He said what he was hearing was that on April 7th, the City Commission would discuss general outlines and provide drafts on amending the City's purchasing policy accordingly and the bids back on the agenda.

Vice Mayor Chestnut said when talking about having the bids back on the agenda, if the Commission adopted a local purchasing policy on April 7th, the Commission would want to re-bid this particular package.

Corliss said the Commission would deny those bids and direct staff to re-bid those police vehicles.

Moved by Amyx, seconded by Hack, to defer until April 7th award the bid for nine (9) police cars for the Police Department to Shawnee Mission Ford for \$196,896. Motion carried unanimously. (19)

The City Commission recessed at 8:40 pm.

The City Commission reconvened at 8:50 pm.

Consider authorizing the Mayor and Vice-Mayor to sign a letter to Burlington Northern Santa Fe (BNSF) requesting expeditious ownership transfer of the BNSF Depot to the City of Lawrence.

Diane Stoddard, Assistant City Manager, presented the staff report. She said this topic came up at a City Commission meeting in late February at which the transportation enhancement stimulus funds were discussed and a grant application to the Kansas Department of Transportation.

One of the applications was an application for the depot roof. Staff drafted a letter and proposed that letter be sent to BNSF and would anticipate BNSF to provide a formal response related to their next steps and related to the acquisition. She said BNSF had been very responsive in the discussions and had been somewhat time consuming. BNSF had a number of depots they were currently working on and would anticipate there would be several steps to outline related to what happened next. BNSF had indicated openness to an ownership transfer and several things were needed to make sure their current staff in the depot was protected as well as other stipulations in the memo. Once staff received a response back from BNSF, more information could be provided.

Vice Mayor Chestnut said one thing that had not been discussed was giving an update on ADA compliance costs because of the timeline and the status of that issue.

Stoddard said the facility was in need of several upgrades, one of which was compliance with ADA. Staff provided a report to the City Commission in June associated with the June agenda item related to this issue. In that report staff indicated that anticipated costs related to upgrading and addressing the ADA concerns would be in the \$400,000 range. She said that

was Amtrak's estimate and had not had any independent verification of those numbers. Staff also indicated there would be some other additional repairs, but related to the ADA improvements, the date of compliance for train depots had been a moving target. She said she thought in the summer of 2010 was the next compliance target date. Staff understood there was a report Amtrak submitted to Congress and were looking for funding for some of the ADA improvements. It was somewhat unclear based on the discussions with Amtrak as to whether Amtrak received funding from Congress for those ADA improvements, whether they would come to a station that was privately owned and/or publicly owned. There was a lack of clarity in the response received thus far as to the issue of the ownership transfer and if the depot received funds, would it fund ADA improvements.

Vice Mayor Chestnut said in the letter when stating the major issues were that BNSF was not willing to sell the land and the City would be open to ownership transfer and the City needed to protect the interest of Amtrak and the use of the facility, was that communicating that the City was taking on the responsibility of ADA compliance.

Stoddard said she did not know if it did or the verbiage was meant to do that. It was meant to address a concern that the station remained operable for Amtrak. She thought that was all of their interests to do that. She said at some point the ADA improvements would have to be made and whether that would be something that would be eligible at some point and some funding that Amtrak would be able to secure, she did not have that answer.

Vice Mayor Chestnut called for public comment.

Carey Maynard Moody, Depot Redux, said the Garden City Depot renovation was completed in 2002 which was on the line of what the City was considering in the future. The architecture was different but was their City's priority that this depot served passengers which was why their City went for assuming ownership of the depot. She said the Garden City passenger rail was especially important and had a larger ridership than Lawrence.

She said regarding the Depot Redux group, they had two depot caretakers and were exhausted from Spring Break. The depot was packed and served KU students and Haskell students. Many Haskell students would not be able to attend school without the train and the depot was a welcome place for them when they arrived and departed.

She said she wanted to remind the City Commission of the location of the depot. She said that area of town was more secure because it had a depot, caretaker, passengers, and the train crew. Keeping that area of town safer and active at midnight until 1:00 a.m. was a good thing for the community.

She said in conversation with City Manager Matt Allen at Garden City assured her that they had never looked back. Their City made the decision in about 1999 and took a couple of years to get the transaction to happen. The owner of that depot was also BNSF and one of the criteria for the transfer was housing the crew for their switchyard duties and was something the City and her group were open to. They were good about having the depot open during the daytime and other than the neglect of the facility, BNSF was a good business to have in the neighborhood. She said her group had been thoroughly helped by the work of City staff. She said Stoddard had been very easy to work with and she was on the ball. She said Garden City was devoted to landscaping and did not have to put a lot of money into it. The depot meant a lot to their City and was a portal to the City.

Mark Corrison, Vice President Kansas Northern Flyer Alliance, said the Garden City Depot was a design of county seat and there were a bunch of that design around the state, but no others looked like Garden City's. There were other cities, like Strong City, Kansas, that had received a recent grant and were going through a renovation process because they recognized the opportunity was coming to Kansas that was unprecedented and had not been seen before. It was related to the American Recovery and Reinvestment Act, which was providing an unbelievable amount of money for Amtrak improvement. The sky was almost the limit on what Amtrak could afford since it had almost tripled their budget and had \$8 billion on top of it. It

would purchase almost any improvement that would be needed from the purchase of the passenger train, to ADA compliance, to renovating stations, and putting in signals and switches for stations. It was so important that the State of Kansas legislature had a transportation committee meeting last week in which they wanted the Department of Transportation to move ahead with due diligence and haste to see if Kansas could get in line for that money. There were about a dozen other states in the process of seeking this and on Saturday, Ray Lang, Vice President of Public Affairs for Amtrak, said that he was being beseeched by states seeking requests for study. Kansas was in a much better position because the study for Kansas was already going on. The study began last December and put them a little bit ahead.

Last year on February 14th, he appeared before the City Commission. Since then, another three dozen communities, four county legislatures, and 37 other civic bodies had endorsed this idea. He said the City Commission was in the vanguard of cities that endorse the idea and now there was a convergence of interest on part of the state and what was going on locally with the station which had shown a dramatic improvement from last year was part of a perfect storm of opportunity. Not only did the Kansas Transportation Committee urge KDOT to move forward, but there were two measures that were going to be a joint measure by the house and senate.

He said last night he was watching the news and they were talking about KU going to Indianapolis. They mentioned how the students were going to get there and were talking of flights. What they did not mention was KU students could get there by Amtrak. They could depart there at about 6 a.m. on the morning train and would be in Indianapolis that evening and if they went as a group, they could get a discount.

He said he also wanted to call attention to the dramatic improvement to the station. It was the City's opportunity right now to take them to the next step to put them in sync of what was going on right now.

Dennis Domer, Lawrence, said he wanted to talk about people and the depot. For \$160.00 he went round trip to Santa Fe and could not find anything close to that within \$100.00. It was a very inexpensive trip and he could see that others thought so as well because the train was packed both ways. It was packed with students on the way back studying. Lawrence had an excellent depot and lot of people understood that. This depot had a broad spectrum of political support. He said there were a number of organizations that supported the depot being a part of the community in the way they hoped would help them. He said the ridership was up 5% from last year and would continue to go up. This was clearly one of the few buildings the broad community supported with only a small minority perhaps in opposition. He hoped the City Commission would take that into consideration.

