



**PLANNING COMMISSION MEETING**  
**October 21, 2013**  
**Meeting Minutes**

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October 21, 2013 – 6:30 p.m.

Commissioners present: Britton, Culver, Denney, Graham, Josserand, Liese, Rasmussen, Struckhoff, von Achen

Staff present: McCullough, Stogsdill, Halm, Larkin, M. Miller, Day, Ewert

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**COMMITTEE REPORTS**

Receive reports from any committees that met over the past month.

Commissioner Culver said the Metropolitan Planning Organization (MPO) met and received updates on various studies. He said they received updates on the multi-model transportation study. He said the MPO took action on the 2014 Unified Work Program.

**COMMUNICATIONS**

Receive written communications from the public:

Mr. Scott McCullough said a request was received from the applicant to defer Item 3C, Preliminary Plat for Menards Addition, located at 1900 W 31<sup>st</sup> St.

Motioned by Commissioner Liese, seconded by Commissioner Struckhoff, to defer Item 3C, Preliminary Plat (PP-13-00338) for Menards Addition.

Motion carried 8-0-1, with Commissioner Graham abstaining.

Receive written communications from staff, Planning Commissioners, or other commissioners: Mr. McCullough said the Board of County Commissioners placed a moratorium on agritourism applications until April to revise some standards. He stated the standards would come back to Planning Commission to look at balancing the issue of administrative review and approval. He said they would be looking at what level of neighborhood impact would demand the Board of County Commission or Planning Commission review and consideration.

- a) Disclosure of ex parte communications.
- b) Declaration of abstentions from specific agenda items by commissioners.

**EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- Ex parte:  
Commissioner Liese said he talked to someone from North Lawrence regarding an item that would be on the November Planning Commission agenda and wanted to know if he should disclose that now or later.  
Mr. McCullough said for Commissioner Liese to declare the ex parte at the time the item was heard in the future.
- Abstentions:

Commissioner Graham said she would abstain from Items 3A & 3B due to Menards being a national account with the company she works for.

PC Minutes 10/21/13

**ITEM NO. 1 CERTIFICATE OF SURVEY VARIANCE FOR PROPERTY AT, & ADJACENT TO, 1619 E 818 RD (MKM)**

Consider a variance associated with Certificate of Survey, **CSU-13-00432**, to allow two access points for Residential Development Parcels at 1619 E 818 Road and the adjacent parcel to the south. Submitted by Doug Garber Construction Inc., property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item.

**APPLICANT PRESENTATION**

Mr. & Mrs. Garber were present for questioning.

**PUBLIC HEARING**

Ms. Marsha Dean wanted to be sure there would be no additional access on the private road.

Ms. Miller showed a map on the overhead and explained the access. She said the only access on the private road would be the one house and the other houses would not be able to access it.

Ms. Dean inquired about the type of homes, quality, and price range that would be built.

Mr. Ron Crawford said they needed to keep in mind that this was part of the Horizon 2020 plan and it was a fairly high density area. He said this would be a major intersection as Trailriders Road came into Highway 40. He said it would create a special tax benefit district and felt it created difficult issues as single-family homes develop in the growth area.

**COMMISSION DISCUSSION**

Commissioner Liese thanked Ms. Dean for her comments and asked staff to respond.

Mr. McCullough said the application was a land division application, not zoning, so it would be afforded all the uses of the A zoning. He said the expectation was that homes would be built there and that the applicant could speak to the type of homes because staff does not have or ask for that information since this was just a land division at this point. He said the Planning Commission review was limited to the variance issue related to access to the road. He said most of the application was permitted by right and administrative. He said if the application met the standards it was approved and moved on to the next step which would be permitting for the homes, consisting of two administrative processes, building permits and inspection.

Commissioner Liese asked if anything built would have to follow Code.

Mr. McCullough said yes.

Commissioner Denney said Planning Commission was not deciding or looking at what would be built. He wondered if there was a process after this one to look at what was being built.

Mr. McCullough said there would be an administrative building permit process which would be submitted to County for review, as well as a plot plan for setbacks. He said there was additional review but that staff could not determine the final outcome in terms of the size of the home and the home value.

Commissioner Denney asked if it was limited to single-family homes.

Mr. McCullough said that was correct. He said if it weren't for the variance request the Planning Commission wouldn't see this request at all.

**ACTION TAKEN**

Motioned by Commissioner Liese, seconded by Commissioner Denney, to approve the variance requested from Section 11-104(c)(1)(vii)(c) [Section 20-804(c)(1)(vii)(c)/City Code] to allow the Certificate of Survey CSU-13-00432 to provide 2 access points with 1 point being the existing access from the residence to E 818 Road, subject to the following condition:

1. The Certificate of Survey shall be revised so that the Cross Access Easement extends to the east to provide future access to Residential Development Parcel 2, in the event the intersection of E 818 Road and Highway 40 is removed. The additional drive does not need to be constructed with this division.

