

#### **Updated:**

5/20/13 @ 11:45am

Added Communications for the following items:

Item 4 - H2020 Chp 6 & Revised Southern Development Plan

Item 5 - Rezoning 1900 W 31st St

Item 6 - CUP Big Springs Quarry 2 N 1700 Rd

Item 7 - TA Development Code Retail Market Study Added Misc 1 - Notification of Landmark Nominations

**Added the Draft April Planning Commission Minutes** 

5/15/13 @ 4:30pm

The Draft April Planning Commission Minutes will be added when available

\*\*The Wednesday, May 22<sup>nd</sup> Planning Commission meeting has been cancelled\*\*

LAWRENCE-DOUGLAS COUNTY METROPOLITAN PLANNING COMMISSION CITY HALL, 6 EAST 6<sup>TH</sup> STREET, CITY COMMISSION MEETING ROOM AGENDA FOR PUBLIC & NON-PUBLIC HEARING ITEMS MAY 20 & 22, 2013 6:30 - 10:30 PM

#### **GENERAL BUSINESS:**

#### PLANNING COMMISSION MINUTES

Receive and amend or approve the minutes from the Planning Commission meeting of April 22, 2013.

#### **COMMITTEE REPORTS**

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

#### COMMUNICATIONS

- a) Receive written communications from the public.
- b) Receive written communications from staff, Planning Commissioners, or other commissioners.
- c) Receive written action of any waiver requests/determinations made by the City Engineer.
- d) Disclosure of ex parte communications.
- e) Declaration of abstentions from specific agenda items by commissioners.

AGENDA ITEMS MAY BE TAKEN OUT OF ORDER AT THE COMMISSION'S DISCRETION

REGULAR AGENDA (MAY 20, 2013) MEETING NON-PUBLIC HEARING ITEMS:

ITEM NO. 1 VARIANCE REQUEST; 1321 WAKARUSA DR (SLD)

MS-13-00114: Minor Subdivision for University Corporate and Research Park Subdivision No. 3 request for variance from 20-808 (c)(2) (i) and section 20-601(b) requiring a 200' minimum width and section 20-810 (e)(5) requiring a minimum 150' of right-of-way along Wakarusa Drive.

#### ITEM NO. 2 REMINDER - JOINT HRC/PC MEETING 6/20/13 @ 6:30pm

Continue discussion and develop recommendations regarding Downtown Redevelopment Memo (January 2013 PC agenda - Item No. 6)

#### ITEM NO. 3 2012 RETAIL MARKET STUDY (AAM)

Receive Presentation on 2012 Retail Market Study.

#### **PUBLIC HEARING ITEMS:**

# ITEM NO. 4 HORIZON 2020 CHAPTER 6 AND REVISED SOUTHERN DEVELOPMENT PLAN (MJL)

**CPA-13-00067**: Consider Comprehensive Plan Amendment, CPA-13-00067, to Horizon 2020 Chapter 6 Commercial Land Use and Chapter 14 Specific Plans, Revised Southern Development Plan, to expand the S. Iowa Street commercial corridor east along W. 31<sup>st</sup> Street to include 1900 W 31<sup>st</sup> Street and identify the area as a Regional Commercial Center. Submitted by Menard, Inc. *Deferred by Planning Commission on 4/22/13.* 

Authorize the chair of the Planning Commission to sign PCR-13-00192 regarding CPA-13-00067, if appropriate.

## ITEM NO. 5 RM12 TO CR; 41.5 ACRES; 1900 W 31<sup>ST</sup> ST (SLD)

**Z-13-00071**: Consider a request to rezone approximately 41.5 acres from RM12 (Multi-Dwelling Residential) to CR (Regional Commercial), located at 1900 W 31<sup>st</sup> Street. Submitted by Menard, Inc., for Mid-American Manufactured Housing, Inc., property owner of record. *Deferred by Planning Commission on 4/22/13.* 

# ITEM NO. 6 AMENDED CONDITIONAL USE PERMIT FOR BIG SPRINGS QUARRY; 2 N 1700 RD (MKM)

**CUP-13-00126**: Consider an amended Conditional Use Permit for a revised phasing schedule for Big Springs Quarry, located at 2 N 1700 Rd. Submitted by Mid-States Ventures, LLC, for Bonnie M. Nichols, Trustee, and Mid-States Materials, LLC, property owners of record. *Big Springs Quarry was approved with Conditional Use Permit CUP-7-2-90.* 

# ITEM NO. 7 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; RETAIL MARKET STUDY (AAM)

**TA-12-00205**: Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, Article 11, to modify the requirements for a Retail Market Study. *Initiated by City Commission on 8/21/12.* 

#### \*\*DEFERRED\*\*

ITEM NO. 8 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; LIGHTING STANDARDS (MKM)

**TA-12-00204**: Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, to establish lighting standards and requirements as an alternative to the photometric plan. *Initiated by City Commission on 8/21/12*.

#### MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

#### MISC NO. 1 RECEIVE NOTIFICATION OF LANDMARK NOMINATIONS

Receive staff memo regarding nominations for listing in the Lawrence Register of Historic Places.

#### **ADJOURN**

#### **CALENDAR**

April					20	013
Sun	Mon	Tue	Wed	Thu	Fri	Sat
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May					20	013
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June	<u>;</u>				20	13
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23	24	25	26	27	28	29
30						

#### **PCCM Meeting:**

(Generally 2<sup>nd</sup> Wednesday of each month, 7:30am-9:00am)

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## PLANNING COMMISSION MEETING April 22, 2013 Meeting Minutes DRAFT

April 22, 2013 – 6:30 p.m.

Commissioners present: Blaser, Britton, Burger, Culver, Graham, Hird, Josserand, Lamer, Liese, von

Achen

Staff present: McCullough, Stogsdill, Day, Larkin, Leininger, A. Miller, Warner, Ewert

#### **MINUTES**

Receive and amend or approve the minutes from the Planning Commission meeting of March 25, 2013.

Motioned by Commissioner Blaser, seconded by Commissioner von Achen, to approve the March 25, 2013 Planning Commission minutes.

Motion carried, 9-0-1, with Commissioner Burger abstaining.

#### **COMMITTEE REPORTS**

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

Commissioner Liese said MPO met and approved T2040.

#### **EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

Ex parte:

Commissioner von Achen said she spoke briefly with Ms. Barbara Shallen and Ms. Marci Francisco.

Commissioner Hird said he spoke with Mr. Mike Flory regarding Item 2.

Commissioner Culver said he spoke briefly with Mr. Steve Schwada regarding Items 3-4.

