



City of Lawrence

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MAYOR
MICHAEL DEVER

COMMISSIONERS
MIKE AMYX
JEREMY FARMER
DR. TERRY RIORDAN
ROBERT J. SCHUMM

August 13, 2013

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

A. RECOGNITION/PROCLAMATION/PRESENTATION: None

B. CONSENT AGENDA

Michael Almon asked that Consent Agenda item number 1, the July 23, 2013 City Commission meeting minutes, be pulled from the consent agenda for separate discussion.

Graham Kreicker asked that Consent Agenda item number 6a, purchase of three (3) fixed-route vehicles as replacements for three (3) existing fixed-route transit vehicles, be pulled from the consent agenda.

Vice Mayor Amyx asked that Consent Agenda, item number 7a, Ordinance No. 8895, authorizing the sale of 2013 Series A Bonds and Series III General Obligation Temporary Notes on September 10, 2013, be pulled from the consent agenda for separate discussion.

Commissioner Farmer asked that Consent Agenda item number 13, Substantial Amendment to the 2013 CDBG Annual Action Plan and Investment Summary of the 2013-2017 Consolidated Plan, be pulled from the consent agenda for separate discussion.

It was moved by Amyx, seconded by Riordan, to approve the consent agenda as below, minus items 1, 6a, 7a and 13. Motion carried unanimously.

1. THIS ITEM WAS PULLED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. Approved City Commission meeting minutes from July 23, 2013.
2. Received the minutes from the Mental Health Board meeting of 06/25/13



3. Approved claims to 195 vendors in the amount of \$2,444,255.69, and payroll from July 28, 2013 – August 10, 2013 in the amount of \$1,876,337.19.
4. Approved the drinking establishment license for Mexquisito, 712 Massachusetts; the Drinking Establishment/Caterer licensed for KU Memorial Unions, 1301 Jayhawk Boulevard; Salty Iguana, 4931 West 6th Street; and, the Sidewalk Dining License for The Roost, 920 Massachusetts.
5. Approved the appointments as recommended by the Mayor to the Convention and Visitors Bureau Advisory Board of Charlie Persinger to a term that expired July 1, 2017; Jason Booker to a term that expired July 1, 2014, Mike Logan to a term that expired July 1, 2015; and, Sally Zogry to a term that expired July 1, 2016.
6. Bid and purchase items:
 - a) THIS ITEM WAS PULLED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. Deferred consideration of the purchase of three (3) fixed-route vehicles as replacements for three (3) existing fixed-route transit vehicles which had surpassed both the manufacturer and Federal Transit Administration useful life requirements. Those vehicles would be purchased off of the existing Brownsville, Texas Contract with Gillig Corporation for a total cost of \$1,275,000. Federal Grants would pay for \$1,058,205 and the local match of \$216,750 would be paid for by the City.
7. Adopted on first reading, the following ordinances:
 - a) THIS ITEM WAS PULLED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION. Ordinance No. 8895, authorizing the sale of 2013 Series A Bonds and Series III General Obligation Temporary Notes on September 10, 2013.
 - b) Ordinance Number 8896, establishing reserved parking for persons with disabilities in front of 3924-3926 Overland Drive.
8. Adopted on second and final reading, the following ordinances:
 - a) Ordinance No. 8886, approving and appropriating the 2013 City of Lawrence Operating and Capital Improvement Budget.
 - b) Ordinance No. 8887, attesting to the increase in property taxes levied for 2014.
 - c) Ordinance No. 8883, establishing water and sanitary sewer service rates, effective November 15, 2013.
 - d) Ordinance No. 8892, allowing the possession and consumption of alcoholic liquor on Massachusetts Street from North Park Street to South Park Street on Sunday, August 25, 2013, from 9:00 a.m. – 7:00 p.m.
 - e) Ordinance No. 8893, establishing an ALL-WAY STOP at the intersection of Lincoln Street and 5th Street (approved by City Commission on 7/23/13).

- f) Ordinance No. 8894, establishing a SPEED LIMIT of 25MPH on Lincoln Street, between 2nd Street and 7th Street (approved by City Commission on 7/23/13).
 - g) Ordinance No. 8888, rezoning (Z-13-00199) approximately .06 acre from OS-FP (Open Space with Floodplain Management Regulations Overlay) District to RM-12-FP (Multi-Dwelling Residential with Floodplain Management Regulations Overlay) District, located at 3309 W 31st St. (PC Item 5A; approved 6-0 on 7/22/13)
 - h) Ordinance No. 8889, rezoning (Z-13-00249) approximately 13.06 acres from RM12 (Multi-Dwelling Residential) District to RM12 (Multi-Dwelling Residential) District to revise condition, located at 3309 W 31st St. (PC Item 5B; approved 6-0 on 7/22/13)
 - i) Ordinance No. 8890, to rezoning (Z-13-00250) approximately 6.39 acres from RM12-FP (Multi-Dwelling Residential with Floodplain Management Regulations Overlay) District to RM12-FP (Multi-Dwelling Residential with Floodplain Management Regulations Overlay) District to revise condition, located at 3309 W. 31st St. (PC Item 5C; approved 6-0 on 7/22/13)
9. Adopted the following resolutions:
- a) Resolution No. 7033, authorizing the issuance of General Obligation Bonds for certain public facility improvements (Lawrence Arts Center - \$40,000, Public Health Building - \$60,000, and Carnegie Building - \$100,000), for a total amount of 200,000.
 - b) Resolution No. 7038, authorizing the issuance of General Obligation Bonds for certain fiber optic cable improvements and other associated improvements along 6th Street from Iowa Street to Wakarusa Drive, in the amount of \$400,000.
 - c) Resolution No. 7040, authorizing the issuance of General Obligation Bonds for acquisition, construction, and equipping a public safety facility (future police building) in the amount of \$1,500,000.
 - d) Resolution No. 7041, authorizing the issuance of General Obligation Bonds for the acquisition of fire-fighting equipment in the amount of \$654,885.
10. Approved Special Event, SE-13-00317, for a weekend market by Lawrence Flea Market located on Mount Oread Aerie 309 FOE Inc. property at 1803 W. 6th St on August 17, 2013. Submitted by Danielle Rittenhouse, Lawrence Flea Market, with permission from Mount Oread Aerie 309 FOE Inc., property owner of record.
11. Authorized the Mayor to sign Department of Army Permit Number NWK-2011-124, for the construction of 31st Street, from Haskell to O'Connell.
12. Authorized the City Manager to sign 2014 contracts with Cigna, Delta Dental, and Medtrak; modified plan eligibility rules to cover domestic partners; established 2014 employee contributions at the 2013 level; and established 2014 retiree contributions at eighty percent (80%) of the 2014 premium equivalent.

13. THIS ITEM WAS PULLED FROM THE CONSENT AGENDA FOR SEPARATE DISCUSSION Approved a Substantial Amendment to the 2013 CDBG Annual Action Plan and Investment Summary of the 2013-2017 Consolidated Plan for reallocation of \$25,000 from Just Food Inc. Refrigerated Box Truck Project to the City of Lawrence Public Works Department for the Sidewalk Gap Program.
14. Authorized the Mayor to sign a Release of Mortgage for Ella Seibel, 1609 Barker Avenue.

Regarding Consent Agenda, item number 1, from the July 23, 2013, City Commission meeting minutes, Michael Almon, Sustainability Action Network, said those minutes referenced the budget and the discussion about potential funding for bicycle transportation facilities and a Bicycle Engineering Division for the City of Lawrence. He said there was fairly extensive amount of commentary on that item by Dan Phelps, Jeremy Rothe-Kushel, and Mike Myers, all pretty much everything they said, verbatim, as well as his comments. He said when getting to the Commission discussion, it was very abbreviated and yet much of what Commission Schumm and Commissioner Riordan said had lots of implications for what they did with this in the future and he wanted to make sure that was accurately reflected. He said he went to the audio and transcribed those minutes, but not exactly verbatim because he put those minutes in past tense like the City Clerk did and would like his minutes to be included.

Dever said he did not have any problem with the amended minutes.

Schumm said that was exactly what he said.

Riordan concurred and said he had no problems putting those minutes into record.

Moved by Schumm, seconded by Riordan, to approve the City Commission meeting minutes from July 23, 2013, with the amendment suggested by Sustainability Action Network. Motion carried unanimously.