Gwen Klingenberg, Lawrence, said she would like to point out that Transportation 2030 was supportive of a rail system. Under Goal 2, develop a system that integrated all modes of transportation providing appropriate lengths to the major transit terminals and support regulations that promote multi-modal use. She said under Goal 1, plan for a multi-modal transportation center to facilitate rail, bus, transit, and intra-city taxi commuter, so forth, proper timing and coordinating various transportation modes for efficient and economical access shall be an objective to encourage use. At this time with stimulus federal grants, volunteer fundraising, this was a perfect time to go ahead and do this. Under regional commuter service, the Johnson County connection bus service provided a route between KU campus and Johnson County was the first step in providing this service. Inter city bus services along the Kansas Turnpike, an ultimate option would be a commuter rail system that served the Topeka, Lawrence and Kansas City areas. Right now was the most financially feasible time to promote regional transportation and this was an excellent place to start.

James Budde, Lawrence, said he was a frequent Amtrak rider and was a person who looked over the depot and saw it progress to where it was today. One of the great things going was the relationship with Amtrak. Had it not been for Redux negotiations, they would not have

the two caretakers. He said as a result there were good relations and opportunities to negotiate. He said Stoddard had done a fantastic job with BNSF. They were asking for a letter of opportunity to proceed and there were a lot of things they did not have the answer to. He knew a study was needed for the cost of improvements, but there were other costs they did not think of coming in. For example, the rent from Amtrak would be going to the City and would suspect and ask if it was possible to have negotiation with Amtrak to see if they could get money for the crew that would be in the back part of the building. He said with the letter they were just moving one step forward and appreciated the discussion about costs and things going on, but there were opportunities there and they had to take advantage of them and move ahead. He urged the City Commission to sign a letter and see what they could do.

Marty Kennedy, Lawrence, said he wanted to thank the City Commission to take the time to listen to Depot Redux tonight. He thanked Stoddard for everything that she had done for stimulating the City to be able to advance in negotiation with BNSF Railroad to be able to negotiate a possible lease agreement on this property. There was a lot of stuff in the background that Stoddard had done that was exceptional. He said East Lawrence had a wonderful facility down there right now and he had the chance to meet the train every Sunday morning at 5:45 a.m. and greet the people coming into Lawrence and leaving Lawrence and have a chance to communicate. Besides that, East Lawrence was his community and had always been very special to his family. He lived just a few blocks away from the depot and it was a pleasure to walk his dog over there in the morning and meet everyone at the depot.

He said it was tough and when he was on the City Commission you had financial positions they were always in. He said they had a mission with Depot Redux even if they did not receive all the funding. He said he knew that this amount was not in the budget, but they needed to look at the future of the City of Lawrence.

Tom Harper, Lawrence, said he wanted to thank Stoddard and Corliss for their commitment and doing the leg work over the last year. He also wanted to thank the City

Commission for giving them the task to start doing that. He said he would love to see Vice Mayor Chestnut's support tonight and knew he was cautious regarding this whole issue, but there was tremendous opportunity here and it was risky, but the benefit was greater than any risk they might suffer as a community. The building was a gem and was a beautiful building. The building was a hub of a lot of good energy. They had been working hard the past year every month to clean it. There were people coming in and out to watch it and were being good stewards of the building. The small level, community level, they talked about doing it and also looked at the big picture of railroad travel increasing and money was coming from other sources like the federal government. This seemed like it was growing and for them to not seize the moment was crazy. They needed to do this and they should sign and send the letter to continue on the path and take the next step.

Commissioner Hack said she echoed the public comment on staff's work on this project and also the Depot Redux group. This had been a passion and the Depot Redux group had put in a lot of time and effort, heart and soul into this project. The improvements were fabulous but they knew they had more to do. She appreciated the phrase that it was a letter of opportunity to proceed and she did not want them to pass this opportunity or have it pass by. It was important and had such potential. She was convinced that it was a mode of transportation they would become increasingly reliant and they would need to be in the forefront. She said she would like the City to proceed with the letter.

Highberger agreed with Commissioner Hack's comments. They were not committing themselves to anything by signing the letter and it was a great potential opportunity. They needed to follow up and make it happen.

Commissioner Amyx said having an East Lawrence accessible, maintained and well secured facility for rail travel was something to be applauded and everyone involved in putting this together, they would need their help and would have to find out where all the applications would need to go for stimulus funds and other. His goal would be along with what

Commissioners Hack and Highberger said. The rail travel in the future would be a real opportunity and would not want to see them miss it. He said he would support this.

Vice Mayor Chestnut said regarding the way the letter was written, the City was communicating that the City was taking on the maintenance responsibilities and relieving the railroad from ADA compliance. He said by saying the City was protecting the interests of Amtrak for the use of the facility and hopeful it was no cost donation because they were aware there were certain large deferred maintenance items that needed to be addressed by the City, the City was saying they were relieving Amtrak of that responsibility and taking on that responsibility.

Stoddard said in talking with the attorney at Amtrak, she learned it was Amtrak's position that no privately owned depot and no private railroad that owned a depot that was an Amtrak depot was responsible for those ADA improvements. The question would be whether somehow the letter made it appear the City was taking that responsibility off the shoulder of Amtrak and there might be a way to clarify that the City was not taking on that responsibility. She said it was fairly clear that BNSF did not have that responsibility and somehow that was buried in the agreement with BNSF and Amtrak on those depots and had not been able to get their hands on that master agreement.

Vice Mayor Chestnut asked if it was Stoddard's opinion that Amtrak had the ultimate responsibility.

Stoddard said yes and the question was if the ownership would transfer to a public entity. If it transferred to the City, she asked what that did to Amtrak's responsibility for the ADA improvements and that was the issue staff was a bit unclear on. A person at Amtrak indicated that if it transferred from the private railroad to a public entity, then the public entity would be responsible for those things. She said she might need some help in looking at the statute and the Amtrak regulation that apply because the way she read it, it almost appeared that the public entity would need to be operating the station in order for that to apply. She said her point was

there was a lack of clarity regarding that question and there possibly could be, with some of the funding opportunities mentioned, some way to defray that question even if the City ended up being responsible. Certainly, in the future, if there were other grant opportunities, such as the transportation enhancement grant opportunity which was one the City could certainly look at, again under the normal round, those types of improvements could be funded under that grant as well.

Vice Mayor Chestnut said in moving forward with this process, he asked if the City would be at the point where the City would have clarity about the City's ultimate accountability before executing the agreement.

Stoddard said that clarity would be very good and staff requested Amtrak to provide staff additional clarification on their stance with their current report to Congress. She said it could be by the time the City finalized those extensive agreements between BNSF and Amtrak brought those agreements to the City Commission for execution, they would hopefully have more clarity on the issue.