Commissioner Liese said Mr. Steve Schwada contacted him also to let him know Mercato was still available for development.

#### Abstentions:

Commissioner Graham said she would abstain from Items 3-4 because her current employer has a national account with Menards.

ITEM NO. 1 CS & RS7 TO CS; 2.7 ACRES; 750 N 3<sup>RD</sup> ST (DDW)

**Z-13-00057**: Consider a request to rezone approximately 2.7 acres from CS (Commercial Strip) District and RS7 (Single-Dwelling Residential) District to CS (Commercial Strip), located at 750 N. 3<sup>rd</sup> Street. Submitted by Paul Werner Architects, for James Slough, property owner of record.

#### STAFF PRESENTATION

Mr. Dan Warner presented the item.

#### APPLICANT PRESENTATION

Ms. Joy Rhea, Paul Werner Architects, was present for questioning.

#### **PUBLIC HEARING**

No public comment.

#### **ACTION TAKEN**

Motioned by Commissioner Hird, seconded by Commissioner Blaser, to approve the rezoning request for approximately 2.7 acres, from CS (Commercial Strip) District and RS7 (Single-Dwelling Residential) District to CS (Commercial Strip) 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 10-0.

ITEM NO. 2 A TO B2; 21 ACRES; SW CORNER OF N 1100 RD & HWY 59 (MKM)

**Z-13-00059**: Consider a request to rezone approximately <del>29</del> **21** acres from County A (Agricultural) to County B2 (General Business District), located in the southwest corner of the intersection of N 1100 Road and Hwy 59. Submitted by Grob Engineering, for Michael Flory, property owner of record. (Acreage revised by applicant following publication of legal notice.)

#### APPLICANT PRESENTATION

Mr. Dean Grob, Grob Engineering Services, said one of the statements in the Comprehensive Plan said no commercial development in the urban growth area but three area sector plans have commercial nodes in them, which was contradictory. He said staff recommendation was for denial and a protest petition was submitted today with a significant number of names. He said the applicant called him today and wanted to be good neighbor so he was withdrawing the application.

Commissioner Liese asked staff to respond to the discrepancy.

Mr. McCullough said the application had been withdrawn by the applicant so it would not be heard. He said there was a provision in both the City Development Code and County Code upon withdraw an application cannot be submitted within 12 months, unless there was a substantial change.

NO ACTION TAKEN - ITEM WAS WITHDRAWN BY APPLICANT

ITEM NO. 3 HORIZON 2020 CHAPTER 6 AND REVISED SOUTHERN DEVELOPMENT PLAN (MJL)

**CPA-13-00067**: Consider Comprehensive Plan Amendment, CPA-13-00067, to Horizon 2020 Chapter 6 Commercial Land Use and Chapter 14 Specific Plans, Revised Southern Development Plan, to expand the S. Iowa Street commercial corridor east along W. 31<sup>st</sup> Street to include 1900 W 31<sup>st</sup> Street and identify the area as a Regional Commercial Center. Submitted by Menard, Inc.

ITEM NO. 4 RM12 TO CR; 41.5 ACRES; 1900 W 31<sup>ST</sup> ST (SLD)

**Z-13-00071**: Consider a request to rezone approximately 41.5 acres from RM12 (Multi-Dwelling Residential) to CR (Regional Commercial), located at 1900 W 31<sup>st</sup> Street. Submitted by Menard, Inc., for Mid-American Manufactured Housing, Inc., property owner of record.

#### STAFF PRESENTATION

Ms. Michelle Leininger presented Item 3 for the Comprehensive Plan Amendment.

Ms. Amy Miller presented the retail market study section of the Comprehensive Plan report.

Ms. Sandra Day presented Item 4 for the rezoning.

#### APPLICANT PRESENTATION

Mr. Tyler Edwards, Real Estate Representative for Menard Inc., said he started working on a Menards in Lawrence about two years ago. He said Menards looked at Gaslight Village originally but the owners went with the student housing project. He showed a map on the overhead of locations they had looked at in Lawrence. He said Menards deemed other sites to be unfitting. He stated staff recommended the 6<sup>th</sup> & SLT area but Menards did not feel it was developed enough to make it worth their while. He said the site had a lot of challenges. He said Menards found the perfect site at the Gaslight Village location. He felt the focus should be less on expanding the existing South Iowa node and more on a new smaller node of Louisiana and 31st Street. He said Menards was willing to take care of any traffic issues. He showed the concept plan on overhead which showed the building set fairly far back from the street. He said Menards was here to stay and had no intention to increase the vacancy rate. He said the entire site would not be built out and that the out lots would not be built until someone wanted to buy them and go through the approval process. He said the response had been positive from residents in the area and that their initial concern was the existing stream channel being in poor condition which caused backup of water. He said Menards could make that issue better. He said Menards would have a full lumber yard, garden center, pet food, some people food, hunting supplies, holiday ornaments, etc and was not a direct competitor of anyone. He showed pictures of other existing Menards stores.

#### **PUBLIC HEARING**

Ms. Joanne Zingo expressed concern about residential property values. She wondered about outdoor lighting and security for the open outdoor area. She wondered about the stub of Ousdahl, when there was previous talk of putting in a gate and road for emergency vehicles to access the area from 27<sup>th</sup> Street. She expressed concern about thru traffic and parking safety. She said she was not adverse to commercial development.

Mr. Greg Springer discussed previous lumber dealers that disappeared and lumber now being outsourced. He said McCray was the only lumber yard in town. He felt competition was good and it

was an excellent location. He said Home Depot was an excellent place but that Menards would be worthy for the growth of the community.

Mr. Zak Bolick supported the rezoning. He said the site was a blighted rundown area that was a highly visible area of the community. He said Lawrence did not need more multi-unit complexes. He stated many retail dollars leave Lawrence and Menards was a willing retail business that wanted to relocate to Lawrence. He said he was impressed Mr. Edwards took the time to respond to individual communications. He asked that Planning Commission approve this.

<u>Mr. Dale Willey</u> said he wanted tax relief and wanted Lawrence to open up for business. He stated Horizon 2020 was originally meant as a guide. He asked if a bike and walking path was currently on the property.

Ms. Day said it was recommended.

Mr. Willey felt Lawrence was difficult for businesses. He said all the retail activity was at 31<sup>st</sup> and Iowa. He felt the business would increase taxes and employment. He felt they should become more proactive.