Regarding Consent Agenda item number 6a, the purchase of 3 transit vehicles, Graham Kreicker said he noticed on the internet, in preparation of this meeting the following: the City of Salt Lake bought 24 buses powered by natural gas; Los Angeles converted 2,000 buses that would run on natural gas; Kansas City School District bought 47 natural gas powered buses and

would convert entirely to natural gas; Lee Summit would have 106 buses running on natural gas; Kansas City, Missouri, Transit System would be converting 300 buses to natural gas over the next 10 to 12 years and would replace every bus running now with a bus that ran on natural gas as well as turning in 2 hybrid diesel electric buses because the buses running on natural gas were so much better; UPS in some parts of the Country ran on 100% natural gas, parcel cars and trucks and currently had 2,700 natural gas powered trucks and this year they were buying 700 more class A trucks that ran on natural gas; and, Pilot and Flying J truck stops were installing 150 natural compressed gas pumps. The city purchased an F-150 Ford Pickup that ran on natural gas and hoped that before any decision was made to purchase new buses that the Commission would seriously consider natural gas. He said by using natural gas, a person could save \$1.50 cents per gallon and in some parts of the country, paid the equivalent of \$1.50 a gallon for natural gas, a fantastic savings compared to diesel fuel. He said this was the time when many progressive communities were entering 20 year contracts with firms like Black Hills and other natural gas suppliers to get a real sweetheart deal. He said he would suggest trying to follow suit. He said when the "T" was launched one of things that helped the "T" get off to a good start was the fact that there was a sweetheart deal to get diesel fuel at a very low price and as the price of diesel fuel went up, the "T" kept paying the same amount that the contract was signed. He said he suggested that the City look toward having a natural gas fleet and encouraged the local school district to do the same. He said there was one diesel hybrid bus in the fleet right now and wanted to know if anyone had given the Commissioners any information showing that the \$100,000 that that bus cost was returned in fuel savings. He said City staff could furnish that information.

Schumm said he had the same thought and had encouraged staff to look at gas powered trash trucks. The problem, when staff started looking at that idea it was not so much the cost of the equipment because it was more expensive, but it was the refueling in this area because there wasn't a reliable source that could refuel all of those vehicles quickly. The city

was using Black Hills single pump for the pickup truck, but in order to manage an entire fleet of vehicles, it would cost a substantial amount of money. He said he was not saying it wasn't economical, but to get the compression pumps to where the gas could be pressed to where there was a need for a ready supply to refuel the vehicles quickly. He said there was a front end cost over and above just the cost of the buses and it was the fueling infrastructure as well.

Kreicker said his point was that he listed 6 or 8 places where they had gotten over that hurdle. He said if the City entered into a long-term contract with one of the major national gas suppliers, they would work out a very equitable cost structure for the installation of the equipment.

Dever said they addressed this item when they first identified the need for alternative fuel vehicles and had a lengthy study done by some of the top engineering experts in the field in alternative fuels. He said he was a big proponent of compressed natural gas (CNG) at the time and believed it was an important fuel source. He said the City did the math and determined that the best alternative for the city at the time, at the rate CNG was costing, that the diesel hybrid electric vehicles would be the best trade-off for the city. He said he also knew that the cost of the CNG had decreased and the difference between those two might have changed dramatically. He said he also knew there were downsides from a greenhouse gas emission standpoint for using CNG and a downside from an energy creation and fuel efficiency standpoint for CNG vehicles and it was not as simple as trading out fuel. He said he agreed that the City Commission would like that information regarding evaluating CNG at this time.

Bob Nugent, Transit Administrator, said staff could take a look at the compressed natural gas idea again. The one thing to consider with the city's vehicle replacement was the life expectancy of 10 years. Indeed there was quite a capital cost upfront, millions of dollars the city would have to invest for a 12 to 15 bus fleet. City's like Wichita really went down the path of looking at CNG and were going to buy hybrid electric buses at that time, but decided to shelve the hybrids and go to CNG, but the City was going to do their entire fleet, but they backed off on

that idea because of the cost and the budget. He said this City's problem was that they were replacing very few buses and to put in millions of dollars of infrastructure at the beginning and not really be able to replace those buses for another 8 to 10 years, the City wouldn't see a cost savings in transit. He said if the infrastructure was already available and started buying buses to plug into that infrastructure the City could see a better cost benefit ratio. He said staff would provide the City Commission an analysis between CNG and what the hybrids were doing.

Dever said if Nugent got his hands on that study and looked at the variables that were utilized they could plug in new numbers, specifically the cost per gallon equivalent of the CNG that might be a fair assessment to address some of those questions. If the city would buy more of the CNG vehicles, then perhaps that infrastructure cost could be spread over a much larger base, but the City hadn't gotten to that point yet. He said the Commission had talked about that in the past and it was a substantial investment as well as finding a location. He said he knew that impacted MV's ability to service the City and where they would place that fueling station was also a question.

Kreicker said he looked at the purchase of 3 or 4 buses as this being the opening to a city wide fleet, a school district fleet and transferring over to natural gas. He said if it was only 3 buses, it wouldn't be worth it, but if looking forward to the future, it might be.

Dever said he agreed. He suggested tabling 6a until the City Commission received the cost benefit analysis on CNG versus hybrid diesel electric.

Schumm asked if the city was under any kind of time constraint.

Nugent said there might be with the piggy back they were on. He said he would need to check how long that piggy back was available to the city.

Schumm asked about the piggy back.

Nugent said when staff bought vehicles, instead of using a Request for Proposals, they usually buy off someone's RFP that had already been done and gone through that process, since the City bought so few vehicles.

Schumm said in terms of functionality of existing bus system, he asked if the city was under any time constraint.

Nugent said staff was operating vehicles that had a 7 year life expectancy and were operating on 13 years at this time. He said staff was getting pressed with trying to keep vehicles on the street at this point.

Dever said some of those vehicles were bad. He said he wondered about the time constraints too, but presumed that the cost benefit analysis had been done historically when discussing CNG for solid waste vehicles and other city vehicles. He asked if it was 1.5 million for a station.

Corliss said correct. He said one of the other issues was the joint maintenance fueling facility the city had with the University of Kansas. He said the facility didn't have CNG capacity at this time.

Nugent said in maintaining CNG vehicles, there needed to be a change in how you were doing maintenance.

Corliss said it could be at the same location, but it had to be at least separated.

Nugent said in the future, staff was prepared. He said when KU had the building built, they bought 13 acres and they were operating on 8 of those acres right now. He said one of the acres was a retention pond and had 4 acres that they could do something else with.

Farmer said it seemed that this could be one of those things that in 20 years from now they looked back and said "that would have been a really good idea." He asked if this was something the Commission could look at with a new site at 9th and Iowa where the Commission authorized a study or a potential site for a bus hub and this could be something they could add.

Nugent said he didn't know if he would put a fueling station where the majority of their passengers were boarding and didn't think that would work.

Amyx suggested working with Scott McCullough, Planning and Development Services Director, to make sure there would be enough room on the 4 acres for the fueling station at that

location. He said he didn't know all the requirements, but believed the requirements would be substantial.

Dever suggested waiting a week and said the formula shouldn't be hard to track down when they did the assessment on alternate fuel vehicles. He said they could take a look at that assessment to underscore where they were at and the actual cost difference.

Moved by Farmer, seconded by Amyx, to table for one week consideration of the purchase of three (3) fixed-route vehicles as replacements for three (3) existing fixed-route transit vehicles which had surpassed both the manufacturer and Federal Transit Administration useful life requirements. Motion carried unanimously.

Regarding item number 7a, Ordinance No. 8895, authorizing the sale of 2013 Series A Bonds and Series III General Obligation Temporary Notes on September 10, 2013, Amyx said this ordinance included Rock Chalk Park and he wanted to continue his voting record.

Schumm said if they extracted Rock Chalk Park, he asked if that would be done in two motions.

Corliss said it would be one motion because it was an ordinance.

Mayor Dever called for public comment. None was received.

Moved by Schumm, seconded by Riordan, to adopt on first reading Ordinance No. 8895, authorizing the sale of 2013 Series A Bonds and Series III General Obligation Temporary Notes on September 10, 2013. Aye: Dever, Farmer, Riordan, and Schumm. Nay: Amyx. Motion carried.