Unanimously approved 9-0.

PC Minutes 10/21/13

**ITEM NO. 2A RS10 TO RS7; 2.186 ACRES; 1146 HASKELL AVE (MKM)**

**Z-13-00350:** Consider a request to rezone approximately 2.186 acres from RS10 (Single-Dwelling Residential) District to RS7 (Single-Dwelling Residential) District, located at 1146 Haskell Ave. Submitted by Struct/Restruct LLC for BK Rental LLC, property owner of record.

**ITEM NO. 2B RS10 TO IL; 1.785 ACRES; 1146 HASKELL AVE (MKM)**

**Z-13-00351:** Consider a request to rezone approximately 1.785 acres from RS10 (Single-Dwelling Residential) District to IL (Limited Industrial District) District, located at 1146 Haskell Ave. Submitted by Struct/Restruct LLC for BK Rental LLC, property owner of record.

**ITEM NO. 2C RS10 TO OS; 2.384 ACRES; 1146 HASKELL AVE (MKM)**

**Z-13-00408:** consider a request to rezone approximately 2.384 acres from RS10 (Single-Dwelling Residential) District to OS (Open Space) District, located at 1146 Haskell Ave. Submitted by Struct/Restruct LLC on behalf of BK Rental LLC, property owner of record.

**ITEM NO. 2D PRELIMINARY PLAT FOR BURROUGHS CREEK ADDITION; 1146 HASKELL AVE (MKM)**

**PP-13-00352:** Consider a Preliminary Plat for Burroughs Creek Addition, a 6.36 acre subdivision consisting of 9 residential lots, 1 industrial lot, and one open space tract; 1 associated variance from right-of-way requirement in Section 20-810(e)(5) of the Subdivision Regulations. The property is located at 1146 Haskell Ave. Submitted by Struct/Restruct LLC for BK Rental LLC, property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented items 2A-2D together.

**APPLICANT PRESENTATION**

Mr. Eric Jay & Mr. Matt Jones, Struct/Restruct, said they hoped to purchase the property and move their office to it. He said the property was a lot more space than they needed so they came up with ideas of how to develop the property to mitigate some of the cost. He said they were going to keep the current building at 12<sup>th</sup> & Haskell for their shop and office, develop the 9 lots to the east, and donate a little over 2 acres to the City for a park or outdoor recreational facility. He said they wanted to have a positive impact in the neighborhood.

Mr. Brian Sturm, Landplan Engineering, said he helped with the preliminary platting. He said this project could revitalize East Lawrence and the Brook Creek Neighborhood. He said the open space provided floodplain management. He said the State of Kansas was currently working on a new floodplain study and the residential properties would not be final platted until after the flood insurance study was complete. He said the plan was to only final plat the IL piece initially. He said they would be setting aside approximately 40% of the property as open space. He said in some places there would as much as 45' of greenspace between the street and property lines that had no underground utilities on it. He said water lines would be the least invasive to install and could be directionally bored from a small hole above ground to avoid significant trenching. He said they would do their best to minimize damage with the installation of water lines south of 12<sup>th</sup> Street

**PUBLIC HEARING**

Ms. Julie Mitchell, Brook Creek Neighborhood Association, thanked Struct/Restruct for holding neighborhood meetings. She said the neighborhood understands this may be the best option for the property. She said a lot of the neighborhood questions were answered by Ms. Miller during her presentation, such as the industrial use concerns. The neighborhood was concerned about flooding issues and insurance rates increasing. She wondered if the real estate deal didn't go through for Struct/Restruct to purchase the property if the zoning would still go through.

Mr. McCullough said the zoning would go with the land, not people, so the property would be rezoned with conditions. He said if anyone wanted to lift the prohibitions it would go back through the rezoning process. He said part of the consideration was that no matter who the applicant was the land use should be compatible with the neighborhood.

Ms. Mitchell expressed concern about enforcement and concern about easements. She said it felt like plans were still up in the air.

Mr. Clement Garrick wondered how long the property had been zoned RS10.

Mr. McCullough said since the property was annexed in the 1960's.

Mr. Garrick asked how the recycling use was allowed.