Vice Mayor Chestnut said he appreciated all the efforts of the Depot Redux. He drove on 10th and Delaware every day for work and liked that corner now. He said he would like to add some language in the letter about wanting further discussion discussions about ADA compliance. The roof repair at \$68,000 did not bother him, but \$400,000 for ADA compliance did and knowing that undefined liability that was floating around, he would like to have something in the letter that discussed that they would be entering into discussions. He said that issue needed to be resolved or at least have it mentioned in the letter.

A person said there were a number of legal minds present and she did not know why they were not considering making some type of contingency in the letter.

Commissioner Highberger said this was a letter to BNSF and it did not have any responsibility for ADA compliance.

Commission Hack said this was not an arrangement with Amtrak. She said if the ADA compliance issue ended up being the City's responsibility it might be something to take into consideration.

Vice Mayor Chestnut said he agreed, but there was discussion 6 months ago about Carnegie and was a very important structure of the historical register, but the depot was also a very important structure, but he would hate to put the depot in front of the Carnegie Library.

Commissioner Amyx said this was a letter going to BNSF, but in item number 3 it stated that the City needed to protect the interest of Amtrak.

Stoddard said the reason for that statement was that BNSF wanted to be assured the City would work out a deal with Amtrak to have it continue to be a train station. The City would need to address the issue of costs incurred from Amtrak that the City needed to share in someday once the City was the owner of the facility and knew there was some type of shared agreement with BNSF on maintenance.

Stoddard said they would need to address the issue of cost incurred from Amtrak that they needed to share in someday once the City was the owner of the facility. She knew they had a shared agreement with BNSF now with maintenance. She said there needed to be discussion on who was responsible for what and that would be known before executing any documents.

Moved by Hack, seconded by Highberger, to authorize the Mayor and Vice-Mayor to sign a letter to Burlington Northern Santa Fe (BNSF) requesting expeditious ownership transfer of the BNSF Depot to the City of Lawrence. Motion carried unanimously. (20)

Conduct public hearing on proposed budget amendment providing for the 0.05% sales tax for transit.

David Corliss, City Manager, said when the City Commission adopted the 2009 City budget, the increase of the .05% sales tax was not published. They had the infrastructure sales tax and the .2% for transit, but did not include the .05% for additional transit uses. In order,

under state law, for the City to spend the money they would start receiving after the new sales tax, which began next week, the City Commission needed to amend the budget to do that.

Commissioner Amyx asked about the payback time.

Corliss said he did not think it was going to take the 3 years to pay out.

Vice Mayor Chestnut called a public hearing on the proposed budget amendment providing for the 0.05% sales tax for transit.

Upon receiving no public comment, **it was moved by Hack, seconded by Highberger,** to close the public hearing. Motion carried unanimously.

Moved by Hack, seconded by Amyx, to adopt on first reading Ordinance No. 8377, amending the 2009 City of Lawrence adopted budget to include the 0.05% sales tax for transit. Motion carried unanimously. (21)

Consider the adoption of economic development policies and cost benefit model.

Roger Zalneraitis, Economic Development Coordinator/Planner, presented the staff report. He said the purpose of the presentation was to update the City Commission on what the changes had been since they last spoke about this issue in the study session in January and to seek approval for the overarching policy as well as the cost benefit model to go into effect. This would also remove the existing tax abatement ordinance because of what was going on with the abatement and where it was going to be located.

He said the policies were first placed into the Future Agenda Items on November 4, 2008 and appeared there every week thereafter, except December 9th, which was the day he was originally supposed to present it, but was deferred. The economic policies were first presented to the City Commission on December 16th and a month later, a joint City/County study session on January 27th and were at the County Commission on February 25th. They were back at the City Commission tonight to finalize this issue. Public input had been welcomed throughout and received public comment both at the City Commission meeting and

some of the City/County study session. There was no public comment at the County Commission meeting except for some informal communication.

He said there were a number of changes made to the benefit cost model and some of those change were small. There were some errors found that were corrected and new components were added. Vice Mayor Chestnut talked about having construction costs added. He said the sunset sales tax, the .05% that was approved in November, was added to the model as well. The biggest driver of change was the way population was counted. Population tended to have, even when it had a positive impact, the positive impact tended to be less than a business. The more new residents coming in that tended to lower the net benefit cost ratio. There was probably a double count, the first way it was done. He said if someone worked in town and lived in town they were counted as two people, so that was removed. Also, people who did not live in Lawrence, but commuted in, they estimated those people had less of an impact on the budget than people who lived and worked in Lawrence.

He said regarding the policies, overall from the City/County study session, there was a desire to see the tax abatements governed by this over arching policy. He said what was done and what they would do in the future was that anything governed by the overarching policy, any cash like incentive, there would be one overarching policy talking about the process and procedures and a separate section for each different type of incentive. There was a section for tax abatements and the tax abatement policy was moved over into this. They were repealing the tax abatement ordinance because otherwise it would be in the code twice.

He said in the over arching policy, the substantial compliance provisions were basically the same but were now going to govern the tax abatements as well. He said it would be a mathematical formula. Most performance agreements might have a wage job capital requirements and the abatement has also been noted in the overarching policy as having a wage floor and health care requirements as well. Those would go into abatement's performance

agreement and needed to continue to meet the wage floor and health care requirements. The performance agreement would be mathematically calculated to determine compliance.

There was also a question of how a firm could appeal the determination, which would be done by an appeals process. A requirement was put into the document on what information the City wanted if a firm was appealing if determined in non compliance or less than full compliance. It would include the targets they missed, the reason why they missed those targets and if they thought they would be in compliance the following year. Staff recommended a majority vote for override and that could be discussed.

He said the Public Incentive Review Committee had its role expanded and would be part of the process for all cash like incentives. They were in the overarching policy now and any firm that came through with whatever else would be governed as a cash like incentive, PIRC would be involved in both in the approval process and review process. PIRC could also now meet at the City Commission's request to look at other economic development issues that the City Commission would feel necessary and the Sustainability Advisory Board requested a seat in PIRC as well. A new seat was included and the Sustainability and Advisory Board would provide three or more candidates to the City Commission that could be voted on.

He said they originally started out with the idea of having two city commission meetings and there was a desire from the county and SAB members to be involved in the process of reviewing applicant requests for incentives. In order to keep the number of meetings from going to three or four, they retained the two meeting process now. PIRC would have the first meeting, recommendations going forward for City Commission consideration and approval. He said one thing that might be worth considering was if PIRC was to meet about an incentive, they should meet in the evening so it was just as accessible to the public as it was to the City Commission.

He said in the benefit cost model, Commissioner Jones at the County asked if it would govern all incentives. They wanted flexibility for small projects, like if there were micro loans. It did not make sense to have a micro loan go through the same process a tax abatement would.

He said if there were any flexibility, they were talking about small incentives, not infrastructure projects or things like that. At the SAB's request, they added some language that under the qualitative part of the benefit cost model, environmental impact, positive or negative, could now be included and considered for PIRC when going forward when receiving an application.

He said under the tax abatement policy, the biggest change made was establishing criteria for what a firm could get abatement for and what percentage and abatement could qualify which were additive and not exclusive. There was a 50% baseline abatement in the ordinance as it was, but now it was being referred to as a baseline up to 50%, which was based on capital criteria of \$7 million in investment and 30 employees. For local firms, they were setting a \$5 million investment or 20 employees. On top of that, a local business that has been here for three years or more could get an additional 10% abatement. The baseline for a local firm would be up to 60%. Also added was language for LEED certification. If they were certified or silver, they would get up to 5% additional abatement. If they were gold or platinum, they could get another 10%.