<u>Mr. David Geyer</u> said he was Chairman of Lawrence Association of Neighborhoods when Home Depot was developed. He asked Planning Commission to recommended denial because it would create a line of businesses right down 31<sup>st</sup> Street. He expressed concern about drainage being an issue in the area.

Ms. Bonnie Johnson, Indian Hills Neighborhood Association, said she heard from ten residents in the neighborhood. She said they had concerns about Home Depot being promised as the end, drainage issues, and traffic and alignment issues. She said some residents would rather see a business at the site than an apartment complex because it would be the lesser of two evils. She said neighborhood comments were about half in favor and half opposed. Ms. Johnson said she would personally prefer to see Menards farther south on Iowa Street. She expressed concern about traffic and drainage issues. She did not feel the revised Southern Development Plan needed to be changed without a valid reason.

Mr. Kirk McClure, Old West Lawrence Association, said retail spending drives activity and retail jobs were related to spending, not by the number of stores. He said adding more stores would not change that. He said regarding tax revenue, customers pay the sales tax. He said there would not be new jobs and that the number of jobs in retail was a function of spending. He said there would also not be any new property taxes. He said the aggregate value of retail space was a function of the spending. He stated adding supply did not build demand. He said the market analysis on this project was flawed and did not answer the question if the community was able to support two home improvement stores. He said this was predatory development and he recommended Planning Commission deny it.

Ms. Cille King, League of Women Voters, read the letter they sent that was included in packet, which requested the Southern Development Plan not be changed to expand the existing designated area for regional commercial center and to deny the request. She said there was an intentional residential buffer to limit commercial along 31<sup>st</sup> Street.

Mr. Gary Rexroad felt Menards was different than anything Lawrence already had and felt it was an outstanding and unique shopping experience. He was in favor of approving the rezoning and allowing it to go forward. He had trouble thinking about this being a risk of extending commercial

down 31<sup>st</sup> Street, primarily because there was a natural end to developable ground. He thought they should think of this as a new node instead of an extension of the existing node. He said the alternative of a trailer park going back in at that site was not out of the question. He said Menards was not just a good second choice but a good primary choice for that location. He felt Menards drew residents to from Lawrence to Topeka and Kansas City.

<u>Mr. Mark Stinger</u>, Diamond Realty Investments, represented The Connection apartment complex on the south side of 31<sup>st</sup> Street, supported the project and was in favor of the development.

#### APPLICANT CLOSING COMMENTS

Mr. Edwards responded to questions and comments made during the public comment. He said Menards would use low level light that would not spill outside of the yard and also would have security cameras. He stated Ousdahl would not stub and not connect to the neighborhood. He said a significant number of Lawrence residents make the trip outside of Lawrence to Menards. He agreed with Mr. Willey's comment about Horizon 2020 being a guide. He said he was not allowed to create more runoff onto someone's property. He said that concern was not necessarily going to be a problem. He said regarding traffic issues the traffic comes steadily throughout the day, there was not an afternoon rush. He said their busiest time was noon-2:00pm. He said traffic impacts would be minimal. He said Mr. McClure mentioned there would be no new jobs but Menards would employ about 250 employees. He stated there was significant support from the residents of Lawrence.

#### COMMISSION DISCUSSION

Commissioner Hird inquired about the market study that was using 2010 data. He wondered when the new study would be done.

Ms. Miller said the new study would hopefully be done in the next few weeks. She said there was lead time and the applicant needed to use 2010 data to generate their study.

Commissioner Hird asked why it was considered vacant.

Ms. Miller said it was the Code requirement and was in Horizon 2020 Comprehensive Plan. She said it states it would either be vacant upon completion or cause vacant space elsewhere.

Commissioner Hird asked if there was some indication there would be vacant space.

Ms. Miller said the pad sites did not have identified tenants.

Commissioner Hird inquired about excluding the pad sites in the vacancy rates.

Ms. Miller said it probably wouldn't change it that much and could push it to 8%.

Commissioner Josserand asked Mr. Zach Bolick about his earlier statement regarding vacancy rates of multi-family.

Mr. Bolick said he was a banker and tracked monthly vacancy rates but did not have exact numbers this evening.

Commissioner Josserand asked Mr. Rexroad if he thought multi-family was overbuilt.

Mr. Rexroad said that was just his opinion.

Commissioner Liese asked Mr. McClure about the term predatory that he used earlier.

Mr. McClure said the applicant knows there is no latent demand for a second home improvement store and they are seeking to capture the existing demand and take it away from a current vendor. He said the home improvement industry was narrowed down to Home Depot, Lowes, and Menards which were each trying to cannibalize each other.

Commissioner Liese asked Mr. McClure's thoughts about certain kinds of business drawing customers from surrounding counties.

Mr. McClure said there is no significant untapped demand out there. He said Lawrence was considered a small micro-metro area. He said people from Kansas City and Topeka are not going to drive to Lawrence when they have choices in their area. He said spending from Jefferson and Franklin County already exists and that there was no evidence that a small amount of households could support two home improvement stores.

Mr. Edwards said Menards would not spend millions of dollars on a store thinking one of them would fail.

Commissioner Liese said at this point in time he did not feel this was the best place to locate the store. He said it could be more appropriate for the store to be closer to  $6^{th}$  and SLT. He asked staff to explain rationale to direct the store to  $6^{th}$  and K-10.

Mr. McCullough said staff identified the  $6^{th}$  and K-10 area as being able to accommodate the store. He said there were a number of sites in Lawrence. He said timing was key and at some point in time the  $6^{th}$  and K-10 area would be the best location.

Commissioner Liese asked what Menards would have to do to build at 6<sup>th</sup> and SLT right now.

Mr. McCullough said platting, site plan, and pulling building permits.

Commissioner Liese inquired about the traffic study for 6<sup>th</sup> and SLT.

Mr. McCullough said he did not have that information off the top of his head.

Commissioner Liese asked Mr. Edwards to respond to locating at 6<sup>th</sup> & SLT.

Mr. Edwards said in the future 6<sup>th</sup> & SLT might be a good spot but not right now.

Commissioner Burger asked if there was a way to approve this without the pad sites.

Mr. McCullough said there was room to modify this in a number of ways. He said reducing the size of the rezoning would reduce the amount of retail at the site.

Commissioner Blaser asked about the earlier suggestion of creating another node.

Mr. McCullough said staff would not view it as a secondary node and that it would be considered strip development.

Commissioner Culver said there were competing arguments about the potential precedence to expand the commercial area to the east being an impossibility.

Mr. McCullough said there was some opportunity beyond this subject site to entertain commercial development. He said at the very least the Snodgrass property to the east.