Mr. McCullough said there was an underlying issue in the background that wasn't really up tonight for Planning Commission discussion, in his opinion. He said there was a lot of discussion at the Board of Zoning Appeals and City Commission about a land use enforcement case. He said essentially the property was annexed in 1966 with automotive related uses and some commercial and industrial uses throughout the years. He said in approximately 2003 Mr. Bo Killough began a use that ended up turning out to be not in compliance with the non-conforming status. He said that was enforced and at the end of the day Mr. Killough moved his business up the street, which left the property vacant. He said this proposed use had turned out to be one of the better outcomes for this property. He said he did not want to dwell on the history of the legal non-conforming case.

Mr. Garrick wondered if it was appropriate to have residential development so close to a sewage treatment facility.

Ms. Sharon Vaughn said Brook Creek has not had much work done to improve it. She said she asked the City's first Stormwater Engineer about 10 years ago how long it would be before the Brook Creek stormwater flooding issues would be addressed and he said it would be 30 years. She said there were still flooding problems in the area. She felt that nine curb cuts on 12<sup>th</sup> Street were a lot and she wondered how that would impact flooding to existing homes. She expressed concern about toxic waste on the site.

Mr. Michael Almon showed slides on the overhead of the property when it was owned by Mr. Bo Killough. He was concerned about extensive industrial use activities by future owners or by Mr. Killough if he retains the property. He said Struct/Restruct considerably requested that 38 use groups be prohibited with the IL. He disagreed with the character of the neighborhood as described in the staff report.

Ms. Melinda Henderson, 1202 Almira, expressed concern about vegetation being destroyed with the water line installation. She was also concerned about development to the north increasing the floodplain area. She said that fill added for new homes would affect the ability for the area to drain to the northeast. She showed pictures on the overhead of 12<sup>th</sup> Street. She wished the Hydraulic and

Hydrologic study was complete before the rezoning. She said if the rezoning was approved she would like conditions place on the industrial zoning.

Ms. Cille King, League of Women Voters, said floodplain should be left undeveloped for flood waters. She said if the homes were raised on stilts they would lose tornado protection. She felt the safety of the soil should be proven before rezoning.

Mr. Byron Wiley, 1200 Almira, said he was mostly pleased with the proposal presented by Struct/Restruct. He said his major concern was the rezoning conditions. He felt there was no need for industrial zoning and that it could be zoned CC with restrictions.

### **APPLICANT CLOSING COMMENTS**

Mr. Jay discussed ideas they had about the residential portion. He said they were thinking about the idea of pier construction homes which would have as little impact to the site and floodway as possible. He said it would consist of a structure being on stilts/piers and would still include some sort of storm shelter as part of the structure where the utilities come into the house from beneath. He said there would probably be some sort of pre-construction site grading plan to balance the cut and fill of the site to divert the water differently. He said the plan was that the piers would be the only change to the site. He said regarding access it didn't make economic sense to build two cul-de-sacs within the development which would create higher development costs. He said an environmental study was completed by Larson and Associates and states the contamination levels were below State requirements for residential development. He said he had no objection to the restricted uses.

### **COMMISSION DISCUSSION**

Commissioner Denney asked if Planning Commission rezoned and replatted tonight would that remove any previous non-conforming use agreements that may be out there. He asked if anything that was grandfathered before would go away.

Mr. McCullough said yes.

Commissioner Denney asked if it would be starting new with no previously existing conditions.

Mr. McCullough said that was correct.

Commissioner Denney inquired about addressing the drainage issues.

Mr. McCullough said the State needed to complete the review and analysis with the Hydraulic and Hydrologic study on Burroughs Creek and how it intercepts with Brook Creek. He said the final plat could not be done until that study was received.

Commissioner Denney asked if what they were considering tonight would approve any structures being built at this point.

Mr. McCullough said no. He said another step for the light industrial site would include site planning. He said that may include some property improvements and limited fill or paving.

Commissioner Denney asked if the lots that were being rezoned to RS7 would qualify for RS10.

Ms. Miller said there was enough area to be an RS10 lot but the length of 12<sup>th</sup> Street with RS10 would require 70' of frontage per lot and RS7 would require 60' of frontage per lot.

Commissioner von Achen asked for examples of other areas in town where industrial was next to single-family.

Mr. McCullough said the City was essentially established in a pattern of linear corridors and Haskell Avenue was one of those corridors where there is industrial development flanked by residential development. He said there was a historic pattern of industrial along corridors with residential back to back with it.

Commissioner von Achen inquired about transitions between uses.

Mr. McCullough said conditional zoning could be employed as another protection. He said the reason staff advised the applicant not to request commercial zoning was because the only commercial zones that support the construction sales and service use was Community Commercial, Regional Commercial, or Commercial Strip. He said IL was the district that most accommodated the requested use. He said conditional zoning can be used on top of that zoning to make it compatible with the neighborhood.