He said for targeted development areas, they were thinking of office parks that already had infrastructure in place or if an area was identified as desirous of being redeveloped. There were also unique site constraints, like steep slope sides, could also be another potential. In the policy now was an example of how those would be additive and not exclusive.

He said the only thing removed from the introduction to the tax abatement policy where it set the criteria, wage floor, and health care requirements was the small and mid sized business requirement. It as not clear what was meant by a small or mid sized business, but more importantly as he worked with the model, had the policy and worked with businesses in town, it was very difficult for a small business to get the full benefit from an abatement. Abatements work best with capital investment and if looking at a \$15 – \$20 million investment, there was less chance that a small business would be making those types of investments than a midsized

or large business. There was a lot of consensus in the City to take a closer look at small businesses, but did not know if small or mid sized businesses fit well into an abatement policy.

Commissioner Amyx said regarding the abatement policy in talking about the baseline at 50% and was given a 5% consideration for targeted areas and asked if that was an adequate percentage and rather than continuing to expand areas of town, giving more focus on a greater percentage. He asked if they should look at what they already had and made it 10% instead of 5%.

Zalneraitis said the amount could be increased if the Commission desired. If it was an existing or targeted area, it would be a 55% minimum depending upon other criteria as well.

Commissioner Amyx said if things were already in place the percentage could be increased to encourage development in places that already existed.

Zalneraitis said one thing to keep in mind was that inside the model those costs would be calculated first and any infrastructure even if it was not an incentive request and that would affect the cost benefit ratio. The closer getting pushed down 1.25, the less incentive could be offered anyway. That might play against a greenfill development inside the model itself.

Commissioner Highberger said it looked like the model was proposing retaining the Economic Development Board. He thought it called for an ED Board member on PIRC.

Zalneraitis said the ED Board was usually occupied by a Chamber of Commerce representative and thought it made sense to pull that seat out, but if the Chamber wanted a seat in PIRC, then that was the seat occupied. The seat could be renamed and given to the Chamber Board or it could be up to City Commission discretion. They had not commented on the ED Board except with the expanded role of PIRC, they might be redundant.

David Corliss, City Manager, said they needed to talk about the long term vision of the ED Board and thought that was probably part of the Chamber's review of economic development in the future. It made sense to reinvigorate it work on something else.

Vice Mayor Chestnut called for public comment.

Kirk McClure, Lawrence, said this was an interesting first effort in creating a new overarching policy, but unfortunately had a long way to go before having a policy that was worthy of adoption. They needed to dissect this in several pieces and look at it a little more carefully to bring them up to speed with economic development as currently practiced. The objectives appeared to be good at first blush, but showed how out of date the City was in the way they practiced economic development.

He said in the document it said they needed to seek job growth that was faster than population growth. He said that was the way they needed to approach things and give them a baseline in which to compare things. The goal was to seek a net reduction in the number of workers that needed to commute.

The next one seemed correct until one thought it through. It stated that they needed to seek expansion of the commercial tax base. He said they all preferred to live in a community where they could have a smaller percentage of revenues coming from residential and higher percentage from non residential. He said it was what made Overland Park such an envious position to Lawrence. Unfortunately, that tended to cause the City to think more commercial spaces were automatically a good thing, but it was not. Adding retail space that they did not need created a transitory increase in property taxes, but in a very short amount of time it vacated existing space elsewhere in the community, reducing value, and had a blighting effect on the surrounding neighborhood. The amount of commercial space they could support in the community, retail was a function they had in the income. He said office space was strictly the number of office jobs they had. They did not gain by just building commercial space. Their goal was to make certain they grew the base of their tax base at an appropriate level. Just building commercial space did not help them.

He said they wanted to attract high skill jobs, but the real goal was to seek jobs where they had unemployment or underemployment. In the past, they had a shortage of low skill entry level jobs and right now they had a surplus. In fact the City's greatest need was in the area of

jobs for young college graduates, but that might not always be the case. The more correct way to say this was to create jobs to where they had a labor force in surplus supply. They needed to make certain they were going about this in a way that brought about the economic strategies needed. He said he believed the draft policy did correctly cite the City's roles to provide land, infrastructure and in some cases, and would add rare cases, incentives. It correctly listed loans, grants, infrastructure, TIF's, TDD's, and incorrectly lists tax abatements.

He said the benefit cost analysis was an improvement over what they had. It had little or nothing to do with the formulas. He thought they had an improved model, but the problem with the benefit cost analysis was not on how to count the multiplier effect of spending or how they count the number of commuters who come into or out of the town. He said he had been in Lawrence for 22 years and had seen it misused for about 22 years. Benefit cost analysis answered a very simple question: would the benefits of this project as proposed exceed the costs. It did not mean they should do it or the absence of benefits greater than costs meant they should not do it. There were situations where the costs exceed the benefits but failure to take action to retain a dying firm may result in costs that were even greater. He had been involved in economic development projects where they had a sub 1 benefit cost ratio, but the loss of existing employment was going to be so great that it was necessary for the community to step in and bring it back.

He said the more important question was if the expansion would happen without the subsidy or if it was the most cost effective way for the community to get the expansion to happen. Tax abatements were rarely, if ever, an effective way to go about achieving that second question. He knew a lot of people said that it could not be done, but it could. It was no different than being a loan officer in a bank; they had to make a decision about the creditworthiness of the borrower and feasibility of the project being proposed and ultimately they were partnering with the project and making an estimate of where it would go. Very often they were finding they did not need the level of public subsidy that was being proposed. He said he

would suggest that everyone knew that benefit cost analysis was mandated by state statute. Procedurally they were better off by having staff do a cost benefit analysis in-house and get it rerun under a different set of assumptions. Now the membership of the PIRC would have that capacity. He said it did not answer the most important question of if it was the most cost effective way for the City to get this work to happen.

He said there had been a change on the procedural issues of the public hearing that he thought was for the worse. The two meetings have been reduced to one. There was a public meeting with PIRC but PIRC had never before taken public input. The public was now reduced to one last opportunity to speak to a problem only after there had been public review by the advisory body and a recommendation made. He said in the normal land use planning process, the public was allowed to speak to the Planning Commission and have a chance to have input and have some redress of their problems identified. They did not have that in the economic development process they had now and he thought that should be included. They had way too much feeling on part of the public that they have been excluded from the process, and the membership of the PIRC was part of that. Right now, the membership of the PIRC was not composed with citizen input in any significant way. It was designed originally as a way for communication between the different elected bodies and thought that was a perfectly good idea. For the most part, the County felt excluded from the process because for a set of historical reasons, the state chose to invest in the City Commission the power to make determinations on tax abatements. Therefore, the County often times was not there and given the way USD 497 funding operated, it was relatively indifferent to the tax abatement. They needed to think about the purpose of the PIRC and if they were looking for a way to have public input both in the process and makeup of the PIRC, right now, was not correct.

