

**BEFORE THE CITY COMMISSION OF THE CITY OF
LAWRENCE, KANSAS**

In Re: APPLICATIONS FOR ZONING)
MAP AMENDMENTS OF LANDPLAND)
ENGINEERING, PA, IN BEHALF OF) No. Z-15-00327
ARMSTRONG MANAGEMENT, LC,) No. Z-15-00328
AND GRISHAM MANAGEMENT, LC.)

INTRODUCTION

On August 24, 2015, the Lawrence-Douglas County Metropolitan Planning Commission recommended approval of two applications for zoning map amendments, which would rezone that real property located at the southeast corner of the interchange between Kansas Highway 10 and U.S. Highway 59, as follows: (1) approximately 59.80 acres from RS-10 (Residential) district to CR (Regional Commercial) district; and (2) approximately 6.07 acres from RS-10 (Residential) district to OS (Open Space) district.¹ On January 5, 2016, the City Commission convened a public hearing on the proposed rezonings. The City Commission received testimony from City Staff, the applicants, and the general public. Based on the credible evidence adduced at that hearing, the City Commission voted by a 4-1 supermajority to override the recommendation of the Planning Commission and to deny the proposed rezonings. This document memorializes the City Commission's findings of fact and conclusions of law.

¹ Contemporaneously, the Planning Commission recommended approval of an application to amend *Horizon 2020: The Comprehensive Plan for the City of Lawrence and Unincorporated Douglas County*, which would permit general commercial retail use of the subject property. Because amendment of *Horizon 2020* is a legislative act, these Findings of Fact address that application for amendment only as it is relevant to the proposed rezonings.

FINDINGS OF FACT

1. Armstrong Management, LC, and Grisham Management, LC, own approximately sixty-five acres ("subject property") located on the southeast corner of the interchange between Kansas Highway 10, also known as the South Lawrence Trafficway ("SLT"), and U.S. Highway 59, also known as South Iowa Street.

2. The City annexed the subject property in 1979. At the time that it annexed the subject property, consistent with its practices of the time, the City zoned the subject property for residential use as a holding designation. Currently, the subject property retains residential zoning: RS-10 (Residential) District. Historically, the subject property has been, and currently is, used for agricultural purposes.

3. In 1987, the owners of the subject property sought to rezone the subject property, under the City Code in effect at that time, to C-4 (Commercial) District in order to accommodate an enclosed shopping mall. On April 12, 1988, for a number of reasons, including protection of the City's downtown commercial district, the City Commission voted to deny the application for rezoning. Thereafter, the City Commission issued findings of fact consistent with its decision. (Those findings of fact are affixed hereto as Exhibit A and, to the extent that they remain relevant, are adopted herein by reference). Ultimately, the United States Court of Appeals for the Tenth Circuit affirmed the decision of the City Commission. *Jacobs, Visconsi & Jacobs Co. v. City of Lawrence, Kan.*, 927 F.2d 1111 (10th Cir. 1991).

4. The subject property overlaps the Wakarusa River floodplain. It is bounded to the north by the SLT. Farther north is the southern terminus of the South Iowa commercial corridor. The properties immediately east and south are used for agricultural purposes. Farther east is the Baker Wetlands and the floodplain extends to the south. The subject property adjoins U.S. Highway 59 to the west. Across the highway, to the west and southwest, are agricultural land and the Wakarusa River floodplain.

5. Although the subject property has been zoned residential since 1979, the *Revised Southern Development Plan*, which is incorporated into *Horizon 2020, the Comprehensive Plan for the City of Lawrence and Unincorporated Douglas County* ("*Horizon 2020*"), as the area or sector plan, provides that a portion of the subject property shall be used for auto-related commercial activities that will be surrounded by medium-density residential and open space.

6. It should be noted that the current owners of the subject property actively participated in the planning process that created *Horizon 2020*, which was officially adopted in 1998, and the *Revised Southern Development Plan*. They were well aware that a portion of the subject property was designated auto-related commercial use and that the remainder was planned for less intensive uses.

7. On June 18, 2015, as owners of the subject property, Armstrong Management, LC, and Grisham Management, LC, granted to LandPlan Engineering (collectively, "applicants") the authority to act in their behalf for the "purpose of making application with the Planning Office" regarding the subject property.