Ms. Day displayed the land use map on the overhead.

Commissioner Liese asked Commissioner Culver, as a banker, to respond to Mr. Bolick's comments regarding banks receiving information on vacancy rates.

Commissioner Culver said there were trends, but that he had not seen specifics with hard numbers from a third party.

Commissioner Josserand wondered if planning should drive development or should development drive plans. He said at some point excess capacity had deleterious effects.

Commissioner Lamer thanked Mr. Edwards for meeting with the neighbors. He asked Mr. Edwards if this location was denied would Menards look at a different area in Lawrence.

Mr. Edwards said no, not for a long time.

Commissioner Burger ask Mr. Edwards about the property west of Four Wheel Drive.

Mr. Edwards said they had extensive conversations with the property owners and it was unrealistic to pay what they were asking.

Commissioner Blaser said they needed to study 31<sup>st</sup> Street east. He wondered how should this proceed if approved so that both could be done.

Mr. McCullough said there were a couple of options. He said they could defer the application and open the Southern Development Plan, or forward to the City Commission with a recommendation to initiate planning for the corridor.

Commissioner Blaser asked if the location of the 31st interchange was set.

Mr. McCullough said it was pretty well set. He said the original  $31^{st}$  Street would go back to Haskell University.

Commissioner Burger asked to see a map of the SLT exits.

Ms. Day showed on the overhead that segment having an interchange at Iowa and an interchange at Haskell.

Commissioner Hird inquired about the development potential with floodplain.

Ms. Day pointed out the Snodgrass property on the overhead and where the floodway portion was. She said there would be infrastructure improvements to help with the drainage. She pointed out the developable portions along 31<sup>st</sup> Street.

Commissioner Liese asked Mr. Willey if he had an additional comment.

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Mr. Willey said 31<sup>st</sup> Street had been the SLT for the last up-teen years. He felt the traffic volume would be less after the SLT was complete and not an issue for the neighborhood. He responded to Mr. McClure's comment about businesses going out of business. He said it was due to management matters.

Commissioner Liese thanked Mr. Edwards for his work. He said they had heard conflicting information.

Mr. Edwards said a while back before the city knew the current market they thought 6<sup>th</sup> and K-10 was the best place for retail. He said the former Gaslight Village was the best spot for Menards.

Commissioner Liese asked Mr. McCullough to respond.

Mr. McCullough said the 6<sup>th</sup> and SLT node made sense and they were trying to plan a community for decades worth of growth. He said right now there were policies about strip development. He said the market does adjust to the will of the community. He said he agreed it may be premature at 6<sup>th</sup> and K-10 but he would like to work with the market to identify other locations in the South Iowa corridor.

Commissioner von Achen asked if he was saying they were premature to act tonight and that more studies needed to be done before a decision was made.

Mr. McCullough said they needed to act on the applicants request for plan amendments and zoning to accommodate their specific request. He thought there were some collateral impacts that could be pursued further if they wanted to accommodate the applicants request at this location. He felt there were some options but Menards has indicated they were not willing to start over and take the time to pursue other opportunities. He said staff could not compel the applicant to pay a higher price than they were willing to pay for a piece of property.

Commissioner von Achen asked if staff was making a different recommendation than what was in the packet.

Mr. McCullough said no, staff's recommendation was based on the Comprehensive Plan policies in place and that this was not the place to extend retail down 31<sup>st</sup> Street. He said if Planning Commission believed otherwise they should pursue that and develop that in an appropriate way.

Commissioner Lamer said the guiding document was the Comprehensive Plan and that many members of the community spent hours coming up with a vision of how the community should grow. He felt he would be doing a disservice if he discounted the document.

Commissioner Liese said he did not want to ignore the Comprehensive Plan but he was concerned if he voted against this the city would be blamed for being difficult to work with. He respected the applicant's knowledge of the business. He said he would vote in favor of the text amendment to the Comprehensive Plan.

Commissioner Hird would like more information on the market study. He would like to see a calculation of the vacancy rate with only the pad sites vacant. He said the SLT would provide a huge change in traffic patterns and appearance. He said they needed to consider what the changes in the road would do to the area. He said he was surprised the neighbors seemed to prefer a quality big box project like this than apartments. He said he was not sure they could force the applicant to look at other alternatives. He said the Comprehensive Plan was a good document and he has used it as a sword and shield over the years. He said he would be in favor of approving or deferring for more

studies on 31<sup>st</sup> Street and how it would actually be handled. He said as a consumer he liked the idea of competition and felt this was a good project.

Commissioner Burger asked if it was possible to eliminate the 31st Street curb cut.

Mr. McCullough said there were some options that could be looked at. He said this was just a concept plan subject to a lot of different revision and modification.

Commissioner Culver said the tough part was to balance between future and current planning and market opportunities. He felt this was a unique piece of property and underutilized. He was encouraged by the support from the community surrounding this. He felt it was worthwhile to consider the request. He had concerns about the area to the east of the property and the future of it. He thought revisiting those plans and further developing them was prudent. He said he could support moving ahead with this project or defer for further studies.

Commissioner Britton said he was struggling because he wanted to say yes but also put stock in the planning guides. He said he put a lot of stock in staff's recommendation. He was concerned about the extension of retail east on 31<sup>st</sup> Street, although it would be limited due to the floodplain area. He expressed concern about retail vacancy rates. He stated it almost didn't make sense to include Menards in the vacancy rate when they would be going into the space they build. He said some of the support for the project he felt were more the kinds of things that were up to City Commission, such as economic, taxes, and how to pursue commercial development. He said he would probably oppose this but had not made his mind up. He would like more information on vacancy rates and how to treat that with the building being occupied by the applicant.

Mr. McCullough said the Comprehensive Plan was a process and would take longer than a month or two to revisit the Revised Southern Development Plan to stretch it to Louisiana Street. He answered Commissioner Hird's earlier question about the vacancy rate of Menards being occupied and the pad sites vacant, the vacancy rate would be 7.6%.

Commissioner Blaser felt the Comprehensive Plan can and should be changed because conditions have changed, such as the SLT. He said he did not like strip malls so the term strip out bothered him. He said the property needs to be used and Menards was a good potential use for it. He said he would vote in favor but felt they needed to study the Revised Southern Development Plan for changes farther east.

Mr. McCullough said there were three primary questions the plan review amendment process includes and Planning Commission may want to use those as a guide for this item:

- Does the proposed amendment result from changed circumstances or unforeseen conditions not understood or addressed at the time the Plan was adopted?
- Does the proposed amendment advance a clear public purpose and is it consistent with the long-range goals and policies of the plan?
- Is the proposed amendment a result of a clear change in public policy?