He said he thought tax abatements were a mistake and when Lawrence got into the tax abatement business, it was already well believed in economic development that tax abatements were not good procedures. Lawrence was late coming into it and late coming into a position of

admitting their mistakes. Abatement had been divisive and had contentious hearings in front of the City Commission and the majority had never been able to convince the other side of the rightness of abatements. He said he thought the record of performance of the tax abatements would convince the City that this was not a policy to continue. The policy had been unproductive and had more failures than successes in this program. The abatements had been ineffective and knew nationally, regionally and locally that multiple firms that have received tax abatements had said publicly that they would have done it anyway even if they had not received the tax abatement. The assertion that they needed the tax abatement to go forward was fabricated and businesses were looking for a way to not make a contribution to the community. He said the greatest source of taxation was usually on new equipment and secondarily on the infrastructure. A lot of the buildings were nothing more than shells but the state already mandated that they would give 100% abatements on new equipment, so as a practical matter they were now debating tax abatements on shell buildings without any taxation powers on the equipment. That had reduced whatever effectiveness they thought might have been with tax abatements before and was reduced dramatically. He said it was time they face up the fact that tax abatements did not work. They had given 17 firms abatements in this town and looking at their jobs and wages, only 6 met or were now meeting the job and wage requirements. He said 11 firms were out of compliance, out of business, or just plain not reporting. They were looking at a situation where non compliance was the norm and compliance was the exception. They had been successful only 35% of the time, non compliant 40% of the time and complete failure 25% of the time. They had multiple firms that stated they would have come without the abatement and was time to realize that the research was correct. Property taxes make up too tiny a percentage of the operating revenues of those firms in being influential in expansion or location decision. He said it was time to refocus and put their time and energies into where it matters.

He said he had followed job growth in Lawrence for about 20 years and had mirrored population growth. There seemed to be relatively little they could do about the job growth rate and came and went with the economy. The job growth mirrored population growth and had over a period of time with and without those incentives. The job growth rate was not the immediate problem nor was it something within their control. As far as wages, they continued in Lawrence to fall further and further behind the Kansas City area, the State of Kansas, and Topeka. Someone could take the same occupation, move to Kansas City, and get a 14% pay raise. It was not a function of the fact that Lawrence was a college town. Food service had a slightly higher wage rate than in Kansas City. It showed that it was not the fact that Lawrence was a college town. Skilled tradesmen and office workers had a 14% pay cut to live and work in Lawrence. Wages were their problem, not the job growth rate. They needed to turn their attention to that and that should be the focus.

Gwen Klingenberg, Lawrence, said this was not economic development goals and process, but a tax abatement process. Economic development should include things like the small and medium businesses. They needed to do a better job of getting jobs that pay people better to live here. All this talked about was tax abatements and the problem was that tax abatements were not important to most communities or businesses. She said in the 59 pages Madison, Wisconsin had in their economic development, they said that Madison's taxpayers should be grateful that tax abatements were prohibited in Wisconsin and were not allowed in several states. She asked why they were spending so much time worrying about tax abatements and not taking care of their economic development issues.

She said there were not enough people involved in this process. There was the City, County, and one outside agency which was the Lawrence Chamber of Commerce. She said other cities like Austin and Madison used economic allies which include the universities in those towns. Lawrence was not including the university in this and had a chance to tell the new Chancellor at KU that the City wanted to work with KU. She said the Convention and Visitors

Bureau, the transit system, and KDOT could be included. They had not invited enough people to this discussion and it took a whole community to determine what they wanted to do with their economic development. She said they could be linking sources to local businesses and buyers with local suppliers. She said they could utilize smart growth practices for a better incentive. She said they could also use building salvage rather than demolition of a building.

She said starting off with a 50% tax abatement when tax abatements were not important, they were automatically forcing residents to pay the taxes that businesses were not paying. She said there was something backwards with this and needed to do a better job.

She said in Littleton, Colorado, they do something called economic gardening. At a time when the entire state was in recession, they created something called economic gardening. The Littleton City Council expressed displeasure of having their future being dictated by out of state corporations and directed staff to work with local businesses to develop good jobs. She said communities all over the country were having better jobs, growing jobs, and bringing people to the town besides just using tax abatements. She said Littleton stated that they were more convinced than ever that their fundamental concept, entrepreneurs drive the economy and that healthy communities had a healthy base of entrepreneurs. Yet, Lawrence did not want to discuss or put in the policy what they were going to do to help small and medium businesses; they were only interested in the large businesses that came to town so they could give them tax abatements. She said there were places all over the country including California, Vermont, South Carolina, North Carolina, there was not city or state that was doing something that was viable to help grow their community that involved the community and invited stakeholders to be a part of it. It was not just about tax abatements.

Beth Johnson, Lawrence Chamber of Commerce, said they were talking about the overarching policy that was to govern the incentives the City gave. She said they did not have a lot in the policy for small businesses and it was one of the modules they needed to look at and continue to look at that would fall under the overarching policy. She said this was not the end all

be all type of policy; it was an overarching policy that allowed them to have modules underneath it. One of those was the tax abatement policy. She said that seemed to be the one that was getting the most attention because it was the one they were talking about the most, but TIF's and TDD's fall under this overarching policy as well.

She agreed that staff had done a terrific job and were excited about the cost benefit analysis model they were using. She thought it was a great model and was giving them an opportunity to not change the numbers but go back and use different scenarios. She said this model allowed them to play with those issues and had not had that opportunity to do that in the past.

She said they needed to look at the PIRC committee make up and their role. She said the Chamber had been the leader on the ED Board and if they expanded the role of PIRC and also had a Chamber committee for economic development, she thought they could expand the role of PIRC a little bit to talk about small business incentives. She wanted to make sure that the Chamber as one of the economic development partners had a seat at that table at PIRC because it was important when they were working with those companies.

She said a real property tax abatement could be important to a small business as well, but the \$5 million and 20 employees level threshold would be high for a small business, but there were some under state law that would qualify. State law stated they could only give a tax abatement for companies that were doing manufacturing, interstate commerce or research and development. They could look at a company like Deciphera or Krititech. There were also a number of bioscience companies that were very small but could maybe move to a new facility, but might not be a \$5 million investment or 20 employees. The real property taxes they would pay would be a benefit to them if they needed an abatement to make the project work.

She said they were competing against communities in their area that do give abatements. Some give them willingly and some not so much. She completely agreed that they did not have them on the books, but it was something the State of Kansas did. They could

not go back and change that now and going back and saying they would no longer give those would be a disadvantage to the community. She said there were states that did not have tax abatements, and she would look at those. She said Wisconsin was not really a state they competed with, but competed more with the Midwest states like Texas, Oklahoma, Nebraska, and Iowa, all of which gave abatements.

She said the incentive given for LEED certification and some sustainability efforts was terrific. The fact that it was actually an incentive and not a deterrent was terrific. It was telling people they find LEED certification and sustainability an important concept for the community and they would reward the businesses for doing that.