Mr. Jay said the current location of Struct/Restruct at 920 Delaware Street was zoned similarly and contains a mix of uses.

Commissioner von Achen asked if staff had seen the soil test that the applicant did.

Ms. Miller said no, staff had not seen the report.

Commissioner von Achen asked if staff would see the environmental study.

Mr. McCullough said staff could accept the environmental study into the record. He said during the enforcement process staff had been in contact with KDHE and it was his understanding there were no open KDHE cases on the property.

Commissioner von Achen asked if all of the houses in the development would be built by the same developer or would individual buyers purchase the lots and build with their own builder.

Mr. Jay said the plan was to place some covenants on the nine lots for the design of the properties and potentially submit an approved contractor list. He felt the design was more important than who the builder was.

Commissioner Rasmussen asked for staff to put an aerial on overhead. He asked questions based on the Golden Factors. He said he was concerned about going from RS to Industrial zoning. He asked how this fit within the Comprehensive Plan.

Ms. Miller said it was zoned residential because when properties were annexed in the 1960's they were automatically zoned to a placeholder zone of RS1 and that district converted to the RS10 district with the adoption of the Development Code. She said the RS10 zoning was just a placeholder zoning, it wasn't intentionally zoned RS10.

Commissioner Rasmussen asked if when it was annexed in 1966 it was already an industrial use.

Mr. McCullough said it was a vehicle storage lot.

Commissioner Rasmussen asked how it fit with the Comprehensive Plan.



Mr. McCullough referred to the staff report. He said there was industrial zoning and uses in the area.

Commissioner Rasmussen said he felt Brook Creek was a natural stopping place of industrial into the neighborhood. He did not see any properties south of the creek that were industrial.

Mr. McCullough said historically it has been 12<sup>th</sup> Street where the pattern stops between residential and industrial uses.

Commissioner Rasmussen asked if staff considered the residential parts of the neighborhood. He expressed concern about what happens when Struct/Restruct is no longer at that location in the future.

Mr. McCullough said one of the hardships to the neighborhood has been the unknown with the non-conforming use issue. He said currently the site was RS10 and it may or may not have some non-conforming use rights today. He said one of the positive impacts of this rezoning request was that it would clearly zone the property to a zoning district and could include conditional zoning. He said a site plan would provide an enforcement mechanism. He said in his opinion it was never the intent of the enforcement process to try and get the building and use completely demolished and abandoned.

Commissioner Rasmussen asked Mr. Jay if the conditions Mr. Almon mentioned earlier were accurate.

Mr. Jay said yes.

Ms. Miller said restricting uses from the district that could be compatible could just bring the issue back to Planning Commission if Struct/Restruct decided not to build at the site. She said restricting uses that were allowed in the neighborhood to the south didn't make sense. She said staff went through all the uses recommended and she did not think uses that were actually permitted in the RS7 district should be prohibited in the IL district. She said it would provide a clear zoning district with uses that were compatible, not necessarily all the uses the neighborhood suggested or even the one the applicant would agree to.

Commissioner Rasmussen asked if at this point staff was not including any more conditions than what was recommended in the staff memo.

Ms. Miller said that was correct.

Commissioner Liese said this was a terrific example of a developer, community, and staff doing a professional job working together to get rid of a problem in the community. He appreciated the developer's willingness to approach and talk to the neighborhood. He thanked staff for going through all the questions. He asked about the question that a public member brought up regarding the regulations about residential development near a treatment plant.

Mr. McCullough said there were no distance standards.

Commissioner Liese felt IL was a reasonable transition between the higher intensity industrial uses to the north and the residential uses to the south. He felt it was a sensible plan. He said he would support the rezoning.

Commissioner Josserand agreed with Commissioner Liese's comments. He felt it was a well thought thru plan. He thanked the applicant for meeting with the neighborhood. He said the history of the property was an additional factor that could be considered. He expressed concern about the flooding in the area and hoped some of the stormwater issues could be solved. He said it was unfortunate the water line needed to be on the south but it was right-of-way and he agreed with Mr. Sturm that the water line was not as noxious as some other things that could be in the right-of-way. He said there may be changes to the right-of-way that may be necessary to solve the flooding issue.

Commissioner Liese inquired about the access to the open space.

Ms. Miller said access to the open space would be provided from 12<sup>th</sup> Street from a pedestrian easement.

Mr. Jay said the leg of open space north of the IL district was for a small pedestrian bridge over the creek.

Commissioner von Achen had strong reservations that the proposal did not meet the criteria necessary for industrial zoning, it's not identified in future land use maps for industrial, it does not meet the setback criteria for street frontage where industrial is across the street from residential, it abuts RS7 district on two sides without any transition. Said she could not support the IL zoning.