Commissioner Burger said one changed circumstance was a change of use. She felt this was a responsible applicant and would be a nice addition to the community. She expressed concern that it would take some business away from current businesses. She said one benefit would be that it could provide a draw to the area. She said there were lots of pluses and some negatives but that the pluses outweighed the negatives. She said she was not okay with it not agreeing with the

Comprehensive Plan. She felt it would be helpful to have a more detailed road diagram to see what 31<sup>st</sup> Street would look like. She felt there were ways to redesign it so that it was less stripped out.

#### **ACTION TAKEN**

Motioned by Commissioner Blaser, seconded by Commissioner Hird, to approve the change to the Comprehensive Plan to include extending the commercial area east to include this property for Menards, which would identify this parcel as CR. He said the changed circumstances included the completion of the SLT which would attract the need for more commercial. He stated the change in purpose would in fact lower construction costs because of materials and competition.

Commissioner Josserand asked when the Southern Development Plan last changed.

Ms. Leininger said the revised Southern Development Plan was approved in 2008.

Commissioner Josserand asked if there was any change to the South Lawrence Trafficway configuration since then.

Ms. Leininger said no.

Commissioner von Achen said she relied on the staff recommendation and the Comprehensive Plan. She felt the Comprehensive Plan should be amended and revised as needed if there was an exceptional reason to do it. She agreed with the Comprehensive Plan. She said she would oppose the motion.

Commissioner Britton said he hoped City Commission would look at whether approving this proposal might significantly frustrate the growth envisioned west on 6<sup>th</sup> Street.

Commissioner Burger asked if the site plan would be seen by Planning Commission or administratively approved.

Mr. McCullough said it would be administratively approved.

Commissioner Burger said that changed her vote and she would not support this.

Commissioner Josserand said he would reluctantly vote against the motion. He said with some additional study he could support it. He felt the staff recommendation was very well written and agreed with it. He did not think there was a changed condition with SLT but did think they should engage in a Revised Southern Development Plan.

Commissioner Lamer echoed Commissioner Josserand's comments. He said he could not support this with its non-compliance with the Comprehensive Plan. He agreed staff did an excellent job with the staff report. He said the Revised Southern Development Plan was only 5 years old. He did not believe the SLT had changed that much. He said he would vote against the motion.

Commissioner Hird felt this was a tremendously unique situation of infill that was supported by the neighbors. He felt if they voted this down it would be the Planning Commission killing another opportunity. He expressed frustration because this was a good opportunity.

Commissioner Britton said City Commission should look at what approving this project down off of Iowa would do to progress at 6<sup>th</sup> and SLT. He inquired about more information regarding that.

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Mr. McCullough said he was not sure any good information could be brought back. He said a lot of it was market driving. He said it was possible it may impact the progress. He said staff was not trying to push everything to that node but it was an option for the market to consider as an inventory option.

Commissioner Blaser withdrew his motion.

Commissioner Hird withdrew his second of the motion. He thought they were deferring it just because they didn't want to make a difficult decision. He said he had not heard any particular direction. He asked Mr. Edwards about his thoughts on a deferral for 30 days.

Mr. Edwards said a deferral would allow him to look at any concerns they may have. He said it was not an issue of either or, so denying this location did not mean they would relocate to 6<sup>th</sup> and K-10. He said they were under contract for a limited time but that they still had a little bit of time left.

Commissioner Liese asked if staff could look at the entire area and provide options.

Mr. McCullough said staff could provide option for increasing the commercial use along  $31^{st}$  Street and show what it may look like.

Motioned by Commissioner Hird, seconded by Commissioner Blaser, to defer items 3 and 4 to next month for study of issues discussed.

Commissioner Lamer asked Mr. Edwards if there is a certain amount of funds he would lose based on the real estate contract.

Mr. Edwards said it would equal less time the property could be utilized but that he was okay with a deferment.

Commissioner Josserand said he would support a deferral. He requested that staff obtain more information regarding traffic impacts on Louisiana Street.

Motion carried 9-0-1, with Commissioner Graham abstaining.

ITEM NO. 5 TEXT AMENDMENT TO THE LAND DEVELOPMENT CODE; LIGHTING STANDARDS (MKM)

**TA-12-00204**: Consider a Text Amendment to the City of Lawrence Land Development Code, Chapter 20, to establish lighting standards and requirements as an alternative to the photometric plan. *Initiated by City Commission on 8/21/12.* 

Item 5 was deferred prior to the meeting.

#### MISCELLANEOUS NEW OR OLD BUSINESS

Consideration of any other business to come before the Commission.

ADJOURN 10:32pm

## 2013 LAWRENCE-DOUGLAS COUNTY METROPOLITAN PLANNING COMMISSION **MID-MONTH & REGULAR MEETING DATES**

Mid-Month Meetings, Wednesdays 7:30 – 9:00 AM	Mid-Mont	Mid-Month Topics			
Jan 9	Topics fo	or 2013	Jan 28	Jan 30	
Feb 13	PD Occi	upancy	Feb 25	Feb 27	
Mar 13	Downtown Redevelopme	Downtown Redevelopment - HRC Joint Meeting			
Apr 10	Downtown Redevelopme	Downtown Redevelopment - HRC Joint Meeting			
May 8	APA Conference follow-up	Process Questions/Updates	May 20	May 22	
Jun 12	Water/Wastewater	Water/Wastewater Master Plan update			
Jul 12**	PC Orientation	PC Orientation – all day Friday			
Aug 14	2010 Cen	2010 Census Data			
Sep 11	Horizon 2020 R	Horizon 2020 Review Process			
Oct 9	New County 2	New County Zoning Codes			
Nov 6	tenta	tentative			
Dec 4	tenta	tentative		Dec 18	