She said she wanted to comment on the two meeting process because it went back to the fact of other communities that Lawrence competed against. They have looked at other processes and what other communities had. It was usually a one meeting process and sometimes a two meeting process if they needed it based on public input or changes to the project. The fact that Lawrence had a PIRC committee meeting that was open to the public and was not sure they had anyone present that wanted to speak. She said it was open to the public and a chance for the public to come. The Lawrence Journal-World was always present and gave an update in the paper within a day or two about the company, what was needed, what the costs and benefits were to the community, so it was chance for the public to get first glance before it went to the City Commission on what the assets were for that company.

All in all, she thought it was a great over arching policy. There were still several nodes they needed to work on and things she thought the policy needed to take into effect, either. She did not think it was a policy that should state what all of their opportunities or work was that they were doing for the community. She said she had a program of work that she would be bringing to talk about what the Chamber was doing. There were efforts made to reach out to the small and medium businesses. She said the intent of this policy was to get at the incentives and bring them to a workable policy where they could look at what they were trying to strive in the

community and what benefits they would bring to a company that would meet the criteria and compliance measures needed to be brought for non compliance.

KT Walsh, Lawrence, said she wanted to point out that any building could be LEED certified whether it was 200 years old or a brand new building. She applauded the idea from Commissioner Amyx of adding the incentive for businesses going into a part of town where they already had infrastructure. This might be a way to incentivize people to reuse some of the empty buildings already.

Dennis Constance, Lawrence, said he agreed a great deal with what Professor McClure said about the policy. He thought the benefit cost analysis was an improvement. One thing that bothered him after having read through this was that it almost implied that if they met X criteria that it was going to be automatic. He said he knew it did not specifically say that, but that was the feel you got from it. He was not saying that they should do away with the tool because it could be valuable, but should be clear that all those kinds of policies were going to be very restrictively used. He said in the plan statement the company provided when they wanted an abatement policy, there should be some key questions that were asked in that process to decide whether they would get into the door of negotiating what kind of abatement might be appropriate.

He said abatement for some LEAD standards was a good idea or for reuse of existing space, but had a great reluctance of abatements in general and always has had because it pitted communities against each other. While he lived in Lawrence and wanted Lawrence to prosper, he did not want it to prosper by sucking the life blood out of some other community.

He said it occurred to him the other night that tax abatements are like shooting yourself in the foot and hoping that you do not bleed to death before the wound heals. They needed to be very careful on how they used abatements and would like to see the policy be a little clearer in that it would be judiciously applied.

Commissioner Highberger said McClure was clear that research showed that tax abatement were not effective, and asked if McClure had other comments on the other types of public incentives that were contemplated by this policy in terms of whether they could be used effectively or not.

McClure said anything that had a big effect or high percentage on the operating expenses or development costs of that expansion. Land write downs could have a big impact along with financing. They were seeing a time period right now where credit markets were frozen and were finding that developers were turning to the public sector for financing sources. He said it was not a bad tool for them to use because they passed the effect on the federal tax payer. Land, financing and the infrastructure were important things that had an impact. He said Abilene, Kansas gave free land with 100% tax abatements. Lawrence sold land at about \$1.00 a square foot and 50 – 80% tax abatements. Johnson County charged about twice that for their land and was more careful about their abatements. Abilene's job growth rate was extremely low, Lawrence was better than Abilene, and Johnson County's was better than Lawrence's. All this talk about competing with other communities was not where it was at.

Commissioner Highberger said McClure made a reference to one of the goals of the economic development policy which was increasing commercial space. He did not see that reference and it had been his understanding that this had been about industrial growth and not retail growth.

McClure said he took the quote out of the front page of the document that was online.

Commissioner Highberger said he could not find it and if McClure could point it out it would be something that would be corrected.

McClure said what he was getting at was the goals stated were to increase the commercial tax base.

Vice Mayor Chestnut said what the intent was for commercial classification C, which was assessed at 25% which was all industrial development, it was taxed at a rate that was 2.5 times of residential.

McClure said they should refine the language so they say that; building more office space than they needed leads to the same problem. The capacity of growing the commercial base was not building buildings; it was the function of the underlying strength of the economy. He said the amount of office space that could be supported was a function of jobs, not a function of how many buildings were built.

Diane Stoddard, Assistant City Manager, said regarding the economic development objective section, nothing was changed and it was all in the City's existing policies and no language was changed.

McClure said increasing the share of tax based coming from non-residential growth. It was that type of thinking that led this City into a lot of the problems it has. The notion of building more stuff somehow was good for the City was not a good idea. There was a right amount of building and a wrong amount and the idea was to hit that needle at the right number.

Vice Mayor Chestnut said he wanted to compliment Zalneraitis in his work and knew that a lot of people on the City staff participated in this process. He wanted to start his comments with taking them back a little bit. The genesis of this came from a memo he had put together at the end of 2007 which was an acknowledgement that the City had a lot of gaps in the City's policy. To some of the comments that this issue was all about tax abatements, he did not understand where that came from because that was the issue they had. They had a very well fully development tax abatement policy and two paragraphs in the City Code relative to all other incentives. They recognized the fact that they had a lot of other tools being considered rather than TIF, TDD or any kind of direct cash investments that had absolutely very little or no overarching policy and very little City Code that guided it. That was a discovery they came to in looking at some of the situations. It was a good process in going through and saying what other

tools and how they define them. They developed TIF and TDD and tried to get the overarching policy to get overall statements about objectives relative to all incentives. He thought it was important to recognize where they started it.

Secondly, the benefit cost analysis he found was not acceptable because they did not know where the input came from. One comment he agreed with Professor McClure was being able to adjust the inputs. The answer was not the most important thing, but understanding what the inputs were and realizing that there were variables that changed the inputs dramatically. They needed to understand what the sensitivity analysis was to it and was an important part of having Zalneraitis on board and immolating the model that was given to the City by KU and creating flexibility. In a two hour time period they could change assumptions and see what impact it had which was a huge benefit.

He said he did not want to spend a lot of time on the “but/for” question. There had been a lot of public comment and a lot of opinions about that question and did not think it was a question that could be answered straightforwardly, but they were monitoring conditions to move those things through.

He said he wanted to make a comment about performance. All the numbers quoted went against Ordinance No. 7706, which was adopted in 2003. They had zero tax abatements against Ordinance No. 7706. The nine tax abatements existing right now, eight of them were under Ordinance No. 5431, which was adopted in 1991, and one under Ordinance No. 6343, which was adopted in November 2001. None of which had any wage requirements, it had employment and capital requirements, but no wage requirements, annual evaluation or submission. What the City had done was they went back and said they wanted businesses to submit these numbers on an annual basis and evaluate against a criteria that those companies never agreed to in the first place. It was as if someone signed on for a 30 year fixed rate mortgage and your mortgage company came back and said their rate would be two points higher than what they signed up for. The City had held the businesses to a standard they never

agreed to in the first place when the abatement was provided. It was not to say that was necessarily not good policy at that point when the abatements were made, but they were evaluating people against criteria they really never agreed to. He thought that the overall debate about tax abatements would go on and on. The City used it fairly judiciously and had not had one approved in a long time. Their objective was to get an over arching policy that addressed a lot of the issues that were not being addressed by the City Code at this point. They have reached those objectives and were happy with the process and appreciated all the work. There had been a lot of public input and a lot of comment from the County and comments from a number of stakeholders. He said this would evolve and was a stake in the ground, but it was time to move forward.