Corliss said in the memo it stated that they were doing debt on the Police Facility, but they weren't. The City Commission had separately, this evening, authorized debt authority. He said staff didn't think they would need to go to the debt markets in September for that money, but if there were expenses that they had capitalized between now and then, including up to 1.5 million dollars, staff would be able to do that with a future bond issuance in the Spring.

Regarding item number 13, Substantial Amendment to the 2013 CDBG Annual Action Plan and Investment Summary of the 2013-2017 Consolidated Plan, Commissioner Farmer said he had a conflict of interest and would be recusing himself from the discussion and vote. Farmer left the room at 6:56 p.m.

Dani Dresslar, Community Development Manager, presented the staff report.

Mayor Dever called for public comment. None was received.

Moved by Riordan, seconded by Schumm, to approve a Substantial Amendment to the 2013 CDBG Annual Action Plan and Investment Summary of the 2013-2017 Consolidated Plan for reallocation of \$25,000 from Just Food Inc. Refrigerated Box Truck Project to the City of Lawrence Public Works Department for the Sidewalk Gap Program. Motion carried 4-0 with Farmer abstaining.

Commissioner Farmer returned to the room at 6:58 p.m.

C. CITY MANAGER'S REPORT:

David Corliss, City Manager, presented the report.

D. REGULAR AGENDA ITEMS:

1. **Considered Text Amendment, TA-13-00106, to the City of Lawrence Land Development Code, Chapter 20, Articles 4 and 5, to permit the Accessory Dwelling Unit use as an accessory use in the RS5 (Single-Dwelling Residential) District. (PC Item 6; denied 6-0 on 7/22/13)**

Scott McCullough, Planning and Development Services Director, presented the staff report.

Mayor Dever called for public comment.

Holly Krebs said she and her husband submitted the request for this text amendment. She said for personal purposes they made this request with the desire of building a new garage with an accessory dwelling unit above, primarily to serve as her husband's office, but also to position them to provide care for elderly family members, if needed in the future. She said their understanding about the accessory dwelling unit regulations was that when those regulations

were first passed, those units were allowed in all residential districts except for RS-5 and RS-3 because of a concern that a massive influx of accessory dwelling units in those areas might create too much density. The Planning Department had not seen such a massive influx of requests for those units in any zoning district leading them to believe this would not happen in RS-5 districts if this text amendment were to pass. As accessory dwelling units only allowed the addition of one additional person to be able to live on the property, a few additional accessory dwelling units in RS-5 areas did not threaten the density of those districts. Additionally, they believed that the limitation of a small lot would naturally restrict too many of those units being built. She said while they lived in RS-5 district, they lived on a double lot and had plenty of room for that addition, but many small lots in RS-5 district could not accommodate the same. Allowing accessory dwelling units in lots that would accommodate it would appropriately allow for slightly denser living in certain areas and would provide a mix of housing types which were both goals of Horizon 2020. The Planning staff had also identified a long list of additional reasons for supporting this amendment which was previously mentioned in the staff presentation. As often happened with legislation, this proposed text amendment had brought up an issue that applied not just to this amendment, but to all accessory dwelling units, the owner/occupancy of one of the property's residents. The concern was that a corporation might grant someone a small stake in the corporation while the person rented the residence to make them an owner, occupying the house. The discussion at the first Planning Commission meeting at which this amendment was presented revolved around this concern of owner/occupancy, but almost all of the speakers at that meeting were in favor of the general purpose of accessory dwelling units which was to allow a family to provide living space for a relative or to expand the families' primary living space. The amendment was deferred so language could be drafted to protect them from corporations using accessory dwelling units to create 2 rental units, but the public comments from the second Planning Commission meeting, primarily continued to reflect the same concern making it clear that the newly suggested language did not fully address the

citizens' concern and accomplish the goal of clearly limiting corporations actions. If the City Commission followed the Planning Commission's recommendation to deny this amendment, they would end up where they started and were continuing to have a lack of clarity about the owner/occupancy requirements of accessory dwelling units and this concern still deserved consideration. She said if the City Commission took action tonight, she hoped they would consider not only allowing accessory dwelling units in RS-5 districts which she believed was appropriate, but also providing more legal clarity addressing owner/occupancy language in residences with accessory dwelling units and therefore taking care of the rest of the citizen's concerns about this amendment.

Kirk McClure, Old West Lawrence Neighborhood Association, said Old West Lawrence was primarily zoned RS-5 and were one of the neighborhoods most directly affected by this proposal. Old West Lawrence Association asked the City Commission to affirm the Planning Commission's recommendation of denial of this ordinance. He said as they looked at this text amendment, the potential for abuse was high. He said they as a neighborhood already suffered from far too many single family homes that had been broken up into multi-family, that those homes were poorly maintained, and a source of nuisance. He said the accessory dwelling unit while attention provided only another opportunity for the splitting up of the single-family homes, the discussion had been largely over corporate ownership and had experienced one such incident where a corporation attempted to break up a single-family home. He said he wanted to point out that in the discussion with the Planning Commission, there were other ownership types, many of which would be easier to create, such as a limited partnership. They had seen this in other communities where there were differential rules between owners and renters. The partnership was formed and the tenant simply made a deposit for their first month's rent which became an equity contribution to the partnership, they then become an owner so a single family home gets split into a duplex. Duplexes were not allowed in RS-5 and he would like to see it stay that way.

Laura Routh, Lawrence Association of Neighborhoods, said LAN submitted a memo regarding this issue. She said LAN supported the Planning Commission's denial of this text amendment and they were asking the City Commission to uphold the Planning Commission's ruling. They believed that this text amendment has too many loopholes and too much risk for single-family neighborhoods. She said while they only had 15 accessory dwelling units currently in the City under the current rules, she understood that the request that was being put forward was 3, specifically for RS-5 which was one-fifth of the total. She said they could be reasonably concerned that if this text amendment was allowed to proceed, they were probably going to see a proliferation of more accessory dwelling units in the RS-5 districts.

Tresa Hill said a home was a major investment for many and for many their only savings. She said they bought a home and expected some continuity or normalcy for their investment or they wouldn't have taken the risk. She said that was actually true, not only of buying a home, but for making major investments in your home. The change from single-family to duplex or multi-family was a major deviation from normalcy. She said for Lawrence's inner city it meant student housing, loud parties, crime, litter, and a material decrease in home values which was their major asset. She said RS-5 was the last of the existing single-family zoning. Even though they had RS-3 zoning, they had none that existed today and RS-5 was the last of the City's truly existing single-family zoning. She said allowing a second unit for rent with up to 3 unrelated individuals was multi-family zoning. She said let their home investment be secure, give Lawrence single-family zoning and support the Planning Commission's rejection of the RS-5 change for accessory dwelling units. She said she emailed each of the Commissioners a letter and wanted to reemphasize that in Old West Lawrence, they had many separate units that had recently been built and those units were for Mother-In-Laws, adult children and home offices. She said the current RS-5 zoning had flexibility without allowing second structures in a single-family neighborhood that could be rented out.

KT Walsh, East Lawrence Neighborhood Association, said at their last meeting had consensus to support the Planning Commission's vote and to support the Lawrence Association of Neighborhoods' stand.

Jim O'Malley, resident in Old West Lawrence, said his original concern about this amendment was the owner/occupancy requirement of the section that seemed to allow corporations, limited liability corporation (LLC's), other business entities, and for other unnatural persons to be owner/occupants of houses with accessory dwelling units. He said he was sensitive to this issue and wasn't purely hypothetical because several years ago an LLC applied for a special use permit for a B&B on their block and the code required owner/occupancy of Bed & Breakfasts. At one of the Planning Commission's meetings, the question of how an LLC could occupy a house came up and the answer seemed to be that an LLC or Corporation could occupy a house just through an employee. He said that was a concern because an employee simply didn't have the same incentives as a resident home owner to maintain property and to keep the guests behavior under control. The B&B issue was resolved without an answer about this question, but he still had a concern. Now that he had more time to think about this proposed amendment, he had broader concerns about Accessory Dwelling Units (ADU's), they should not be allowed in RS-5 Districts, because in RS-5 Districts, they were dense enough already. It made perfect sense in 2006 not to allow ADU's in districts with 50 foot wide lots and allow them in district with bigger lots. Because the ADU section allowed the units to become income producing rental units, the nominally single-family zoning districts, where they were allowed, really aren't single-family anymore. The owner of just about any house could add a rental apartment. The ADU's had a potential to change the character of the nominally single-family district where they were allowed. He said he did not want that extended into RS-5. He said 35 years ago Old West Lawrence, although zoned single-family, had many grandfathered in houses cut up into apartments and duplexes and many owners rented rooms out to students. The neighborhood was shabby and run down. Over the years, homeowners converted the

apartments and duplexes to single-family dwelling houses and houses were now better maintained. Over the past 35 years, homeowners in Old West Lawrence had been vigilant in protecting the single-family zoning of the neighborhood because that kept the neighborhood from going the way of Oread. He said they were close to the University and there were market forces there that aren't necessarily at work elsewhere in the City. Allowing ADU's in the RS-5 districts like in Old West Lawrence would be a step backward.