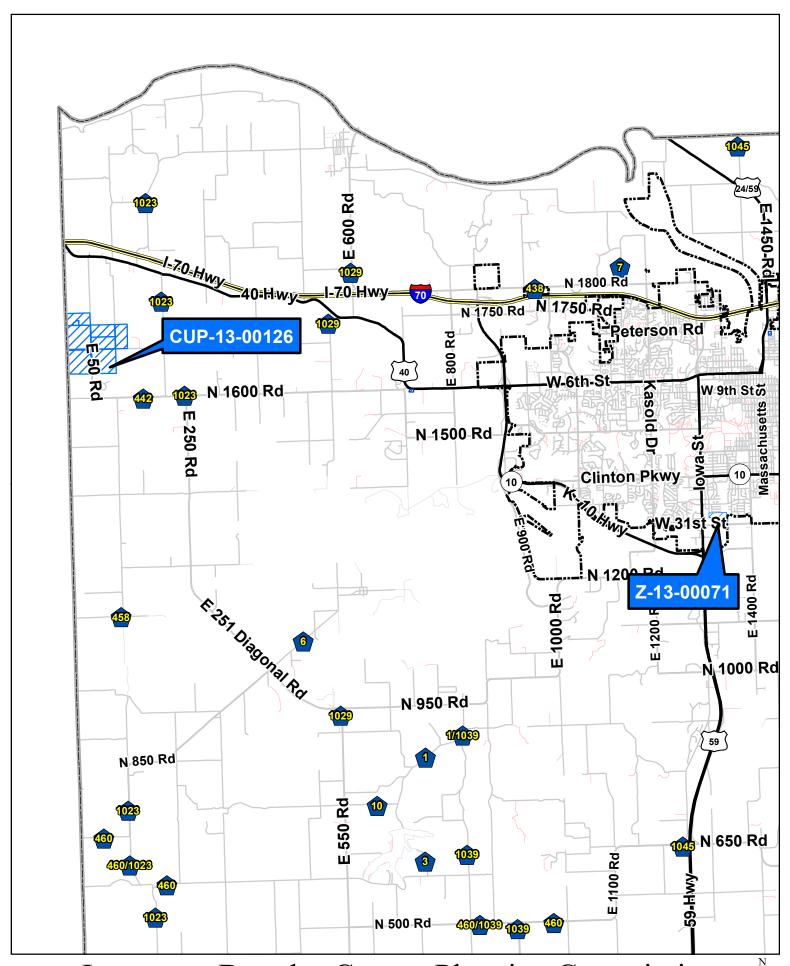
How City/County Depts interact on planning issues Stormwater Stds Update – Stream Setbacks Overview of different Advisory Groups – potential overlap on planning issues Open Space Acquisition/Funding Mechanisms – what do other states do? Library Expansion Update Joint meeting with other Cities' Planning Commissions Joint meeting with other Cities and Townships — UGA potential revisions

Tour City/County Facilities 2010 Census Data Oread Overlay Districts Water/Wastewater Master Plan Update Downtown Survey Memo - redevelopment options\* Comprehensive Plan - Goals & Policies\* \*new suggestions

## **Meeting Locations**

The Planning Commission meetings are held in the City Commission meeting room on the 1st floor of City Hall, 6th & Massachusetts Streets, unless otherwise noticed.

Planning & Development Services | Lawrence-Douglas County Planning Division | 785-832-3150 | www.lawrenceks.org/pds



Lawrence-Douglas County Planning Commission May 2013

# Memorandum City of Lawrence Planning & Development Services

**TO:** Planning Commission

FROM: Sandra Day, Planning Staff

CC: Scott McCullough, Planning and Development Services Director

Sheila Stogsdill, Assistant Planning Director

Date: For May 20, 2013

**RE:** Variance associated with Minor Subdivision for University Corporate and Research Park

No. 3 (MS-13-00114) from the 150 ft right-of-way requirement in Section 20-810(e)(5) for arterial streets and Section 20-808 (d)(2) requiring lots to meet the

minimum area and dimensional standards of the base zoning district.

**Attachment A:** Minor Subdivision 13-00114, University Corporate and Research Park.

**Attachment B:** Applicant's Justification

The Minor Subdivision for University Corporate and Research Park No.3 (MS-13-00114) will create two new lots by dividing the existing platted lot. Minor Subdivisions are processed administratively but Planning Commission approval is required for variances from the Subdivision Design Standards. A copy of the Minor Subdivision is included with this memo for context; however, no action is required on the Minor Subdivision.

#### SUMMARY

Variance 1. Reduce required right-of-way along Wakarusa Drive from 150' to 100'
Variance 2. Reduce required width per lot along Wakarusa Drive from 200' to 168' for

Lot 1 and 132' for Lot 2.

#### Variance 1. Reduce required right-of-way along Wakarusa Drive from 150' to 100'

The subject property is located at 1321 Wakarusa Drive. This property is developed with an existing office use and associated off-street parking. Wakarusa Drive is classified as a principal arterial street on the Major Thoroughfares Map. Per Section 20-810(e) (5) of the Subdivision Regulations, principal arterial streets require 150' of right-of-way. The applicant is requesting a variance from this requirement for the property being replatted as Lots 1 and 2, University Corporate and Research Park No. 3.

Currently 100' of right-of-way is available for Wakarusa Drive. This right-of-way is consistent from 6<sup>th</sup> Street to Clinton Parkway (Figure 1).

Variance 2. Reduce required width per lot along Wakarusa Drive from 200' to 168' for Lot 1 and 132' for Lot 2.

The subject property, located at 1321 Wakarusa Drive, is located within the IBP (Industrial Business Park) District. This district requires a minimum 20,000 SF of lot area and 200' of lot frontage. Per Section 20-808(d)(2) a new lot must meet the minimum area and dimensional requirements of the base district. The existing lot is 122,643 SF (2.8 acres) with 300' of frontage along Wakarusa Drive (Figure 2). The proposed lots exceed the minimum area requirements of 20,000 SF but do not meet the minimum frontage requirements of the IBP District.

#### **REVIEW**

The Subdivision Regulations state that an applicant may request a variance from the Design Standards in the Regulations in accordance with the variance procedures outlined in Section 20-813(g). This section lists the criteria which must be met in order for a variance to be approved. The requested variances are evaluated with the approval criteria below:

# Criteria 1. Strict application of these regulations will create an unnecessary hardship upon the Subdivider.

The City Engineer indicated that he had no objection to the right-of-way variance request. There are no plans to widen Wakarusa and add a median. The additional right-of-way is unnecessary along this segment of Wakarusa Drive.

The existing tenant of the building on the south portion of the property recently expanded the parking lot to accommodate the business operation. No building expansions were necessary to

accommodate the tenant, only surface parking was needed. Development of the north portion of the property is likely to be unrelated to the existing business. Thus, there is no incentive for the existing business to further develop the property to the north.

The development of the existing lot was oriented to accommodate a second building to the north. The existing development on the south portion and the existing development on the adjacent property at 1315 Wakarusa Drive both have parking lots built to be extended in anticipation of an additional building on the north portion of the existing lot. For financing purposes, many property owners seek to create individual lots so that the existing building or improvement is not encumbered by the proposed development. This practice usually necessitates the creation of an individual lot for development and financing purposes.