#### **ACTION TAKEN on 2A**

Motioned by Commissioner Liese, seconded by Commissioner Graham, to approve the rezoning request for approximately 2.186 acres from RS10 (Single-Dwelling Residential) District to RS7 (Single-Dwelling Residential) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 9-0.

#### **ACTION TAKEN on 2B**

Motioned by Commissioner Liese, seconded by Commissioner Josserand, to approve the rezoning request for approximately 1.785 acres from RS10 (Single-Dwelling Residential) District to IL (Limited Industrial) and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report subject to the following condition:

The following uses are permitted only upon approval of a Special Use Permit:

- Lodge, Fraternal & Civic Assembly
- Active Recreation
- Hotel, Motel, Extended Stay
- Public Safety

The following uses are not permitted within the district:

- Kennel
- Livestock Sales
- Fast Order Food, Drive-in
- Car Wash
- Gas & Fuel Sales

- Heavy Equipment Sales/Rental
- Heavy Equipment Repair
- Light Equipment Sales/Rental
- Light Equipment Repair
- RM & Boats Storage
- Scrap and Salvage Operation
- Broadcasting Tower
- Large Collection Recycling Facilities
- Recycling Processing Center
- Participation Sports and Recreation, Outdoor

Commissioner Britton said this was a unique area and in other circumstances he would echo Commissioner von Achen's concern about the industrial zoning. He said it made sense at this location given its unique history and the fact that the land could be put to good use. He said he would support the motion and felt it was a good compromise.

Motion carried 8-1, with Commissioner von Achen voting in opposition.

#### **ACTION TAKEN on 2C**

Motioned by Commissioner Liese, seconded by Commissioner von Achen, to approve the rezoning request for approximately 2.384 acres from RS10 (Single-Dwelling Residential) District to OS (Open Space) and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report.

Unanimously approved 9-0.

#### **ACTION TAKEN on 2D**

Motioned by Commissioner Liese, seconded by Commissioner Jossierand, to approve the variance requested from Section 20-810(e)(5) from the requirement to dedicate additional right-of-way for Haskell Avenue adjacent to Lot 1 Burrough's Creek Addition based on the findings listed in the report, subject to the following condition:

*The plat shall be revised to include the following note: "On October 21, 2013, the Planning Commission approved a variance from the requirement in Section 20-810(e)(5) to dedicate 100 ft of right-of-way for minor arterials to allow the right-of-way for Haskell Avenue as shown on this plat."*

The approval of the Burrough's Creek Addition subject to the following conditions:

1. Provision of a revised plat with the following changes:
  - a. Increase the width of the utility easement between Lots 9 and 10 to 15 ft.
  - b. Revise General Note 10 to note that Tract A will be donated to the City rather than 'dedicated'.
  - c. Revise the site summary to include the tract in the net area.

- d. Add the following note: *"In order to maintain the health and vigor of a Bur Oak Tree (specifically one being a 50" caliber, DBH), and their root systems; the following restrictions apply within the Landscape Easement on Lot 10:*
- *No building.*
  - *No building material or debris storage of any kind.*
  - *No person shall deposit, place, store, or maintain any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air and fertilizer to the roots of any tree growing inside the easement.*
  - *No cut/fill grading over 4 inches and no excavation of ditches or trenches.*
  - *No drives shall be installed.*
  - *No driving, parking, or storage of vehicles."*

Unanimously approved 9-0.

PC Minutes 10/21/13

**ITEM NO. 3A ANNEXATION OF 8.4 ACRES; 1352 N 1300 RD (SLD)**

**A-13-00340:** Consider a request to annex approximately 8.4 acres located at 1352 N 1300 Rd. Submitted by Menard Inc., for Bruce Snodgrass, property owner of record. *Initiated by City Commission on 9/10/13.*

**ITEM NO. 3B A TO CR-FP; 8.4 ACRES; 1352 N 1300 RD (SLD)**

**Z-13-00337:** Consider a request to rezone approximately 8.4 acres from County A (Agricultural) District to CR-FP (Regional Commercial-Floodplain Overlay) District, located at 1352 N 1300 Rd. Submitted by Menard, Inc. for Bruce Snodgrass, property owner of record.

**\*\*Deferral Requested by Applicant\*\***

~~**ITEM NO. 3C PRELIMINARY PLAT FOR MENARDS ADDITION; 1900 W 31<sup>ST</sup> ST & 1352 N 1300 RD (SLD)**~~

~~**PP-13-00338:** Consider a Preliminary Plat for Menards Addition, a 7 lot commercial subdivision, located at 1900 W 31<sup>st</sup> St & 1352 N 1300 Rd. Consider variance request from section 20-810 (e)(5) regarding minimum right-of-way for a principal arterial street. Submitted by Menard, Inc. on behalf of Tom Horner III and Bruce Snodgrass, property owners of record.~~

**STAFF PRESENTATION**

Ms. Sandra Day presented items 3A and 3B.