Karen Kressin, resident in Old West Lawrence, said expanding the ADU's to RS-5 would be replacing what worked with something that sounded good. The ADU ordinance had been sold as Mother-In-Law suites, keeping older people in their homes, and even providing money for Historic Preservation, but the ordinance wasn't written that way. The ordinance was written for purely economic apartments. She said any economic benefit qualified, everyone could use a little bit more money. There was no restriction in the ordinance, two houses on double lots, there was no restriction for an elderly family member and an individual applicant could be on a double lot, but it wasn't going to be denied for someone that was not on a double lot because it wasn't written that way. This ordinance allowed apartments and houses and didn't say that only certain percentages could have those types of homes. It stated that anyone that applied could put an apartment in their house. The restrictions on those apartments were either insignificant or meaningless for the most part. A 960 square foot apartment was a big apartment and was the size of the entire footprint of her house. One of the drawings in an approved application showed two bedrooms, a den, a kitchen and bathroom in the 960 square feet. Those were not little embryonic apartments. The ownership was definitely a problem the way it was written and principle didn't go far enough because principle included shareholders and limited partners. She said it needed to be something that specifically stated what the meant which was a human owner who had a significant ownership. It did help because it took out the employee principle and made it so they couldn't put an employee in, but it was still a problem. She said she did a study of all of the 15 application that had been approved and noticed that 6 of the applications

could be characterized as an auxiliary kitchen in a high square footage home, for example Foxfire or some of the newer large lot areas. She said it was obvious the applicant was going to use the kitchen for the applicant's own benefit but went through the ADU process because it was an additional kitchen. There was a demand in Lawrence for this type of thing. A mother-in-law could live in your house no matter how big your family was because she was related by blood or marriage. The catching point was if the mother-in-law was to have her own kitchen. If you create something that would meet the need of those high square foot homes for an auxiliary kitchen where perhaps people want to bake a pizza in the downstairs wet bar where the television and weight room was located, then the mother-in-law could be handled as an extra kitchen in the home as the family would use two kitchens. Out of the 15 applicants, there was only one that said it was for their mother-in-law. She said it was kind of discombobulated here, but hoped she made some points. She said she thought RS-5 with ADUs were a bad idea because they were dense enough and were 25 to 30 feet away from the house next door in most cases.

Moved by Riordan, seconded by Schumm, to close public comment. Motion carried unanimously.

Dever said if wanting to build an office above his garage in Old West Lawrence, he asked if he could seek that approval individually on a case by case basis or not.

McCullough said through the building permit process staff reviewed those permits and made sure those permits represented on the application and the plans exactly what the space was going to do, and through that process was how they regulated the land use.

Dever asked if McCullough preferred not to do that obviously through this submittal of this text amendment. He asked if McCullough could explain in a brief way why it was better to have a text amendment then to do this on a case by case basis.

McCullough said the text amendment allowed the use of accessory dwelling in the RS-5 District. They did go further with accessory dwelling unit permit applications and made the

applicant fill out additional paperwork and forms that placed them on notice that it was a violation of the code if they didn't own the property and if they did expand to two rental units on the property. One of the units must be owner/occupied which in the strict sense of the code allowed a corporation to own it. By practice he was not sure it had ever been an issue and was one of things the Planning Commission discussed. He said there was a little bit more process and registration for accessory dwelling units because it was a usage and not just strictly a structure code issue. There were some options and if the Commission desired to look at accommodating this district, the City Commission could create standards that spoke to a certain size limit even in the RS-5 district to ensure that it was on a larger lot versus a minimum 5,000 square foot lot and there were things yet to explore. The Planning Commission, for the reasons he noted, decided to recommend denial because they didn't see the need and demand for it.

Dever said there wasn't anything stopping someone from doing this now and could go through a certain process because he knew several people who had done it. He said not as an ADU but as a platted or a construction project on their own property.

McCullough said not for the accessory dwelling units because accessory dwelling units were not allowed in the RS-3 or RD-5 districts. He said if they wanted the office example, that could be done, but not a dwelling unit.

Dever said he couldn't put a kitchen above a garage.

McCullough said no. It gets to a very fine point because they get very detailed and specific on building permit applications. If you have an office above a garage with a kitchenette or counter top with a sink and a place for a microwave, that was generally accepted and would permit that. If it was a fuller kitchen or bedroom and a closet or other components to a dwelling unit and bathroom, all of those things could be in an office space and also could be in a dwelling unit. Staff paid very close attention to how they were permitting those and they make sure they labeled the use and what it was on the application. He said that was used in case there was an

enforcement issue later on because they would have a permit record that showed what they were permitted for.

Schumm said so Krebs request could be allowed for an office space in her home, but not a dwelling unit.

McCullough said correct.

Schumm said that would go through the normal building permit process.

McCullough said correct, office space, artist studio, home occupations at some level which staff registered and process through a permit process as well.

Dever said what if he wanted to sleep in his office, above his garage.

McCullough said as the owner he could, but he couldn't rent the space as a dwelling unit.

Riordan asked if putting a restroom above a garage would trigger an accessory dwelling unit.

McCullough said it depended on how many components of a dwelling unit they had such as an office with a restroom, which staff would be apt to accommodate that request. They had rejected certain permit applications where it just simply looked like an accessory dwelling unit, despite the labeling on the drawing and staff didn't want to create violations.

Riordan said if someone made an accessory dwelling unit and the house was sold, he asked how the City would enforce the regulations that were subsequent to the buyer.

McCullough said that was part of the City's registration process in ensuring that there was a record, through an affidavit, that the owner would live on that property and as that transferred, staff didn't necessarily track the transfer of the ownership. He said from staff's prospective, it ran with the land. If it was a violation, the property owner had options to either cure the violation by having the owner occupy that property and then have the accessory dwelling unit or actually render it not an accessory dwelling unit if they did want to turn it into a single family rental property.

Dever said if he didn't rent it out and built an office space above his garage with a bathroom and a small kitchen, he asked if that would be approved.

McCullough said staff would likely approve that scenario, very carefully again articulating on the permit record that it wasn't a dwelling unit, but an office. If staff received a complaint that the unit was being rented and their investigation yielded that that unit was being rented, in the RS-3 or RS-5 district, then you would be in violation of the zoning code.

Dever said the trigger was the rental of the property for violation code.

McCullough said the trigger was living in the unit.

Dever said if it was just an extension of his home and he lived in that home and decided to sleep above the garage, he asked if the act of sleeping violated the code or the fact that he rented to someone to sleep in his space.

McCullough said it was a very fine line. He said staff's interpretation, off the cuff, as the owner of the residence living in the primary structure sleeping occasionally in the office unit, would not be a zoning violation.

Dever asked what if his kid wanted to sleep in that office space.

McCullough said it would likely not be a zoning violation.

Dever said he wanted to make sure people could enjoy their property and utilize their property to its fullest extent. He said if there were space restrictions, they weren't assuming people wouldn't rent those, but use those spaces as they did their home. He said he wanted to make sure if the Commission didn't approve this that they weren't further complicating matters. He said it made it more difficult to do it on a case by case basis, but the ADU initiated a rental activity.

McCullough said yes, accessory dwelling units allowed that opportunity.

Amyx said at the time the Land Development Code was adopted in 2006, the discussion of allowing accessory dwelling units came up prior to the final adoption and it was clear that ADU's were allowed in other zoning categories. Consequently, when smaller RS-5 districts were

created it wasn't allowed because of the size of the lot. He said they hadn't changed anything and was still allowed in other zoning categories. He said it sounded like they were allowing the accommodations that Kreb requested except for the mother-in-law, parent or someone else staying in that unit. He said it was accommodating in other zoning categories and there weren't people knocking the doors down in the RS-5 district. He asked if it was Krebs and two other applicants at this time.