8. On June 22, 2015, applicants filed with the Planning Office the following: (1) Zoning Map Application, No. Z-15-00327, seeking to rezone 63.89 acres, later amended to 59.8 acres, from RS10 (Residential) District to CR (Regional Commercial) District; and (2) Zoning Map Application, No. Z-15-00328, seeking to rezone 2.61 acres, later amended to 6.7 acres, from RS10 (Residential) District to OS (Open Space) District. (It should be noted, although it is necessary for these findings, that the applicants also filed an application to amend *Horizon 2020*, No. CPA-15-00335, which would permit commercial retail uses on the subject property).

9. The applications also included a concept plan showing a proposed development "of a retail/commercial center" on the proposed commercial portion of the subject property, encompassing "247,000 gross square feet ... of which 30,000 [would be] restaurant and 217,000 [would be] general retail." The concept plan envisioned two large anchor stores, three junior anchor stores, eight smaller shops, and six out parcels.

10. On August 24, 2015, the Planning Commission conducted a public hearing on the applications. At that public hearing, Planning Staff presented its Planning Commission Report, wherein, having examined the applications in light of *Golden v. City of Overland Park*, 224 Kan. 591, 584 P.2d 130 (1978), and City of Lawrence, Kan., Code §§ 20-1303(e) and 20-1303(g) (Jan. 1, 2015), Planning Staff recommended that the Planning Commission recommend to the City Commission that it approve both applications.

11. At the conclusion of the August 24, 2015, public hearing, after hearing evidence from City Staff, the applicants, and the general public, the Planning Commission voted 6-2 to recommend approval of Zoning Map Application, No. Z-15-00327, and 7-1 to recommend approval of Zoning Map Application, No. Z-15-00328.

12. At its January 5, 2016, regular meeting, in accordance with K.S.A. 2014 Supp. 12-757 and City of Lawrence, Kan., Code § 20-1303 (Jan. 1, 2015), the City Commission convened a public hearing on the applications for rezonings. During the course of that hearing, the City Commission received testimony from City Staff, the applicants, and the general public.

13. Highly summarized, the following relevant testimony -- both for and against the proposal -- was presented to the City Commission:

(a) Planning Staff and the Planning Commission both recommended approval of the proposed rezonings.

(b) Approval of the proposed rezonings would be a mere extension of existing commercial zoning to the north across the SLT, the proposed rezonings would not adversely affect the Baker Wetlands, the proposed rezonings would not be more intensive than that designated in *Horizon 2020*, and the proposed rezonings would provide a much needed southern gateway to the City.

(c) The proposed rezonings meet all of the *Golden* factors, except that it is not in compliance with the comprehensive plan, which deficiency would be rectified by approval of the contemporaneous application to amend the comprehensive plan.

(d) The proposed rezoning would increase the City's economic pull factor, would have a positive economic impact on the City by stopping leakage of sales tax dollars to other markets, and, because the proposed development would be 100% occupied, it would decrease the City's commercial vacancy rate.

(e) The proposed rezonings dramatically diverge from the comprehensive plan, dismantle key policies thereof, do not, in violation of the City Code, include a nodal plan, provide for a much more intensive use (regional commercial) than designated by *Horizon 2020* (auto-related commercial), and, because only a concept plan has been submitted, could lead to anything contemplated by the expansive CR (regional commercial) zoning designation.

(f) The proposed rezonings do not meet any of the *Golden* factors -- other than the fact that Planning Staff and the Planning Commission recommended approval -- and fly in the face of the City's 1988 findings regarding the subject property, which findings are still valid today.

(g) The proposed rezonings would exacerbate strip commercial along the South Iowa/U.S. Highway 59 corridor and promote urban sprawl, both of which are contrary to the spirit of the City Code and *Horizon 2020*.

(h) The proposed rezonings are contrary to the comprehensive plan and the comprehensive plan should stand as the vision and plan of the community and should not be altered willy-nilly to accommodate the unilateral wants of a single property.

(i) The proposed rezonings would adversely affect other commercial areas within the City, especially the downtown commercial district, which the City, as established in its 1988 findings of fact, has a vested interest in protecting.

