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January 27, 2005

Mr. Mike Wildgen
Manager
City of Lawrence
City Hall
Six East Sixth Street
Lawrence, Kansas 66044

Ms. Linda Finger
Planning Director
City of Lawrence
City Hall
Six East Sixth Street
Lawrence, Kansas 66044

Re: Proposed Revisions to Development Code

Dear Mike and Linda:

I want to thank the both of you, along with Debbie Van Saun, David Corliss and Sheila Stogsdill for meeting with our ad hoc group on Monday, January 24th, to discuss implementation issues related to the proposed Development Code. Members of our group who attended this meeting include Price Banks (Attorney); Mark Buhler (Stephens Real Estate); Ron Aul (Aul & Hatfield Appraisals); Paul Pendry (Commerce Title Insurance Company); Joe Baker (Insurance Broker); Jack Gilispie (Countrywide Home Loans); Rob Hulse (representing Lawrence Board of Realtors); Mark Andersen (Barber Emerson); David Bunker (Commercial Federal Bank); Ed Collister (Collister & Kampschroeder); and Chris Forbes (RBC Mortgage). It is on behalf of this ad hoc group that I write this letter.

With less than a week's notice, our group consisting entirely of local professionals volunteered their time to review the proposed Development Code, and offered to meet with each of you in an effort to refine and effect recommended changes to the proposed Development Code prior to its anticipated adoption. Other local professionals would like to have participated in this meeting, but were not available to attend on such short notice.

Although the process for taking the concept of a new Development Code from theory to the working draft stage spanned a few years, it seems that this final phase of taking a working draft to implementation has spanned only a few weeks. Furthermore, this time period came during the recent holiday season, which tends to be the busiest time of year for most individuals. Unfortunately, few of us

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had either the opportunity or the ability at the end of this past year to devote a sufficient amount of time or attention to adequately study, comprehend and/or comment in a meaningful manner to the City Commission on more than 300 pages of proposed government regulations. Simply put, the community has not had a sufficient amount of time for input on this final version of the proposed Development Code.

By way of example, our group of concerned professionals began to informally band together less than two weeks ago. Last Tuesday evening, at the request of Price Banks and other concerned citizens, the City Commission agreed to defer a vote on the proposed Development for two weeks. The very next day, our group scheduled a meeting for Monday, January 24th, at City Hall to meet with you and to discuss implementation issues. In less than one week, our group identified significant problems with the intended implementation and, furthermore, you have agreed to propose substantial revisions to the proposed Development Code to address a variety of these practical issues that we identified. Among the proposed changes which you have agreed to support are as follows:

1. Amend text in 20-1502 **NONCONFORMING USES** to add under (c) **Loss OF NONCONFORMITY STATUS (2)**, the following text to permit detached dwelling structures in RM districts to be rebuilt if they are destroyed by more than 50% when they can meet the off-street parking requirements and setback requirements.
 - *"The exception to the above paragraph is that a detached dwelling structure in an RM district is permitted to be rebuilt unless it is located within the floodway overlay district. Nonconforming detached dwelling structures cannot be rebuilt to a greater density than existed before the damage. Rebuilding shall only be allowed if off-street parking and setback requirements of the RM district are met. Reconstruction must be commenced within 12 months of the time the damage occurred. "*
2. Revise Text for 20-1503 **NONCONFORMING STRUCTURES** and 20-1504 **NONCONFORMING LOTS** to address these nonconformities and non-complying structures and non-complying lots. The rules set forth in section 20-1503 are consistent with KSA 12-758 and would remain intact. The rules in section 20-1504 would be revised to remove the potential for inconsistency with KSA 12-758. The revisions recommended for section 20-1504 are:
 - Remove the MERGER OF LOTS provision in: subsection 20-1504 (c) DIMENSIONAL STANDARDS, (1) STANDARDS APPLICABLE IN ALL ZONING DISTRICTS, (i) MINIMUM LOT AREA, b. AND subsection 20-1504(c) (1) (ii) LOT WIDTH, c.

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3. Delete in its entirety section 20-1505 OTHER NONCONFORMITIES, which identifies other issues of nonconformance related to a development site and did not involve the structural aspects of a building, it's location on a lot or the lot's dimensions.
4. Revising section 20-1506 REGISTRATION OF NONCONFORMING USES to remove all references to existing conforming uses [re: single-family detached dwellings in RM district] and restore this section to its original drafted intent which was to create a register of existing nonconforming uses. Revisions to this section would include:
 - (a) Removing the onus of registration from the property owner. Outline a process for making the owner of known nonconforming uses aware of a one-time process through which they could voluntarily document the legal status of their nonconforming use.
 - (b) Establishing a documentary process through which staff would create a data base of known nonconforming uses using appraisal records, field surveys, and owner notification.
 - (c) Revising the Registration Process to make it applicable only at such time as an owner of a nonconforming use applies for the expansion of a building for the nonconforming use or the alteration of a nonconforming use from the nonconforming use in existence at the time of adoption of the Development Code.
 - (d) Revising this section to clarify that Registration of a nonconforming use is necessary prior to application for the expansion or alteration of that use after adoption of the Development Code. Removing the late registration appeals process as registration is a voluntary action for all pre-existing nonconforming uses.

In response to these proposed revisions, we agree with you that it is essential that these revisions be incorporated into the Development Code prior to its being adopted. Furthermore, if this significant number of practical implementation issues can be identified, and this amount of recommended change can be effected in less than one week of concerted effort by our group, just think of how much additional refinement to the Development Code all of us may be able to achieve over the course of 3 or 4 additional months.

The City Commission is not operating under any mandate or deadline to implement this proposed Development Code. The potential benefits to our entire community from a reasonable deferral of 3-4 additional months, to allow local citizens, property owners and professionals the opportunity to review

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and contemplate the practical issues of implementing the proposed Development Code, and to come forward with additional comments and recommendations for refinement is quite significant, while at the same time we are aware of absolutely no downside to doing so.

It is the collective intention of our group to continue to both (i) identify additional practical issues which will result from the implementation of the proposed Development Code, and (ii) to propose practical changes prior to its adoption in an effort to mitigate the negative impact upon affected property owners, lenders, appraisers, brokers, insurers, title companies, etc. Unfortunately, time is not on our side. While the revisions described above are a significant improvement over the existing draft, we are confident that with additional time, we are likely to identify additional implementation issues and concerns, which should be worthy of your attention. We are willing to try, if you will allow us the necessary time.

There has not been a sufficient period of time to allow feedback from all of the multiple interested parties. We urge the City Commission to delay the adoption of the Development Code for a reasonable period of time of at least 3-4 months, during which time our group will work diligently to try and identify additional implementation issues and concerns, as well as review specific provisions of the Development Code, including the sections on use tables, development standards & review procedures, and the nonconforming provisions. If, for any reason, a majority of the City Commission does not agree to extend the time for adoption of the Development Code, then at a very minimum we urge the City Commission to amend the proposed Development Code to incorporate each of the revisions described above.

Very truly yours,

BARBER EMERSON, L.C.

A handwritten signature in black ink, appearing to read "Mark A. Andersen". The signature is fluid and cursive, with the first name "Mark" being more prominent.

Mark A. Andersen

MAA: smb