Commissioner Hack said this was a good overarching policy. She said if someone did not like tax abatements, they would not like this policy because tax abatements were part of it and financial incentives were part of it. Those people that were in the economic development world 24/7 understood the tax abatements. If the City chose to be a part of that, they would have to play by those rules. The City could create their own set of rules, which was what she thought the policy did. She thought it tightened up some of the compliance and made what their offering was clearer and allowed for the appeals process, which they heard on PIRC when she was on that committee right after 9/11. There were some significant drops in people's ability to conduct business.

She agreed with the need to look at what they could do to help small businesses grow. She said they had done a lot of the kinds of things as an economic development partnership. They had worked together as a team to help small businesses but thought they could always do better. They knew that 75 – 85% of the increase of jobs came from increasing businesses. She was worn out with the kinds of things about compliance and that the City was not using them judiciously. They were careful and cautious and were working all the time to increase job opportunities in the community. She thought Zalneraitis had done a fabulous job and had a lot

of people help him out on this. They had done a lot of research and worked closely with the economic development partners. She was pleased with it and thought they should move forward and concentrate on small to medium sized businesses. She said if they worked through that they could be successful in having something the economic development people could go out and present as the City's policy.

Commissioner Highberger said it was a little unfortunate that this was entitled the overarching economic policy. He said he was not a fan of tax abatements but not prepared to rule them out completely as a tool. He was not sure that the fact that no one has asked for a tax abatement in the last two years meant they had been judicious. They had not had the opportunity to be judicious or injudicious.

He thought this policy was a big step forward and appreciated Vice Mayor Chestnut having a policy that would apply the use to other public incentives. Having that spelled out was very helpful. He thought the cost benefit model was a vast improvement in being able to tweak it in-house.

He still had some concerns about the PIRC make up and the process. He said he would like to take a look at the composition of that mixture and make sure there was a broader community representation.

He would like the policy to be clear that public comment was accepted at the PIRC meeting. One problem he had with the process in the past and would like to see changed was that by the time it got to PIRC, it was a done deal. There had been back room negotiations and the percentage was fixed and it was take it or leave it after that. He would like there to be some public comment before there was a take it or leave it deal. Having public comment at the PIRC level could help do that. He said despite the concerns he had about abatements, he was generally supportive of the policy. He said he wanted to see some tweaking done at the PIRC composition and process. He wanted to make sure they kept their focus on other types of economic development that were beneficial to local and small businesses.

Commissioner Amyx said when the Vice Mayor first sent out the memo talking about his new policy, he was a little concerned because he thought they were opening a can of worms, but after going through this process there was a policy now that spelled out a number of things that were good. He said with the new benefit cost model it was great to look at different scenarios. He said he liked the new appeals process and it was something that was very important.

He said if they could expand on PIRC's role and the ED Board, it made sense to have more people involved rather than having two different boards doing the same thing. He said he wanted the public comment section and demanded that it happen through PIRC because it was an important role. He said people having two opportunities for input; one before PIRC and one before the City Commission, was important.

He said help in redefining small and medium businesses was a must. A number of things they would have to deal with were something they would consider as being a small and medium business. As much concern he had several months ago when the question was first asked, it gave them a policy that was easily read and understood. He said he supported expanding the role for PIRC, public comment, and small and medium businesses.

Zalneraitis he had not attended a PIRC meeting yet and did not realize public comment was not taken at the PIRC meetings and the City's policy when going through the procedure section, Section 12105, Step 6, was when the City Manager moved it forward for public comment, and under Step 7, the review committee which was identified as PIRC stated, "shall conduct a public meeting to hear the proposal from the applicant, receive comments from the public and seek additional information. He said he thought PIRC had done that before and was why he did not think about calling that out, but it was in that section.

Commissioner Hack said where PIRC had comments was from companies when doing the review of the company, not looking at an application. It was review of existing abatements and had always been open to the public. She said the new policy addressed that opportunity for

comment far better than the original policy which was valuable. They had heard from the public, but it was the businesses and not the general public.

Commissioner Highberger said he did not want to delay the process, but he would like to see the expanded lists of PIRC members before final approval.

Vice Mayor Chestnut said he was envisioning adopting, but recognize as part of this some direction to staff to come back with some additional text language. He said it set up the right structure for review and public comment, but there needed to be an expansion of the discussion about how often they would meet because PIRC only met once a year. He said with how this new policy had been designed, it had to be an on-going, by-monthly or quarterly review and to be on call for consideration of certain things. He said they were changing the charter and people might not be available.

Commissioner Amyx said it was brought up that when looking at the composition of the PIRC committee, to look at the university and have discussion about other stakeholders needed on the review committee.

Commissioner Hack said the ED Board had ebbed and flowed over the last 10 years and the membership changed from individual appointments to appointment by position which helped except it did not have a function other than to talk about economic development in general. She said if they could continue the monthly visits that involved a smaller team that discussed economic development and then PIRC. She said she did not want a 30 member board, but something that was more representative of some of the major stakeholders.

Vice Mayor Chestnut said what was being created was a Planning Commission for economic incentives.

Commissioner Hack said she would not just say economic incentives, but economic development as the entire community wrestled with continually.

Commissioner Highberger said he appreciated Professor McClure's comment about the "but/for" test because that was his preference.

He said he did not think this policy implied automatic granting of incentives and if did, he would not vote for that policy.

Corliss said he was going to suggest on the issue on the board composition, one way to make sure that was attended to would be to direct staff to talk with Chamber representative and the County because the issue of the economic development board needed to be decided soon. Economic development was a priority and they had a board, but if they were not going to have an economic development board, then they could transfer some of those responsibility to PIRC and could essentially get the economic board. There was a value in the community to have a public discussion about economic development policies and tactics in addition to this group and other elected officials. He said if not, then they could say PIRC would be the board for those items.

Vice Mayor Chestnut said he totally agreed, but he asked about the last time the ED Board met.

Corliss said it had been a year and a half. He said he did not know if that was good, but his point was one way to make sure the membership of PIRC did not die was to have staff come back in six weeks, after discussions with others, with the new Commission and look at that issue and decide whether or not to change the membership of PIRC or do something different. At some point that needed to be resolved.

Commissioner Amyx said the new and improved PIRC committee could be the board.

Moved by Hack, seconded by Amyx, to adopt the new economic development policy that governed cashlike incentives as well as tax abatements, and adopt the benefit-cost model as the official model for evaluating incentive proposals; directed staff to prepare an ordinance for first reading adopting the new policy and repealing the existing policy; and directed staff to prepare information on the expanded role of the Public Incentive Review Committee. Motion carried unanimously. (22)

Receive City Auditor Audit follow-up report.