For ease of development and financing, construction on individual lots is more feasible than the development of a single lot with multiple buildings and businesses. The



Figure 1

properties to the north and south of the subject are developed. It is not feasible that additional property could be acquired to meet the minimum lot width requirements.

**Staff Finding:** Requiring the dedication of additional right-of-way for Wakarusa Drive at this time would constitute an unnecessary hardship on the property owner as the right-of-way is not necessary.

Requiring compliance with the minimum frontage will hinder the ability to develop the existing north portion of the lot that has been designed to accommodate infill development.

# Criteria 2. The proposed variance is in harmony with the intended purpose of these regulations.

Right-of-way dedication is required when properties are platted to insure the required right-of-way is available for improvements to adjacent roadways.

The City Engineer indicated that the right-of-way currently dedicated for Wakarusa Drive in this area is adequate. Future street improvements can be completed within the existing right-of-way. There are no plans for construction of a center median that would necessitate the additional right-of-way.

The purpose of the IBP District is for the development of, and to provide space for, certain low-impact employment and manufacturing uses in an attractive and appropriate location in a planned industrial/business park setting. Much of Wakarusa Drive was platted with access restrictions

requiring access to be shared on common property lines or to be located a minimum distance of 300' apart. Development is intended to be located along arterial streets but with access from internal roads whenever possible per Section 20-214 of the Development Code. This has resulted in generally larger lots and wider lot widths to accommodate a park-like setting compared to other more general-purpose industrial zoning districts. These factors have contributed to the lot design and pattern within the IBP District.

However, strict adherence to the 200' minimum lot width has not been uniform in the district. Several lots have been platted with less than the required 200' minimum lot width with variance approval from past Planning Commissions. The most recent approval of a subdivision plan with a reduced lot width for property along Research Park Drive south of Bob Billings Parkway [Oread West No. 16, approved in 2012]. The following map highlights the platted lots with less than 200' lot widths.

- Approval of the request will not alter the planned development pattern along Wakarusa Drive.
- Approval of the request will not alter the number of access points that could be constructed along Wakarusa Drive.
- Approval of the variances will create an additional infill lot for future development.

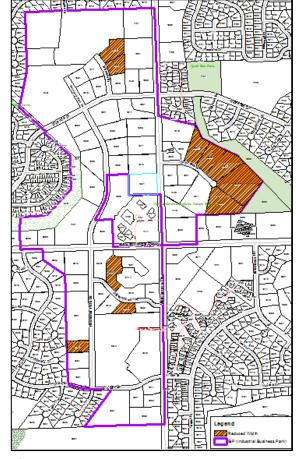


Figure 2

**Staff Finding:** The variance will allow the proposed lot division to occur without requiring the dedication of additional right-of-way. Adequate right-of-way is available for Wakarusa Street. Access limitations along the arterial street, Wakarusa Drive, will be maintained with this minor subdivision regardless of the variance request. The variance will allow and facilitate infill development consistent with the established pattern along Wakarusa Drive.

#### Criteria 3: The public health, safety, and welfare will be protected.

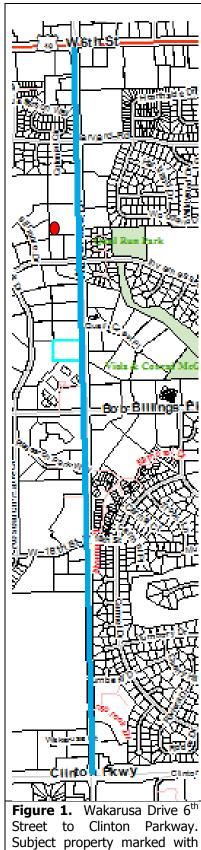
**Staff Finding:** As there are no plans to construct a median for Wakarusa Drive, the variance will not affect the public health, safety, or welfare.

The land use pattern of development and access restrictions are preserved with this proposed minor subdivision. The variance will not affect the public health, safety, or welfare.

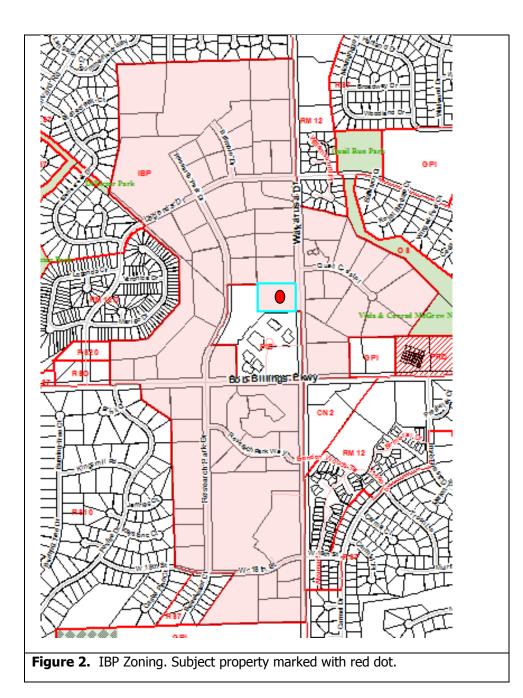
#### Staff Recommendation:

Approve the variances requested from Section 20-810(e)(5) from the requirement to dedicate additional right-of-way for Wakarusa Drive and from Section 20-808 (d)(2) requiring a minimum 200' lot width subject to the following condition:

The plat shall be revised to include the following note: "On May 20, 2013, the Planning Commission approved a variance from right-of-way requirements in Section 20-810(e)(5) and 20-808 (d)(2) of the Subdivision Regulations to allow the replatting of this property with 100 ft of right-of-way currently provided for Wakarusa Drive and for lot widths of 168' for Lot 1 and 132' for Lot 2."



red dot.





#### ADMINISTRATIVE DETERMINATION

MINOR SUBDIVISION

May 2, 2013

**MS-13-00114:** University Corporate and Research Park Subdivision No. 3, a Minor Subdivision Replat of Lot 3, Block 3, University Corporate and Research Park Subdivision No. 2 (Amended). Submitted by Grob Engineering, for Lawrence Business Park LLC, property owner of record.

**ADMINISTRATIVE DETERMINATION:** The Planning Director approves the Minor Subdivision for Meadow Hill, subject to the approval of a variance for reduced lot width and reduced right-of-way for Wakarusa Drive.

