

THOMPSON & ASSOCIATES, P.A.

Law Offices

TODD N. THOMPSON
CHRISTOPHER J. MASONER*
ROBERT W. RAMSDELL
SHON D. QUALSETH
HETAL M. PATEL#
TRACY L. BRODERICK

**333 West 9th Street
P.O. Box 1264
Lawrence, KS 66044-2803**

VOICE: (785) 841-4554
FAX: (785) 841-4499
E-MAIL: tlegal@aol.com
* Also admitted in Missouri
Also admitted in Ohio

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VIA ELECTRONIC MAIL

DCorliss@ci.lawrence.ks.us
PPatterson@ci.lawrence.ks.us

Mr. David Corliss
Assistant City Manager
City of Lawrence, Kansas
P.O. Box 708
Lawrence, KS 66044-0708

Mr. Paul Patterson
City/County Planner
Lawrence-Douglas County Metropolitan Planning Office
P.O. Box 708
Lawrence, KS 66044-0708

Re: *AutoExchange – 33rd and Iowa*
PDP-04-02-04

Dear David and Paul:

Thank you for meeting with Paul Werner and me on December 20th, and with Chris Masoner and Mr. Werner on January 18th, to discuss the access issues involved with the referenced project. The purpose of this letter is to reiterate some of the items we discussed at those meetings. We also wish to present the applicant's concerns to you and the City Commissioners in advance of the Commission's consideration of the Preliminary Development Plan at the meeting on January 25th. We ask that this letter be included in the materials made available to the Commissioners in advance of the meeting.

Based on our discussions and the concerns expressed by the Planning Commission regarding traffic exiting onto 33rd Street, AutoExchange has revised the Plan to provide for a right-in, instead of a right-out. It seems we are all in agreement that a right-in is a better plan that will relieve concerns about traffic exiting onto 33rd Street, while maintaining the internal flow of traffic through the AutoExchange property. As we discussed today, AutoExchange will

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take every reasonable step to discourage drivers from attempting to enter the Property by turning left from westbound 33rd Street.

AutoExchange continues to be concerned about Condition 6 as proposed by the Planning Commission. Condition 6 was added at the tail end of the Planning Commission's discussion about the PDP for this Project, just before the Planning Commission voted to recommend approval of the Project. Unfortunately, Condition 6 was suggested after the public hearing had closed, and there was no opportunity for any analysis of the specific language of Condition 6 prior to the vote. As a result, the precise intent of the Commissioners voting to recommend approval is unclear.

When we sought clarification of the intent of Condition 6, Commissioner Burris (who proposed the Condition but then voted against the PDP) declined to speak to us directly due to the *ex parte* contact rules. Paul Patterson indicates that he has spoken to Commissioner Burris, and that Commissioner Burris is of the opinion that the intent of Condition 6 was to require that the 33rd Street drive be closed immediately. We agree that such immediate removal could be the effect of Condition 6, but we do not believe that was the intent of a majority of the Planning Commission.

We have a problem with the interpretation urged by Commissioner Burris for several reasons. First, if it had truly been the intent of the Condition that the 33rd Street drive should be eliminated when Condition 1 is satisfied, Condition 6 would have been worded simply to require "removal of all driveways directly onto 33rd Street." More significant, however, is the fact that the Minutes from the Planning Commission meeting indicate that the Commissioners understood that closing the 33rd Street drive "**would make the lot unsuitable for the proposed business**". Indeed, during the discussion of Condition 6 "**it was pointed out that closing the 33rd Street access point would make the development plan dysfunctional.**" We do not believe that a majority of the Planning Commission would knowingly vote to recommend approval of a PDP that was being rendered both "unsuitable" and "dysfunctional".