14. At the conclusion of the public hearing, the City Commission discussed the rezonings, deliberated on the evidence that had been adduced, and, taking all evidence into consideration, found the following substantial evidence to be credible:

(a) The proposed rezonings do not conform to *Horizon 2020*, specifically (i) regional commercial is a much more intensive use than the planned auto-related commercial and residential uses and (ii) regional commercial and the proposed commercial development fail to provide an appropriate transition to less intensive uses *Horizon 2020* plans for surrounding areas.

(b) The properties immediately to the east, south, and west are zoned County A (Agricultural) and VC (Valley Channel) Districts. The properties immediately to the north, across the SLT, are largely zoned commercial, although none of those properties are zoned CR (Regional Commercial) District.

(c) The character of the neighborhood, despite the fact that commercial properties are located north across the SLT, is largely agricultural. The area and the subject property is encumbered by the Wakarusa River floodplain. *Horizon 2020* contemplates that the area will also include medium-density residential and open space uses. The proposed rezonings therefore deviate both from the existing and the planned character of the neighborhood.

(d) The *Revised Southern Development Plan*, which is the relevant area or sector plan, and which has been incorporated into *Horizon 2020* by reference, provides that a portion of the subject property will be used for auto-related commercial, surrounded by medium-density residential and open space uses. The proposed rezonings are therefore contrary to the *Revised Southern Development Plan*.

(e) While there is conflicting testimony as to the suitability of the subject property to the restrictions of the current residential zoning designation, the credible evidence is that the subject property, located at the interchange of two major highways, is not suitable for residential use.

(f) The subject property has been zoned residential since 1979, a period of 36 years. Although it has continuously been used for agricultural purposes during that time-frame, the subject property has never been used for residential purposes.

(g) While approval of the proposed rezonings may increase property values in the immediate area, the credible evidence is that the proposed rezonings would harm the planned medium-density residential uses of surrounding properties, as the proposed rezonings and development would be incompatible with such uses. It may also cause neighboring property owners to seek similar changes to the comprehensive plan and to seek rezonings to compatible uses, which would engender a more intensive use of the area and which increased development ultimately would have a deleterious effect on the Baker Wetlands and the Wakarusa River floodplain.

(h) While the community would not gain much by the subject property retaining residential zoning, a rezoning to regional commercial (CR District) would contravene *Horizon 2020* and the credible evidence presented at the hearing, including that set forth in the City's 1988 findings of fact, establishes that it would adversely affect the environment and the downtown commercial district, both of which the City has a vested interest in protecting. It might also, as touched on above, precipitate a domino effect of amendments to the *Revised Souther Development Plan* and *Horizon 2020*, basically rewriting those plans without prior proper planning, again to the detriment of the community.

(i) Planning Staff and the Planning Commission both recommended approval of the amendment to the comprehensive plan and the proposed rezonings.

(j) While the Retail Market Report indicates that the overall economic impact of the proposed rezonings would be negligible, the credible evidence is that approval of the rezonings would be deleterious to other commercial districts in the City, particularly the downtown commercial district. Additionally, it is unclear whether estimates based on 100% occupancy of the proposed concept plan are entirely accurate as the applicants admit that they do not have agreements in place to fill 100% of the proposed development.

16. Based on the totality of the substantial and credible evidence presented at the public hearing -- as outlined in the preceding paragraph -- the City Commission voted by a 4-1 supermajority to override the recommendation of the Planning

Commission and to deny Zoning Map Application, No. Z-15-00327, seeking to rezone 59.8 acres from RS10 (Residential) District to CR (Regional Commercial) District and to deny Zoning Map Application, No. Z-15-00328, seeking to rezone 6.7 acres from RS10 (Residential) District to OS (Open Space) District.

CONCLUSIONS OF LAW

1. The Kansas legislature has enabled the City to adopt zoning regulations, see K.S.A. 12-741, and to amend its zoning map through rezonings. See K.S.A. 2014 Supp. 12-757; see also City of Lawrence, Kan., Code § 20-1303 (Jan. 1, 2015).