*Item 3C was deferred by Planning Commission at the beginning of the meeting, per the applicant's request.*

**APPLICANT PRESENTATION**

Mr. Tyler Edwards, Menard Inc, was present for questioning.

**PUBLIC HEARING**

Mr. Dan Watkins, representing First National Development, said they were not opposed to commercial development to the east and rezoning, but did have concerns about the buffer area to the west. He said he would provide more information next month when the plat was heard.

**COMMISSION DISCUSSION**

Commissioner Denney said he would support the rezoning and would miss the Snodgrass property.

**ACTION TAKEN on Item 3A**

Motioned by Commissioner Britton seconded by Commissioner Struckhoff, to approve the requested annexation (A-13-00340) of approximately 8.4 acres located at 1352 N 1300 Road based on the findings in the body of the staff report and forwarding the request to the City Commission with a recommendation for approval.

Unanimously approved 8-0-1, with Commissioner Graham abstaining.

**ACTION TAKEN on Item 3B**

Motioned by Commissioner Britton, seconded by Commissioner Denney, to approve the rezoning request for approximately 8.45 acres from A (Agricultural) District to CR (Regional Commercial)

District and FP (Floodplain Overlay) District and forwarding it to the City Commission with a recommendation for approval based on the findings of fact found in the body of the staff report subject to the following conditions:

1. Applicant shall provide a revised legal description of the property describing that portion of the property within the regulatory floodplain for inclusion in the ordinance for the CR-FP portion of the property and a legal description for the remainder of the property for inclusion of an ordinance for the CR portion of the property.
2. Uses shall be prohibited in this CR (Community Regional) District:
  - a. Animal Services: Livestock Sales
  - b. Eating and Drinking Establishments: Bar or Lounge
  - c. Sexually Oriented Business: Sexually Oriented Theater
  - d. Vehicle Sales and Service: Truck Stop, Heavy Equipment Repair, Inoperable Vehicles Storage; and
  - e. Industrial Facilities; Laundry Service

Unanimously approved 8-0-1, with Commissioner Graham abstaining.

**ACTION TAKEN on Item 3C**

*Item 3C was deferred by Planning Commission at the beginning of the meeting, per the applicant's request.*

Commissioner Liese asked about the Preliminary Plat and wondered if there was anything specific they should be thinking about.

Mr. McCullough said the applicant would be submitting a new plat and staff would build a staff report that would highlight any issues.

PC Minutes 10/21/13

**ITEM NO. 4 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; BAR OR LOUNGE AS PERMITTED USE IN CN2 (SMS)**

**TA-13-00336:** Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, to include *Bar or Lounge* as a permitted use in the CN2 (Neighborhood Commercial Center) District. *Initiated by City Commission on 9/3/13.*

**STAFF PRESENTATION**

Ms. Sheila Stogsdill presented the item.

**APPLICANT PRESENTATION**

Mr. and Ms. Dan and Chelsea Rose were present for questioning. They said they were happy to abide by the Special Use Permit.

Commissioner Josserand asked what location they had in mind.

Ms. Rose said Wakarusa Market Place located at 15<sup>th</sup> & Wakarusa.

**PUBLIC HEARING**

Mr. Alan Black, League of Women Voters, asked what the zoning was for 23<sup>rd</sup> Street Brewery, located at Clinton Pkwy & Kasold.

Ms. Stogsdill said it was zoned PCD.

Ms. Cille King, League of Women Voters, said it would be difficult for neighbors in these areas to have the Code changed on them. She felt the Special Use Permit was the best option.

**COMMISSION DISCUSSION**

Commissioner von Achen asked if there was any thought to include CN1 as well.

Ms. Stogsdill said all she could find while reviewing the zoning diagnostic to try and identify why it was not included was one comment about there being so many commercial districts and there really wasn't much distinction between them. She assumed that was why CN1 and CN2 didn't include it and the other districts did. She said the CN1 was more for businesses such as a little coffee shop or bakery rather than a shopping center with multiple stores.

Commissioner von Achen inquired about the League of Women Voters concern about neighbors who deal with nuisance noise and what protection they have.

Ms. Stogsdill said there were restrictions through the noise ordinance and any individual could call to request police respond to excessive noise. She said any change to an existing use would still require a revised site plan which would typically include notice to neighbors within 200 feet and a public notice sign posted at the site.