There is also a much more logical interpretation. There has been extensive discussion about having both north and south access points—one being designated across the Uno's site, and one across the Culver's site. The Final Development Plan for Uno's shows an access point at the south end of the subject property, and the Final Development Plan for Culver's shows an "additional" access point toward the north end of the subject property. The language of Condition 6 is very consistent with the notion that IF the City can provide an alternative 33rd Street access through Culver's, THEN the 33rd Street access can be closed. The language of Condition 6 is as follows:

6. Existing 33rd Street access shall be eliminated if the City can provide alternate access to a public right-of-way.

Had the intent been to impose an automatic and immediate removal of the 33rd Street driveway when AutoExchange satisfies Condition 1, there would have been no reason for the contingency for the City to provide alternate access. Because Condition 1 already requires AutoExchange to obtain a cross-access easement on the south end of the AutoExchange property, the Planning Commission could have written Condition 6 to simply eliminate the 33rd Street access.

The Applicant does not object to the concept of closing the 33rd Street driveway **IF** the City can provide an alternate entrance across the Culvers lot. The Applicant does object, however, to having only one driveway, on the south end of the Lot, providing both ingress and egress. There needs to be traffic flow through the site.

If the PDP had been submitted showing only one driveway, we have no doubt that such a proposal would have been subject to numerous negative departmental review comments. For example, the Fire Department would undoubtedly have pointed out that longer vehicles, such as fire trucks, would have no way to turn around once inside the site. The only possible means of egress would be for the fire truck to back out. This is the type of “dysfunction” referred to by the Planning Commissioners.

Due to the “flip” of the project to provide traffic flow from north to south instead of south to north, we believe Conditions 1 and 6 as recommended by the Planning Commission should be revised when considered by the City Commission. The changes we suggest are as follows:

1. Filing of a cross access easement across Lot 3A, Dunigan Subdivision.
Coinciding with the filing of such easement, the City of Lawrence will designate that the cross-access easement referenced on the Final Plat of the Dunigan Subdivision shall be located along the existing internal driveway/access easement (known as Neider Road) from the intersection of 34th Street and Iowa Street, west to Neider Road, and extending north along Neider Road to 33rd Street.
6. *The existing 33rd Street ~~access~~ entrance shall be eliminated if the City ~~can~~ provides a reasonable alternate ~~access to~~ entrance from a public right-of-way to the north one-third of the subject property.*

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We believe these revised Conditions would accomplish the Planning Commission's goal of eliminating direct 33rd Street access if an alternate entrance through Culver's can be provided, while also maintaining reasonable traffic flow through the property in the interim.

David, you indicated a concern with having the City undertake the "obligation" of providing an alternative means of egress. However, we believe we all agree that if the City were to close the existing drive onto 33rd Street (which provides both ingress and egress), the City would be obligated to provide alternative access to a public street (or condemn the entire lot). Thus, the City already has the obligation to provide an alternative if the 33rd Street curb cut is to be closed. We believe the proposal we have made for revising the Conditions does not materially alter the City's obligations; it merely provides a vehicle to accomplish a solution that meets the needs of all parties.

We also want to reiterate that there are other benefits to the City in having this project move forward. As stated by staff, those benefits "include the private funding of improvements to this gateway intersection, including landscaping, sidewalks and the replacement of a building that has outlived its economic usefulness." The reality is that the shape of this property makes redevelopment difficult. Given the property's location at a gateway to the City, the existing cinderblock building and gravel parking lot is not desirable. AutoExchange proposes to redevelop the property with a new building, sidewalks, curbs and gutters, paved parking and significant landscaping. The proposed sales lot would generate less traffic than the uses for which the property is currently zoned. The driveway on 33rd Street would become one-way, as opposed to the full access point that exists today, and the City would have the landowner's consent to removal of the curb cut altogether if an alternative egress can be arranged.

When considering the revised Plan and suggested Conditions, it is important for the City Commission to consider the necessity of maintaining separate ingress and egress drives in the Project. If only one drive is allowed, the Project will not work and the opportunity to redevelop this prominent corner will be lost.

Sincerely,

Christopher J. Masoner

Christopher J. Masoner

CJM:ap
cc: Paul Werner