2. City of Lawrence, Kan., Code § 20-1303 (Jan. 1, 2015), consistent with K.S.A. 2014 Supp. 12-757, establishes the procedures by which the City may rezone districts. The City Commission concludes that, in this case, those procedures have been followed.

3. Additionally, borrowing factors first enunciated in *Golden v. City of Overland Park*, 224 Kan. 591, City of Lawrence, Kan., Code § 20-1303(g) (Jan. 1, 2015), sets forth ten factors that the Governing Body should consider as criteria in making any rezoning decision:

- (1) conformance with the Comprehensive Plan;
- (2) zoning and use of nearby property, including any overlay zoning;
- (3) character of the neighborhood;
- (4) plans for the area or neighborhood, as reflected in adopted area and/or sector plans including the property or adjoining property;

- (5) suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations;
- (6) length of time the subject property has remained vacant as zoned;
- (7) the extent to which approving the rezoning will detrimentally affect nearby properties;
- (8) the gain, if any, to the public health, safety, and welfare due to denial of the application, as compared to the hardship imposed upon the Landowner, if any, as a result of the denial of the application; and
- (9) the recommendation of the City's professional staff.
- (10) For proposals that will create more than 100,000 square feet of retail space within the city: the impact of the proposed project on the retail market ...

Id.; see also *Golden v. City of Overland Park*, 224 Kan. at 598. It must be remembered that the *Golden* factors, as well as those set forth above, are not exclusive factors to be considered in every rezoning case, but are merely suggested factors that may be important in a particular rezoning case. The courts recognize that other factors may, and no doubt will, be of importance to an individual case. *Id.* at 599; see also *Landau v. City Council of Overland Park*, 244 Kan. 257, 262, 767 P.2d 1290 (1989).

4. Consistent with the foregoing, the City Commission, as outlined in paragraph 14 of its Findings of Fact, considered each of the relevant criteria -- the *Golden* factors. Based on that consideration, the City Commission concludes that these factors are of most significance in this case: whether the proposed rezoning

conforms to the comprehensive plan, whether the proposed rezoning is compatible with existing and planned uses of the neighborhood, and whether the proposed rezoning would have a deleterious impact on the health, safety, and welfare of the community. The substantial evidence and credible evidence adduced at the public hearing establish that the proposed rezonings do not conform to *Horizon 2020*, are incompatible with existing and planned uses of surrounding properties, and would have a deleterious impact on the Wakarusa River floodplain and other commercial developments in the City. The protection of the downtown commercial district is a necessary and appropriate consideration of the City. See *Jacobs, Visconsi & Jacobs Co. v. City of Lawrence, Kan.*, 927 F.2d 1111 (10th Cir, 1991). Likewise, protection of the environment is a necessary and appropriate consideration of the City. In this case, the City Commission concludes that the above-noted factors are of such supreme importance that they override other factors -- such as the suitability of the subject property for residential use and the length of time that it has remained vacant -- that may suggest that the subject property is appropriate for rezoning. In fact, while the City Commission is of the opinion that rezoning of the subject property may be appropriate, the relevant criteria (factors) lead it ineluctably to conclude that regional commercial is not a suitable or proper zoning designation for the subject property. The City Commission would finally state that, while ultimately it grounds its decision on the above-stated factors, *Horizon 2020* is of paramount importance in this case, as the proposed rezonings

would deviate from *Horizon 2020* -- the City's planned vision for its future -- would endanger the plan for the entire area, would negatively affect the downtown commercial district, and would ultimately threaten the Baker Wetlands and the Wakarusa River floodplain.

5. In sum, based on the substantial and credible evidence in the record, the City Commission concludes that the proposed rezonings do not conform to the comprehensive plan, are incompatible with existing and planned uses of the surrounding area, and would be harmful to the public health, safety, and welfare of the community, particularly the Wakarusa River floodplain and the downtown commercial district. For each of those reasons, the City Commission hereby overrides the recommendation of the Planning Commission and denies Application for Zoning Map Amendment, No. Z-15-00327, and Application for Zoning Map Amendment, No. Z-15-00328.

ADOPTED by the Governing Body of the City of Lawrence, Kansas, this 26th day of January, 2016.

MIKE AMYX
Mayor