McCullough said right now, but staff had fielded inquires throughout the year.

Krebs said she asked the question about what was allowed and what was not under the accessory dwelling unit regulations and the description that she was given was that it was the addition of a stove, specifically, that changed it from just an overhead office to being seen as a dwelling unit and that it didn't have to do with the rental of the property, but the addition of a more full and complete kitchen that would allow for someone to live in that unit and feed themselves.

Farmer said it seemed like there should be a fair way. He said he didn't think the Krebs were putting a rental in their backyard to rent to 3 unrelated college students, but it seemed like there should be a way to do this, but also to address the concerns of Old West Lawrence to protect the integrity of their neighborhoods because that was a legitimate concern. There seemed to be a win/win that no one was thinking of and he was not sure how to get at that. He said one comment from Hill was that the current RS-5 zoning had flexibility to approve those without those units being rented out. He wondered if that was the win/win language that they could go with where Kreb's request could be approved, but if Kreb was going to rent it to college students that that would be denied because intention mattered. He said he didn't know what he was voting "for" or "against" at this point.

Schumm said it seemed like Krebs could do what she wanted to do through the current building process other than renting it out.

Dever said no, because Krebs couldn't put a stove in that unit.

McCullough said Krebs couldn't create a second dwelling unit. He said to be mindful that those accessory dwelling units had a life cycle. He said they could put unrelated people or related people. He said those units were intended in terms of the purpose to do just that, being an economic benefit to an owner as well as a family benefit. He said today, because of the district Krebs was in, she could not do that.

Schumm said Krebs could put the office above and use it, but couldn't put anything in the unit that identified it as a living unit such as a toilet and stove.

McCullough said it was multiple components. If there was one room with a stove, but no bathroom, that might be approved because a person would need all those facilities to actually have a dwelling unit. It's those key components of a dwelling unit such as the bathroom, shower, toilet, bedroom and kitchen facilities or any combination.

Schumm said Krebs stated she lived on a double lot so that changed the size of the lot and asked if there was a way for a person like that to ask for a variance under the City's zoning law.

McCullough said no, this was considered a use issue.

Riordan said the comment about the use of this unit as a rental brought up another thought. He said people were able to get around things and that was one of the things that had been very clear by other people's comments. It would be easy to get around that one because they could simply hire someone to take care of their grounds, not pay them for that work and not rent. He said there were devious ways that people could do things, but he had no doubt that it would be altruistic, good for the Krebs's and good for the City. He said his concern was the ability for people to come in and manipulate this and change and RS-5 into something that had been described by many members of Old West Lawrence. He said his concern was that it was very difficult to regulate something in such a way that they could keep all those activities from occurring and all the manipulations from occurring. He said although he saw this as having merit and benefits, at the same time, he could not be in favor because of the fact that they had

too much possibility of negative impacts upon RS-5 and negative impacts on citizens. Although a few would benefit, he thought the majority would not.

Dever asked if there was any interest in removing the ability to rent the property or create revenue from it. He said Riordan stated that a person could rent for free and take care of the property.

Riordan asked who could actually verify that they actually did the actions they did. He said there was many a school that had paid people high amounts of money for student athletes that never did any work.

Schumm said he was not in favor and would like to help Krebs, but in general, he saw more difficulty than success. He said he was witnessing in his own neighborhood some rentals that were out of control and he could understand how that could happen, especially in Old West Lawrence's proximity to KU. He said there were other issues like parking and if putting 3 people in another detached dwelling unit, because most people had cars, streets were loaded up. He said he didn't see the benefit in a well-defined single-family neighborhood and he couldn't support it.

Amyx said through the building permit process could the Krebs establish an office on their property as an accessory use. He asked if the Krebs could have a stove in that office.

McCullough said if it was to void the other components of a dwelling unit.

Amyx said it was going to have a bathroom.

Dever said but no shower or bath.

McCullough said he wished he had a firmer answer. He said it was really a review of the specific floor plan of the structure to determine if it was a dwelling unit capable of being reasonably slept and lived in to complete their daily living activities or not. He said staff looked at all the different components, not just one kitchen or bathroom component.

Amyx said under the building permit process, the Krebs had the opportunity to establish what that office was that met the criteria. He asked if there was a condition of the building permit in process that stated that the following changes had to happen once selling the property.

McCullough said no, it would be permitted as an office structure. He said one of the challenges from an enforcement standpoint was either work without permits or the transition of a home office or even a basement space that had been renovated into a dwelling unit and then staff typically had enforcement issues when seeing it through rentals in the newspaper or through complaints where they had gone in and enforced their zoning uses to the single-family districts.

Amyx said the ADU's were discussed at the Planning Commission during the Land Development Code discussions and allowed in the districts where it appeared that the lot size was adequate to accommodate additional use. He said based on that, he would not be in favor of the change to the RS-5 district.

Farmer asked if McCullough could speak to what Hill said regarding the current RS-5 zoning would enable the Krebs to do what they wanted to do. He said this was last resort and there was no other body to appeal this decision to. He said if the City Commission denied this amendment, but still let Krebs and her family do what they wanted to do with their unit it seemed that was fine because they were able to preserve the neighborhoods.

McCullough said it didn't allow the Krebs to do what she desired to do. He said he understood that Krebs desired to construct in the future, an accessory dwelling unit for separate living then her principle dwelling unit. He said they weren't talking about a home office, but living in that space. He said it would be designed and permitted as a dwelling unit by their office and then they would have the ability to live there. He said Krebs wouldn't have that opportunity if the request was denied. He said Krebs would have the opportunity to have the home office, but not live there.

Krebs said she couldn't build a structure and live there.

McCullough said Krebs couldn't have two dwelling units on the property in the RS-5 District. Krebs could expand her principle dwelling unit, such as another bedroom as an example, but still maintain the primary kitchen area and have as many family members as she wanted to live there. He said she couldn't have the second dwelling unit.

Dever asked if a second kitchen could not be in a home if it was all attached.

McCullough said there was a little bit of that out there, but again, when that permit came though, they were very careful with that permit as well in making sure it wasn't a separate dwelling unit. He said for the most part the answer was no. Typically, it was a kitchenette space and not a full kitchen and again it had all those components, such as a separated access to the unit. The example cited was where they had an applicant that wanted a kitchen in the basement. Staff walked them through that process and was getting to a point of putting a unit downstairs, because they had a bedroom downstairs, a kitchen and a living area and all they needed to do was close off their access and get separate access to the unit. He said because they wanted a family member to live in that basement, they went through the process to give them the ability, in the future, to have that as an accessory dwelling unit. He said things change, as the family member moved out, it opened the door for rental or another family member or a neighbor in need or whomever to live in that unit and have on record, registered with the City, an accessory dwelling unit which added value to the property as well.

Dever said an accessory dwelling unit was not defined by detachment, but could be part of the same structure and it was just a separate unit. He said he understood the concern and understood the abuse. He said he hated to change something without thoroughly vetting the consequences and was not in favor of creating more rental units in RS-5. There was an opportunity for that to occur and on that face, he would deny this request, but also understood that people wanted to do things with their property and there should be some ability to do so if following the proper procedures and rules. He said he concurred with Farmer that if they could somehow make it non-revenue generating non-rental property that would be good, but Riordan

pointed out that someone could just cheat. He said there was no way except to deny this request and move forward with protecting and/or maintaining the character integrity of those neighborhoods.

Moved by Amyx, seconded by Schumm, to deny Text Amendment, TA-13-00106, to the City of Lawrence Land Development Code, Chapter 20, Articles 4 and 5, to permit the Accessory Dwelling Unit use as an accessory use in the RS5 (Single-Dwelling Residential) District. Motion carried unanimously.

2. **Consider adopting on second and final reading, Ordinance No. 8856, ordering through the exercise of eminent domain the condemnation of fee simple title to private property interests commonly located at 1106 Rhode Island Street, and authorizing the filing of a petition in Douglas County District Court (the ordinance was adopted on first reading on May 7, 2013).**

David Corliss, City Manager, presented the staff report.

Schumm said let's say the City Commission condemned this property and normally they condemned property for a public purpose, usually a public use. In this particular case, the public purpose was to save a historic structure and rehabilitate that structure. He asked if the City Commission had the legal right to condemn the property on an individual and then turn around and award the property to another individual. He said that question was in the back of his mind and was a very different kind of situation. He said if they were to award the property to another individual, did that go through a bidding process.