Commissioner Liese wondered about the impact to the neighborhood and asked the applicant to provide a mental image of what they were proposing.

Ms. Rose said she was seeking a Class B club type liquor license which would not allow people to come in off the street and buy a beer. She said the business would have designated hours of operation and clients would pay to participate in the activity. She said clients would purchase an

activity for the evening and the liquor license would only allow for members to be in the establishment drinking. She stated it would be a painting party so they would hire several artists to come in and clients would enjoy wine and learn how to do a painting.

Commissioner Liese asked if there was a downside to Option 3.

Mr. McCullough said there would be more process and cost to the applicant.

Commissioner Rasmussen said it would be harder to get a loan with a Special Use Permit.

Mr. McCullough said that could be a consequence of a Special Use Permit. He said Special Use Permits could be revoked if conditions were not abided by.

Commissioner Liese said at this time he favored Option 3.

Commissioner Josserand inquired about non-conforming businesses.

Ms. Stogsdill said there was one at 19<sup>th</sup> & Haskell and Hillcrest at 9<sup>th</sup> & Iowa. She said Wayne & Larry's in Hillcrest Shopping Center, for example, was permitted because it was also a restaurant.

Commissioner Denney inquired about what CN2 meant and if it was meant to be a small neighborhood function.

Ms. Stogsdill read the definition from the staff report:

*Section 20-208(a) provides the purpose statement for the CN2 District: The CN2, Neighborhood Shopping Center District, is primarily intended to implement the Comprehensive Plan's "Neighborhood Commercial Centers" policy of providing for the sale of goods and services at the neighborhood level. Options have been provided that would allow this use with either Development Standards or approval of a Special Use Permit if the Commission does not believe it is appropriate to permit this use by-right in the CN2 District. In Staff's opinion, it is reasonable to permit this use as a by-right use in all CN2 Districts.*

She said CN1 was the inner neighborhood commercial district and was very small, such as one property right on the corner. She gave the example of 13<sup>th</sup> & Haskell where a beauty salon was located.

Commissioner Denney said he was leaning toward Option 2. He asked if there were any negatives to putting a 3,000 square foot limit on it.

Ms. Stogsdill said nothing that she could think of. She said she chose 3,000 square feet because that was the same size used for the standard for a fast food establishment in Section 20-509. She said that was the size of a tenant space that already had that same restriction. She said The Pool Room, for example, would become conforming in terms of use but not conforming to that standard.

Mr. McCullough said they had the option to set a use standard by right and then require a Special Use Permit after that.

Commissioner Liese wondered about limiting it to 3,000 square feet.

Mr. McCullough said they were talking about a limit by right without a Special Use Permit and if that limit was exceeded it would require a Special Use Permit.



Commissioner Denney asked how many people would be allowed in a 3,000 square foot business.

Mr. McCullough said it would depend on the Code design and how the space was laid out. He said there was a distinction between a nightclub and a bar and that this text amendment would not allow a nightclub use.

Commissioner Denney asked if this would allow an outdoor patio without a Special Use Permit.

Mr. McCullough said that was an option they could talk about. He said the way that option could be written was to include outdoor patio space but anything over 3,000 gross square feet would require a Special Use Permit.

Commissioner Denney said he would support that because it seemed like a good compromise.

Commissioner von Achen said since this was in CN2 the size limit wasn't as important to her. She said she would choose Option 1 with a Special Use Permit being required for an outside area.

Ms. Stogsdill said the business would still have to meet the parking requirement. She stated bar and eating establishments had higher parking requirements compared to retail uses. She said sometimes the size of what was available was dependent on the parking that was already built.

Commissioner Denney said he was not married to the idea of including the outdoor area in the 3,000 square feet.

Commissioner Britton agreed with Commissioner von Achen. He felt it was more important to require a Special Use Permit for outdoor areas than relying on total square footage.

Commissioner Struckhoff said he liked the idea of having the total indoor and outdoor square footage under the limit. He said there were practical limits to how big they could be in a CN2 district.

Commissioner Rasmussen said he was inclined to go along with the staff recommendation of Option 1. He did not support Option 2 because he did not feel size restrictions were necessary. He said he was reluctant to require a Special Use Permit because he felt it created more impediments for trying to have a business. He said the staff professional recommendation was Option 1 and he was inclined to follow it. He gave the example of Bambino's outdoor seating area and said it was not a problem. He also said other businesses with bars in the same area, El Mezcal and Shenago Lounge, had not been a problem in the neighborhood. He said when he looks at other site locations zoned CN2 he was not sure there was a need for a Special Use Permit, especially if it would make some of them non-conforming. He said he was more inclined to follow the staff recommendation of Option 1.