Michael Eglinski, City Auditor, presented the staff report. He said the first item he wanted to talk about was the audit follow up. The code required that he went back about 6 months after every recommendation and find out the status. The intent was to keep a recommendation from falling between the cracks and also gave a chance that if there was something management had done they could get credit and say they made improvements. The process he followed was to give management an update. He then went through and used some judgment to determine if it was implemented or not implemented. He proposed that if it was not implemented that he followed up again in 6 months until it was implemented or the City Commission felt like they should no longer follow up on it. Of the first seven recommendations, three he considered implemented. The first was about surveying employees about ethics. The second was about documenting how the enterprise funds were charged for overhead. He said he was comfortable closing that and was comfortable not closing it if they wanted to follow up in six months. The third was to provide updates on the guidelines on debt. The City Manager probably calculated the guidelines right away before the first thought of recommendation came out and said they intended to do that before every debt issuance.

He said the others in progress were related to the street resurfacing issues. They were making pretty good progress and had a response that laid out they were 48% of the way done as of April 7th. The last one he left as undetermined. It was a longer term recommendation and was about keeping the date up to date on the street conditions, leaving it undetermined because in his judgment 6 months was too soon to have it fully implemented.

Vice Mayor Chestnut called for public comment.

Commissioner Highberger asked with Eglinski suggested that Item B might be kept open, the documented method for allocating general overhead.

Eglinski said because the recommendation came out right after the budget had been adopted and had not gone through a budget process yet. He said he was comfortable closing it

because if he saw it was an issue when doing another analysis of the financial report, he would bring it up again.

Vice Mayor Chestnut said Eglinski was winding down the audit plan the City Commission approved for this year and asked timeframe wise, Eglinski's expectation about having that discussion about the next set of audits.

Eglinski said he could come back before the end of April.

Vice Mayor Chestnut said sometime late April talk about the next work plan and in early May talk about the findings of the two that were remaining from the previous work plan.

Eglinski said police would not be done in May, but he hoped and expected that street light would be completed. He said he included information from the Web feedback.

Corliss said next week, on the consent agenda, Eglinski provided an interim report on street lights and one issue identified was that it would be appropriate for the City to participate in Westar's current rate case as it had to deal with the tariff on street light because there were some things that were not in the City's interests.

Vice Mayor Chestnut called for public comment.

After receiving no public comment, **it was moved by Hack, seconded by Highberger,** to receive the report and direct the City Auditor to close audit recommendations A, B, and C. Motion carried unanimously. (24)

PUBLIC COMMENT: None.

FUTURE AGENDA ITEMS:

- 03/31/09 ☐ Receive comments from Steven Watts regarding the boundaries of the Oread Neighborhood Association.
- ☐ Consider adopting on first reading, [Ordinance No. 8378](#), allowing the keeping of chickens and ducks within the City limits. Consider initiating a Text Amendment to Section 20-502 of the Development Code to allow for the keeping of chickens and ducks within the City consistent with the provisions of Chapter III of the City Code.

ACTION: Adopt on first reading, Ordinance No. 8378 and initiate a Text Amendment to Section 20-502 of

the Development Code to allow for the keeping of chickens and ducks within the City consistent with the provisions of Chapter III of the City Code, if appropriate.

- ☐ Receive recommendations from PTAC regarding transit route changes.

ACTION: Approve route changes, if appropriate.

- ☐ Receive recommendations of Mayor's Climate Protection Task Force.
- ☐ Consider request for City approvals and support of the Tour of Lawrence, a bicycling event to be held in Downtown Lawrence on Saturday 07/04/09 and on the University of Kansas campus and surrounding neighborhoods on Sunday 07/05/09.

04/07/09 ☐ City Commissioner Elections

04/14/09 ☐ Seating of new City Commissioners

- ☐ Election of Mayor and Vice-Mayor

04/28/09 ☐ 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.

TBD ☐ Initiate Text Amendments to various sections of Chapter 20 of the Development Code to address implementation issues regarding Parking, Plan Approvals/Extensions, and Site Plan Notice provisions in the Code for future public hearing at the Planning Commission.

- ☐ [Request](#) from Lawrence-Douglas County Chapter of the Kansas Equality Coalition to revise Chapter X of the Human Rights Ordinance of the City Code to include gender identity as a protected category.

- ☐ Authorize the City Manager to execute an engineering services agreement with Black & Veatch for Design Phase Engineering services in conjunction with project WW0601, improvements to the Anaerobic Digester Process at the Wastewater Treatment Plant.

- ☐ Utilities Master Plan

- ☐ ***This item was heard by the CC on 02/10/09.*** 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 & 20-1701 (PC item 18; approved 7-1-1 on 7/23/08 meeting). 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 regarding 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. (PC item 9; approved 7-0 on 9/24/08)

ACTION: Approve Text Amendment TA-12-27-07, revisions to Sections 20-701, 20-702, 20-1101, 20-1109 and 20-1701 of the City Development Code to revise Protection Standards for Environmentally Sensitive Areas and provide more precise definitions and adopt on first reading, Ordinance No. 8304, if appropriate.

- ☐ Receive staff report regarding transferable development rights
- ☐ 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)
- ☐ Maple Leaf Square rezonings, dedication of easements and rights-of-way, and waiver from the requirement of the Subdivision Regulations that sidewalks be constructed on both sides of the street.

COMMISSION ITEMS:

Moved by Hack, seconded by Amyx, to adjourn at 11:15 p.m. Motion carried unanimously.

APPROVED:

Michael H. Dever, Mayor

ATTEST:

Frank S. Reeb, City Clerk

CITY COMMISSION MEETING OF MARCH 24, 2009

1. Purchase Order – Education classes for license contractors to Johnson County.
2. Computer Laptops – Fire/Med, ePCR & Firehouse Mobile Fire Inspection Software.
3. Software Maintenance – ESRI through State of KS contract for \$35,584.38.
4. Intellution Software Maintenance to GE Fanuc Intelligent for 438,320.55.
5. Bid Date – April 7 for 2009 Overlay Program Phase 1.
6. Ordinance No. 8381 – 1st Read, temp liquor license, Lawrence Public Library.
7. Ordinance No. 8379 – 2nd Read, quorum at 4 City Commissioners.
8. Site Plan – (SP-03-25-06) 1 yr extension Carnegie Library, NW corner of 9th & Vermont.
9. Ordinance No. 8376 - Text Amendment (TA-1-2-09) to amend Section 20-1301.
10. Certify expense in excess of \$1,500 for Firefighters Relief Assoc.
11. Federal Earmark request of \$600,000 for Lawrence Community Shelter.
12. Sanitary Sewer Easements for \$17,759 payment to Denton & Jantz.
13. Admin Policy Manuel – Lawrence Cultural Arts Commission.
14. Right of Way Agreement – Lawrence Freenet at 23rd & Harper.
15. City Manager's Report.
16. Ordinance No. 8380 – 1st Read, Street name change Missouri from 10th to 11th to Fambrough Dr.
17. Ordinance No. 8283/Cnty Res____, 1st Read, CPA-2004-0-2, Comp Plan Amend Horizon 2020.
18. Local purchasing preference policies.
19. Award Bid – 9 Police cars to Shawnee Mission Ford for \$196,896.
20. BNSF – transfer ownership to City of Lawrence.
21. Ordinance No. 8377 – 1st Read, amend 2009 budget to include .05% sales tax for transit.
22. Economic Development Policy – Cashlike incentives & tax abatements.
23. City Auditors Report.