Toni Wheeler, City Attorney, said there was a specific statute that authorized the City to exercise eminent domain in this situation. The property at 1106 Rhode Island had been condemned for unsafe and unsanitary conditions and was reported in their staff memorandum. She said that was one of the provisions of the statute that if a house or a property had been condemned under nuisance laws or those types of laws, it was appropriate for a condemning authority to condemn the house or property and then could transfer it to another party. She said the City had express statutory authority to proceed in this manner.

Schumm asked if the statute laid out how the city handled the sale of the condemned property.

Wheeler said it would be the exact same process for any other property. The city would ask the court to appoint disinterested appraisers to value the land, there would be an appraisers hearing held. The property owner and condemning party would have the opportunity to present to the appraisers.

Corliss said Schumm's question was once the City obtained title to the property how would the City fairly handle the sale. He said the City had not done this before. He said staff would recommend establishing a Request for Proposals process, asking for proposals for the use of the property and for what the compensation would be back to the public for the acquisition of the property. He said staff did not see any City need to maintain title to the property, but they did have a City interest in having the property rehabilitated because of its location relative to other historic properties. He said the City would have a proposal process where they would look at the funds coming back to the City, the financial wherewithal of the proposal to get it accomplished and exactly what it proposed to be accomplished and whether or not it met the appropriate values for the City. The City Commission would receive all of those proposals and they would be available to the public and anyone could submit a proposal and then the City Commission would make the best decision to protect the public's interest.

Schumm said the City didn't have to set up a bidding process because the cause of action, the Commission's interest in it was the salvation of this property. He said if you have two bidders and someone bid twice the amount, just to tear it down to build a high rise at that location was not the exercise had been thus far.

Corliss said correct. He said the Commission could look at all of those proposals. Clearly one of the criteria should include what was the proposed use and how did it comply with the land use requirements for that property. He said the public would get an opportunity to see the proposals and would definitely know how much the City paid for the property. He said in

going through the process there was risk as to what that dollar amount would come back from the appraisers because the City didn't control that.

Amyx said one of the concerns in this process as they went through the eminent domain process, was the taking from an owner and transferring it to another owner for profit. He said because of the language in the ordinance which indicated that "for the purposes of rehabilitation said property to a safe and habitable condition" that had always been the intent of the Commission to make sure that they save the property and to carry out the Commission's responsibility in making sure that property was cared for in such way as that it was safe and inhabitable. That was one of the things he had been fighting with in making sure they didn't get in that situation where if the taking was going to ultimately happen and a deal couldn't be struck once this step happened then what would they do to make sure that there wasn't a profiting from person to person. He said he didn't want it to be a taking where someone else benefits at the loss of someone else.

Riordan said some figures had been thrown around. He said let's say the amount came back in at \$60,000, once the property was condemned, he asked if the property owner then have the ability to come back and sell it before that took place.

Corliss said the process was that the City would file a lawsuit in District Court, they would then appoint an appraiser and the appraiser would conduct a hearing determining the value of the property. The City Commission would get that information back if the City then decided to pay that amount money. He said as soon as the city paid that amount of money, the City owned the property and the former property owners had no recourse to acquire title to the property. The property owner had full recourse to continue in court and challenge that dollar amount which would trigger a jury trial and both sides could appeal that verdict as well. Once the city paid into the court, the City owned the property.

Mayor Dever called for public comment.

Robert Barland said his parents owned the property. He said he was listening to the City Attorney and thought this was all about the fact that the property wasn't condemned and she used the condemnation of the property as the reason that the City could go ahead and do this under eminent domain. He asked if he was misunderstanding and had that property been condemned. He said Stan Hernly, person interested in the property, said it was worth less with property on it and if it was condemned they could tear the house down and sell it for more money.

Dever said this was the second reading of the order exercising through eminent domain the condemnation of fee simple title to private property interests. He said not condemning the property, but condemnation of fee simple title to private property interest.

Barland said the City Attorney said the reason that the City could take the property in this type of environment because it was a condemned property. He said that was his question, was the property condemned.

Wheeler said it probably was a poor choice of words on her part. The property was declared unsafe, under the City's building codes and sometimes that was referred to as the property had been condemned under the City's building code. She said it had not gone through the eminent domain procedure which also could be referred to as condemnation. She said she apologized for her imprecise words, it had been declared an unsafe and uninhabitable building under the City's building codes and the city was in the process of condemning it under the eminent domain statute.

Schumm said obviously they had been dealing with this issue for quite a while now and hadn't been successful. He said the City Commission was hoping there would be an exchange of property. He said he understood that the price that was being discussed for the property was at the \$100,000 dollar number.

Barland said the number that was being offered was less than the \$100,000.

Schumm said it was part of the question, but could anyone add anything else.

Barland said at this point they were \$30,000 apart between the offer and what they thought the price should be.

Schumm said his question was if they were at \$100,000 now and not what they wanted and what was offered.

Barland said the offering price was \$120,000 from the property owners. He said they had been offered \$90,000.

Corliss said he had indicated that he would recommend to the City Commission, which the City Commission would determine whether the City would spend any money on this, that if they avoid the condemnation process which was worth a lot for the City Attorney's time, the appraisers, and publication costs, that he would recommend putting \$10,000 into that acquisition as well, in order to avoid those costs that the City was likely to incur through the condemnation process. If you take the \$90,000 that was offered and \$10,000, then it came to \$100,000, but it was his understanding from the Barland's that their current number, which the numbers had changed on both sides, the Barland's current number was \$120,000.

Schumm said that was how he got to his \$100,000 number. The offer was \$90,000, plus \$10,000 that the city might throw in to get at \$100,000. He said a couple of years ago the Lawrence Preservation Authority offered the Barland's \$60,000 for that property and they didn't accept it, but countered that amount. He said it was counter offered it at \$85,000.

Barland said he didn't know if they countered it at \$85,000. He said the Lawrence Preservation Alliance talked about what they would do with the property such as a certain area for a park. He said there were some caveats to that offer and they never responded.

Schumm said the information he received this week was that there was a counter offer of \$85,000.

Barland said he didn't remember countering at that point. He said he wasn't saying that they were lying, but he just didn't remember countering at that point. He said there were a lot of discussions about where they would go, but that might have been perceived to be a counter.

Dennis Brown, Lawrence Preservation Alliance, said they were dealing with memories and couldn't remember exact totals, but he believed they made 3 offers as they attempted, over the course of about 5 or 6 months, to acquire this property. The first offer was in the mid 40's, but that didn't go anywhere. Their thought then as now was could they really value in economic terms the structures that were on the lots in the condition that those structures were in and getting worse every year. He said when that didn't work they checked their numbers and came back with something in the mid 50's and had a meeting with the family. He said he believed they received a counter offer to that at \$85,000. A couple weeks later their board visited and gave the Barland's what they thought was their best possible offer which they were thinking of a one or two lot scenario where they would restore the 2 bedroom house and the barn and came back at that time with \$65,000 and that offer was never countered.

Schumm asked if Brown's recollection was that there was an \$85,000 counter offer from the Barland family.

Brown said that was his recollection.

Stan Hernly said the current County appraisal on the property was around \$85,000. The appraisal they had done through Douglas County Bank with Keller and Associates doing the appraisal was \$105,000 as empty developable land and basically no value given to the structures and the land being able to have 3 units built, either 3 residential under its current zoning or 2 residential and 1 office under a RSO or RMO, essentially 3 units valued at \$35,000 each, so \$105,000 was Keller and Associates appraisal.

Schumm asked if there was a cost established for clearing the lot.

Hernly said he established a cost for clearing a lot with a proposal from a contractor that could demolish the houses for \$10,000. He said in their minds to get through the process of getting a demolition approved through the Historic Resources Commission, through all of that process another \$5,000 on top of that. Essentially, they came to \$90,000 as their offer as what it would take to get it into a condition that was equivalent to the \$105,000. He said basically

starting at \$105,000 and subtracting the amount that it would cost to get to that state. Not that that's what they wanted to do with it, but in establishing the value that was how they had to look at it.

Farmer said he pulled up the Douglas County on-line values and it indicated that in 2013 a value for the land at \$41,190.

Hernly said that was correct.

Farmer said it was appraised by Tim Keller at \$105,000 for the same land.