Commissioner Culver agreed with Commissioner Rasmussen regarding staff recommendation Option 1. He felt the Text Amendment would correct an inconsistency and felt it was consistent with the Comprehensive Plan. He felt if they got into the size limitations they may be favoring some size businesses and possibly penalizing others. He said he was inclined to support Option 1 but not opposed to other options.

Commissioner Liese felt they should send the discussion tonight to City Commission for their consideration. He said regarding outdoor accommodations, he rarely hears screaming and laughing when he goes past restaurants and bars with outside patios. He said patrons leaving an establishment had the potential to be just as loud as people in an outside area.

## **ACTION TAKEN**

Motioned by Commissioner Liese, seconded by Commissioner Denney, to recommend approval of a modified Option 2: Permit *Bar or Lounge* as a use by right with Use Standards similar to those required for *Fast Order Food* establishments in the CN2 District in Section 20-509(3) which limits the gross floor area of the use, including any outdoor area, to no more than 3,000 square feet. When the gross floor area is greater than 3,000 square feet, a *Bar or Lounge* may be permitted with a Special Use Permit in a CN2 District.

Commissioner Britton said he would support the motion but did think there was a difference between the noise generated by people coming in/out of an establishment where they were having a good time versus a sustained good time outside on a patio. He felt the language could be improved to invoke the Special Use Permit for the sustained outdoor presence.

Commissioner Liese agreed with Commissioner Britton that it wouldn't be bad to consider.

Commissioner Rasmussen asked if the motion was if a bar or lounge was 3,000 square feet or less it would be permitted by right but above that size would require a Special Use Permit.

Mr. McCullough said yes.

Commissioner Culver said he would support the motion but would like the City Commission to take a good look at if the 3,000 square feet was an appropriate number and/or if having a size limitation was appropriate.

Commissioner Liese asked the applicant what size space they were looking at.

Ms. Rose said 2,000 square feet.

Commissioner Struckhoff said he hoped the City Commission looked at the 3,000 square feet and addressed it in some way.

Commissioner Rasmussen said he was reluctant to support the motion. He asked staff about the 3,000 square feet.

Ms. Stogsdill said staff picked a number based on what was already in the Development Code. She said it would be consistent with the standard the code requires of a fast order food restaurant in a CN2 district.

Mr. McCullough said 3,000 square feet would capture the majority of establishments in CN2.

Commissioner Liese said most of the establishments on Massachusetts Street were under 3,000 square feet.

Ms. Stogsdill said a lot of the store fronts on Massachusetts Street were 25' wide.

Commissioner Denney said they were looking at a small neighborhood function, not a major nightclub.

Commissioner von Achen said she would prefer Option 1 and would like a Special Use Permit triggered with an outdoor use. She said even if there was no support for that she would still go with Option 1. She said she would not support the motion.

Commissioner Rasmussen said he would support the motion and let the City Commission decide whether they exercised good judgment.

Motion carried 8-1, with Commissioner von Achen voting in opposition.

PC Minutes 10/21/13

## **MISCELLANEOUS NEW OR OLD BUSINESS**

Consideration of any other business to come before the Commission.

### **MISC NO. 1      RECEIVE UPDATE ON HORIZON 2020**

Joint City Resolution No. 7045/County Resolution No. \_\_\_\_, establishing a steering committee to oversee and guide the review and updating of *Horizon 2020*, the Comprehensive Plan for the City of Lawrence and Unincorporated Douglas County; and authorizing the Mayor to appoint steering committee members as noted in the resolution.

#### **STAFF PRESENTATION**

Mr. Scott McCullough provided an update on Horizon 2020. He stated there was no budget to hire a consultant.

Commissioner Liese said this topic would be discussed during the Planning Commission retreat in January.

Commissioner von Achen asked if staff would conduct public meetings.

Mr. McCullough said yes, that was correct.

#### **PUBLIC HEARING**

Mr. Alan Black, League of Women Voters, hoped a consultant would be hired to overlook the process. He hoped the process would be the same as Horizon 2020 with a great deal of public participation.

Commissioner Rasmussen asked when it would be started.

Mr. McCullough said soon. He said Vice-Major Amyx had a goal of completing the work by the end of 2014.

#### **NO ACTION TAKEN**

PC Minutes 10/21/13

**MISC NO. 2 MPO APPOINTMENT**

Appointment for MPO.

**ACTION TAKEN**

Motioned by Commissioner Liese, seconded by Commissioner Britton, to nominate Commissioner Denney to the MPO.

Motion carried 8-0-1, with Commissioner Denney abstaining.

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**ADJOURN 10:08pm**