Hernly said yes. The County Appraiser would actually be appraising the land under its current use which they viewed as a single-family use. The County's appraisal looked at it as a single-family unit and that's where they came up with the \$42,000. He said they also listed the improvements at approximately the same amount and those two together was what added up to the \$85,000.

Schumm said he could argue with the County Appraiser that the improvements were worth \$42,000.

Hernly said Tim Keller and Associates could argue with the County Appraiser for sure.

Brian Barland said he requested that the City Commission not proceed with the second and final reading of this ordinance at this point. He said it was a very controversial process taking private property from private residents and giving the property to someone else to profit. Under the motion it was an inherent that the City would take care of the property, but that wasn't going to happen. The City was just a vehicle to move the property to someone else. He said he couldn't believe that the neighborhood association didn't have some kind of concern about the eminent domain process because that was something that would come back to bite them in the future if this went forward and was a case that could be used as a precedent. He said at this point, City staff wanted them out of that property and they were tired of fighting and were trying to move along to a sale. There was a large difference between what they felt was fair and what Hernly's group was able to offer or show works for their project. The two properties directly

north of 11th Street, if combining those properties, that lot was the same size as their lot. The corner lot was \$65,000 and the next lot was \$40,000 or \$45,000, land value, County appraisal which was \$105,000 and was comparable piece of property with being at the same intersection and location. There were number of recent vacant land sales in the neighborhood. He said those properties ranged from \$6.00 to \$7.00 a square feet to \$14.40 a square foot. He said their lot was close to downtown and should add value. He said if using the \$7.00 a square foot that was about \$60,000 to \$70,000 for bare ground. If going to \$14.40 a square foot that was \$168,000. He said if throwing in their structure it was \$40,000 so you were at \$100,000 with the low numbers and \$200,000 with the high numbers. He said he knew they weren't going to get the low or high number, but looking for a reasonable number and was where they came up with the \$120,000 that they felt was fair value. He said they really didn't want to go through the eminent domain procedure. He said they hadn't tried to fight the City from day one when they were told they could start on that process with the house by simply moth balling it. He said that was no longer good enough for the City and now it had to be made habitable and that was where the whole thing started. They should have been allowed to spend several thousand dollars a month to rehab the place. He said no one could tell them what were the safety issues all they could tell them was there were 11 items on the exterior and 10 items on the interior. Anyone of those could deem your house unsafe. If there was a piece of siding missing from a house that was enough to consider it unsafe. He asked Brian Jimenez, Code Enforcement Manager, if he could give them any help in prioritizing because they had limited amount of money and what did they need to focus on first, but Jimenez could not tell them. He said Jimenez kept pointing to the 11 items for the exterior and the 10 items for the interior and said that it needed to be made habitable. He said he believed in Hernly's project because there was tremendous improvement. He said it would be a great tax generator and improve all the adjacent properties and wished there was a way for someone to help close that gap between the \$90,000 and the \$120,000.

Riordan said if the property was worth \$105,000, was there any attempt to notify the County that it was at \$105,000 so appropriate taxes could be paid.

Brian Barland asked if that was an appropriate question and how many people did Riordan know that would do that.

Riordan said he was just asking a question.

Brian Barland asked why he would do that.

Riordan said because they thought the property was worth more than it was.

Brian Barland said there was an asking price and a selling price and sometimes it met in between and sometimes it doesn't.

Schumm said they had discussed the procedure before and he presumed they would continue and hire some appraisers. Those appraisers might issue a value less than \$100,000 and asked if Barland was aware of that.

Barland said yes. He said the range, just bare prices were down to \$60,000 to \$70,000, but there was also the upper range of \$150,000 to \$200,000. He said that was why he was bouncing those numbers to come up with a reasonable number so they didn't need to go through this process.

Schumm said once the Commission took the vote and was in the affirmative, it was in motion and could well end up with less money than \$100,000. He said they were rolling the dice on this one.

Brian Barland said yes he was and he considered that.

Schumm said he wanted Barland to consider that because it could well come in less than \$100,000.

Barland said yes. He said he was in the wrong country if he didn't believe in the court system.

Schumm said that was a fair statement.

KT Walsh, East Lawrence Neighborhood Association, said her file on this home was very thick. The first notification from the City was in 1987 and they had been fighting fixing up the house since then. This has been extremely frustrating for the neighbors and the neighborhood association. She said when Schumm talked about the public good and when the city engaged in this process, those were contributing buildings in a National Historic District and those were corner buildings quite prominent and had a rich history. She said vacant buildings were really hard on a neighborhood. People live in those empty buildings, start fires and it gets dangerous. She said they wanted families living there and life going on in those buildings and she urged the City Commission to move forward so they could get someone into those buildings.

Schumm said for him, nothing had changed and three weeks later they were on the same page. As he said last time, if they couldn't reach an agreement in 3 weeks then he was ready to move forward with the condemnation and that was where he was exactly tonight.

Farmer said Douglas County on-line values and taxes for 1110 Rhode Island which was the lot next to the Barland's, the land was valued at \$41,780 with no improvements. It was theoretical that it would be as low as that amount.

Barland said that was for 3 lots and included the lots for Tenants to Homeowners.

Farmer said that was actually just one lot.

Riordan said this was unfortunate that the City had to come in and do this something that has been going on since 1987 should not have gone on that long. He said it was unfortunate and sad, but it was what the Commission needed to do. He said he couldn't see spending more time on this issue.

Amyx said he agreed. The hardest thing was taking from one to give to another, but the City Commission's responsibility was to make sure the property was maintained, safe, and inhabitable condition.

Moved by Schumm, seconded by Riordan, to adopt on second and final reading, Ordinance No. 8856, ordering through the exercise of eminent domain the condemnation of fee simple title to private property interests commonly located at 1106 Rhode Island Street, and authorized the filing of a petition in Douglas County District Court. Motion carried unanimously.

3. **Consider approving acquisition of parking access equipment project in the total amount of \$190,731.99 and establish the parking charge rate at 20 cents per hour (9:00 a.m. to 6:00 p.m.) in the Vermont parking garage.**

David Corliss, City Manager, presented the staff report.

Amyx said regarding the New Hampshire Garage across from the Arts Center, he asked if it was cost prohibitive to run the personnel cost. He asked if they were comparing that garage to the new garage on Vermont Street. He said they would be going to automation on the Vermont Street and asked if it was cost prohibitive to run the garage on New Hampshire Street.

Corliss said not the way that it was now.

Amyx asked if that kind of system wouldn't work.

Corliss said that kind of system could work, but the City would need to hire another parking control officer in order to go through the 324 spaces to either mark the tires for 2 hour space or to police and see whether someone was occupying those spaces. The point was that the city built its system around the 400 or more spaces and hired staff to monitor that system and would now more than double the number of spaces that the City would be patrolling and he wanted to see if they could move toward automation. He said there would still be some cost if using the same system on New Hampshire that would go to Vermont. It was an electronic system that the City bought from Schlumberger about 15 years ago. He said they had that cost to acquire as well and also some type of coin system and they didn't need to go to credit cards as well.

Amyx asked if the credit card component be added to that system.

Corliss said yes.

Schumm said if parking was 20 cents an hour and someone parked for an hour, he asked if you could put 20 cents on a credit card.

Corliss said yes, but it wouldn't be cost effective for the City.

Schumm said the City would lose money and would break even at 25 cents.

Corliss said they could make that first hour free if using a credit card system.

Riordan said the breakeven point was 25 cents if they parked for an hour or 2 hours.

Dever said no, the first hour and the breaking point was 25 cents.

Corliss said they didn't want to do meters because meters in parking garages just don't work for a lot of structural reasons such as drilling into concrete. He said if they went to a system where a person remembered their parking space and pay for it at a location like at New Hampshire, that type of system could be done as well, but they still needed parking control officers policing it. He said the parking control officers did police the 125 parking spaces and were adding a little bit more.

Dever said almost 3 times that amount.

Corliss said there were 324 spaces. At first they weren't going to get a lot of usage and wouldn't need to spend a lot of time there. Overtime, particularly when the library returns they were going to see a lot more.

Schumm asked if it was possible to add a graduated scale such as free the first hour, 50 cents the second hour and when going longer into the day, it went down to 15 to 20 cents. He said the reason why was because of the upfront fees were going to kill you on the small amount for the first hour or two.

Corliss said he thought the paying system could be timed.

Riordan said when going to the airport a person paid 90% of their money in the first 4 hours. He said the purpose was to decrease costs for personnel and to raise some money to pay for parking in the downtown area.

Corliss said correct. He said one of the other purposes was to make sure as they established the rate they were not serving as a deterrent for the use. The existence of the parking system was not because the city was balancing its budget, but to continue to enhance the downtown area. He said they wanted to try and get enough money to help the City to continue to police or monitor the system and a little bit of beautification fund as well. He said they were trying to balance all of those different items. He said his concern was when he looked at the parking fund he saw escalating personnel costs, not because they wildly inflated salaries, but moved those personnel cost up and pension cost and had a little bit of health care cost growth overtime. Those costs would continue to grow. He said he was not likely to see a growth in the rate, he would like to, but was not likely to because of concerns that he just mentioned about the desire to attract people downtown. He said as he saw those expenditures growing he was looking at how could he try and curb that a little bit and one of the ways he could do that was to work toward automation. He said it might not be this system, but it might be a system similar to what they did on New Hampshire which had an automation aspect, but he still needed someone to go to every one of those stalls to check and see how long they had been there.

Schumm said he liked the idea of the first hour free, because there were people that would use the library to drop off books. He said they would want those people to park in that garage otherwise they wouldn't have built that garage. He said he could see where that would be a quick turn. He said he thought they did that at KCI when dropping off someone the first half an hour was free in the inner circle. He said maybe they could scale it on the 2nd through the next 5th hour to pick up the cost of the lost 1st hour. The problem was that if someone paid a dollar, the City only netted 48 cents which wasn't very good.

Corliss concurred. As he got into this issue, he was disappointed.

Schumm said different carriers offer different packages too.

Corliss said for good or bad the city didn't do a lot of credit card transactions. If they came in with some of the other City expenditures, the City might be able to negotiate a better deal.

Schumm said the thing that got you was not the percent on small amounts, but the transaction fee.

Dever said they didn't want meters and was almost impossible to do the self-policing without additional labor.

Corliss said it was a challenge to do that.

Dever said they were talking about additional manpower and that system only worked if it was in the flow of a person's daily walk as opposed to going there and having to patrol over 300 spots. He said the City must absolutely charge enough to break even at any transaction costs and it was silly to put in this equipment, spending close to \$200,000 and end up losing money. He liked the idea of the first hour free. He said he didn't think the City needed to be ashamed of asking people for some sort of return on parking downtown. Somewhere in between the rates was fair. He said between what you paid for Massachusetts Street and what you paid for a 10 hour lot, obviously 10 cents an hour would not cut it either and the City would end up losing money. He asked if Corliss was talking about putting the gates up after a certain hour.

Corliss said that was on the proposal because he wanted to make sure he had staff available, but they could change some staff hours or look at some other options as well. He said he wanted to make sure that if there was a problem with the gates that he had someone that was a buzz away from being able to talk to someone.

Dever said gates up meant no revenue and no expense for a credit card transaction so it was a wash. He said people would get around that by parking and leaving later.

Corliss said that was the observation as well. If revenue was the only concern, this wouldn't be an issue. He said he was concerned about charging so much that it would be a deterrent.

Dever said they also needed those spaces freed up and Schumm's idea of an hour or first half hour would be free, whatever the breakeven was, there needed to be a minimum transaction fee and a minimum transaction cost and the city could not lose money in having those transactions.

Schumm said it needed to be free the first hour because otherwise the city would lose 10 cents.

Dever said they would just charge 50 cents.

Corliss said the challenge with that was that people would want to park on the street or somewhere else. He said maybe they might want to look at a less expensive option.

Farmer said he agreed with Riordan's comment about the airports and how those airports wanted to get their customers in and out fast. If parking 2 hours downtown at a meter, such as 7th and Massachusetts Street, a person would pay a buck for 2 hours. He suggested making the first hour free, 50 cents an hour, a dime for every 12 minutes.

Schumm said Farmer was valuing the parking in that garage off of Vermont Street the same as prime parking on Massachusetts Street because that was the same price.

Dever said there was no free parking for the first hour downtown.

Farmer said he was suggesting that under an hour was free and if you're parked one or two hours, it was a buck.

Schumm said they you were pricing at the same price as on Massachusetts Street.

Amyx said between the New Hampshire and the Vermont Street garages he asked if the prices should be consistent.

Corliss said that idea could be argued. He said he wanted to get rid of that free 4th floor on the New Hampshire parking garage.

Amyx said here we have situation on the current garage on New Hampshire Street and had two hours free.

Corliss said correct, on the lower level.

Amyx suggested doing something like the with spaces at the library regarding allowing 2 hour parking and have a consistent all day or whatever that price would ultimately would be and do some of the automation the same.

Mayor Dever called for public comment. None was received.

Dever said he wouldn't motion to approve a rate of 20 cents an hour knowing it was a losing proposition using credit card equipment. He said he would consider authorizing the acquisition, but not the rates.

Corliss suggested waiting. He said he still valued that automation desire, but wanted to see if they might have a better alternative. He said this had been a helpful discussion because he was hearing where the City Commission's comfort level was with the rates and the comment about the analogy of New Hampshire was a good point. He said he also heard some value that they might want to have some free parking. He said they could take those values and get the right automation system.

Riordan asked if Corliss needed a week or two weeks.

Corliss said staff would need some time, but would get back with this issue as soon as they could.

Farmer said if it would lower their transaction fee cost if they were able to for City utility billing, not use Paymentus and the 2.95 fee. He asked if it would help if they had more transactions to lower that fee and could look at that parallel to this option.

Corliss said he would discuss the credit card fee with Ed Mullins, Finance Director. He said that fee was meant to put those users on par with everyone in the system. There was no one paying a utility bill that was subsidizing someone that was using a credit card. He said when it came to Parks & Recreation the City had absorbed the transaction fee. He said staff

hadn't had a consistent discussion about that throughout the city and might be something the City might want to do.

Dever said definitely.

Schumm said he was not real sure he liked the idea that the gates were up a night and anyone could park at that location because it might create an attractive nuisance of sorts. He said there could be a lot of mischief going on. He said there were a lot of bars on that end and would lose a lot of revenue. Again, people could park anywhere they wanted to after 6:00 pm for free.

Moved by Riordan, seconded by Schumm, to defer consideration of the acquisition of parking access equipment project in the total amount of \$190,731.99 and establishing the parking charge rate at 20 cents per hour (9:00 a.m. to 6:00 p.m.) in the Vermont parking garage. Motion carried unanimously.

4. **Considered a motion to recess into executive session for approximately 45 minutes to consult with attorneys for the body which would be deemed privileged in the attorney-client relationship concerning pending and potential litigation and for preliminary discussions relating to the acquisition of real property. The justification for the executive session was to keep attorney client privileged matters and possible terms and conditions of real estate acquisition confidential at this time. The open meeting would resume in the city commission chamber 45 minutes thereafter, unless extended by the governing body.**

Moved by Schumm, seconded by Amyx, to recess into executive session for approximately 45 minutes to consult with attorneys for the body concerning pending and potential litigation and preliminary discussions relating to the acquisition of real property. The justification for the executive session was to keep attorney client privileged matters and possible terms and conditions of real estate acquisition confidential at this time. The open meeting would resume in the city commission chamber 45 minutes thereafter, unless extended by the governing body. Motion carried unanimously at 8:53.

At 9:41 p.m. the City Commissioners returned to the City Commission Meeting Room and resumed the regular session. No actions were taken or reports given following the executive session.

E. PUBLIC COMMENT: None.

F. FUTURE AGENDA ITEMS:

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

G. COMMISSION ITEMS: None.

H. CALENDAR:

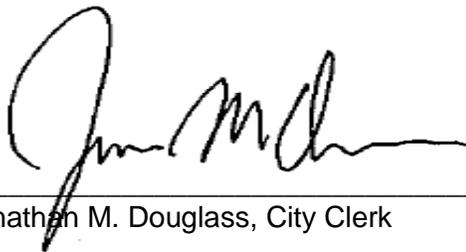
David Corliss, City Manager, reviewed calendar items

I. CURRENT VACANCIES – BOARDS/COMMISSIONS:

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

Moved by Schumm, seconded by Riordan, to adjourn at 9:43 p.m. Motion carried unanimously.

MINUTES APPROVED BY THE CITY COMMISSION ON AUGUST 27, 2013.



Jonathan M. Douglass, City Clerk