#### **KEY POINTS**

- A variance from the minimum lot width is proposed with this Minor Subdivision.
- A variance from the required right-of-way width for Wakarusa Drive is proposed with this Minor Subdivision.
- Proposed Lot 1 is developed with an existing building and surface parking.
- Proposed Lot 2 is being created as a future developable lot with shared access.

#### **SUBDIVISION CITATIONS TO CONSIDER**

- This application is being reviewed under the Subdivision Regulations for Lawrence and Unincorporated Douglas County.
- Section 20-810 (e)(5)(i) requires 150' of right-of-way for arterial streets.
- Section 20-808 (d)(2) requires lots meet the minimum area and dimensional standards of the base zoning district.

#### ASSOCIATED CASES/OTHER ACTION REQUIRED

- Placement on the Planning Commission agenda for variance from the minimum right-ofway requirements in Section 20-810(5)(i) and minimum lot width requirements in Section 20-808 (d)(2).
- Submittal of signed mylar copy, executed Master Street Tree Plan and recording fees for recording of Minor Subdivision at the Register of Deeds.
- The applicant shall provide certification that all taxes that are due and payable have been paid prior to the recording of the plat.

GENERAL INFORMATION	
Current Zoning and Land Use:	IBP (Industrial Business Park); Existing building and parking lot located on south portion of the property.
Surrounding Zoning and Land Use:	IBP (Industrial Business Park); to the north and east. Existing office development.
	PD – [Oread West Office Park PID] to the south and west; developed office buildings to the south. Undeveloped land to the west.

**SITE SUMMARY** 

Area 2.8 Acres

Number of Existing Lots: 1
Number of Proposed Lots: 2

Proposed Lot Size

Lot 1 68,880 sq ft (1.6 Acres) Lot 2 54,120 sq ft (1.2 Acres)

#### **STAFF REVIEW**

#### **RIGHT-OF-WAY**

Wakarusa Drive is classified as a principal arterial street on the Major Thoroughfares Map. Per Section 20-810(e)(5) of the Subdivision Regulations a principal arterial street requires 150' of right-of-way. Wakarusa Drive was constructed with 100' of right-of-way. Planned improvements for Wakarusa Drive, later this year, do not require any additional right-of-way. Variance approval by the Planning Commission is required prior to final approval of this Minor Subdivision.

#### UTILITIES/EASEMENTS

No new utilities are being proposed. The water main serving the area is located along Wakarusa Drive. The sanitary sewer is located along the rear property line. The proposed Minor Subdivision shows two new access easements in the front and rear portions of the lots to accommodate internal vehicular circulation. These easements must be recorded and recording information shown on the face of the plat prior to final approval of the Minor Subdivision. They are not required for any public or private utility purposes. The drawing also shows expanded utility and pedestrian easements to accommodate existing utilities through this area.

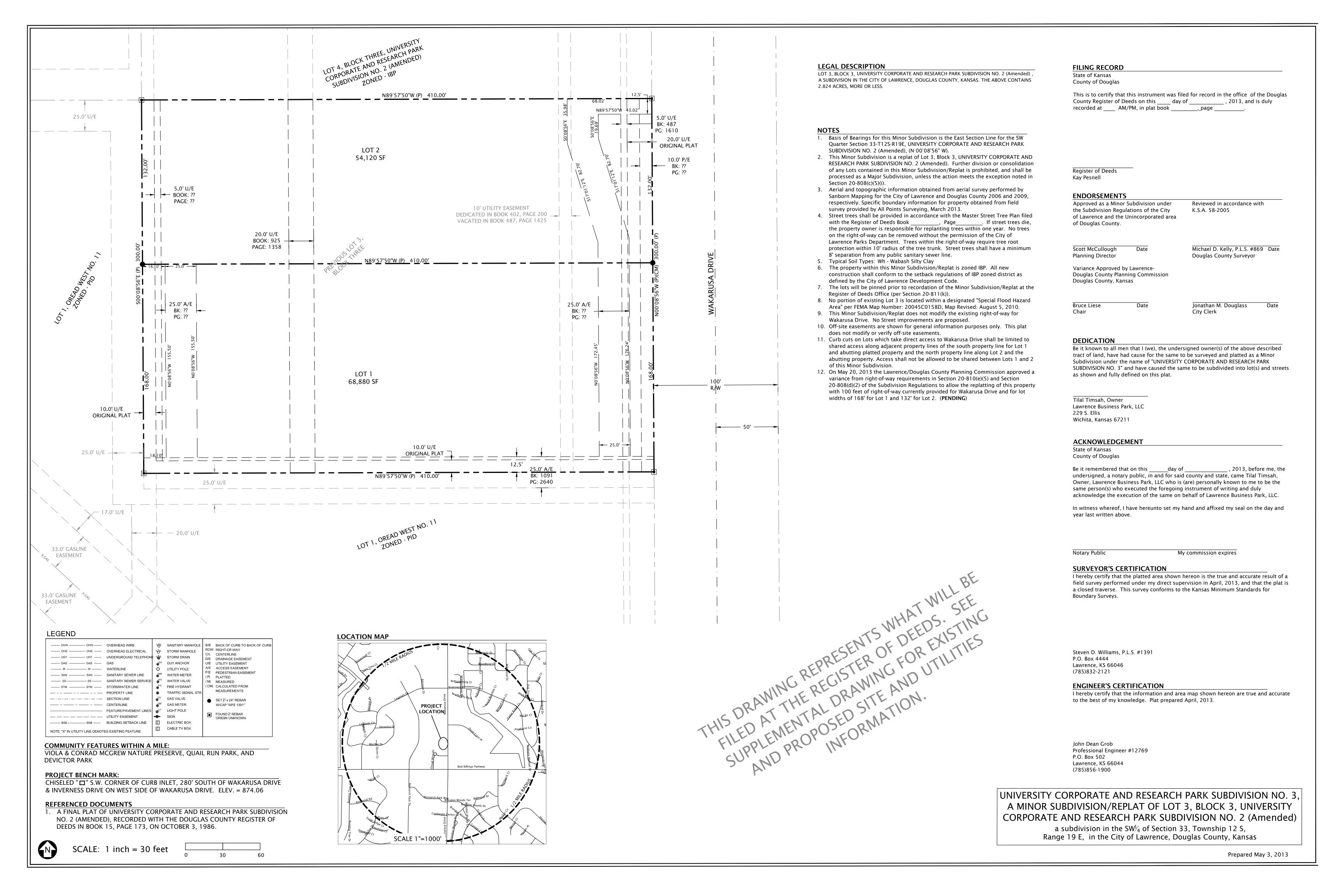
#### **ACCESS**

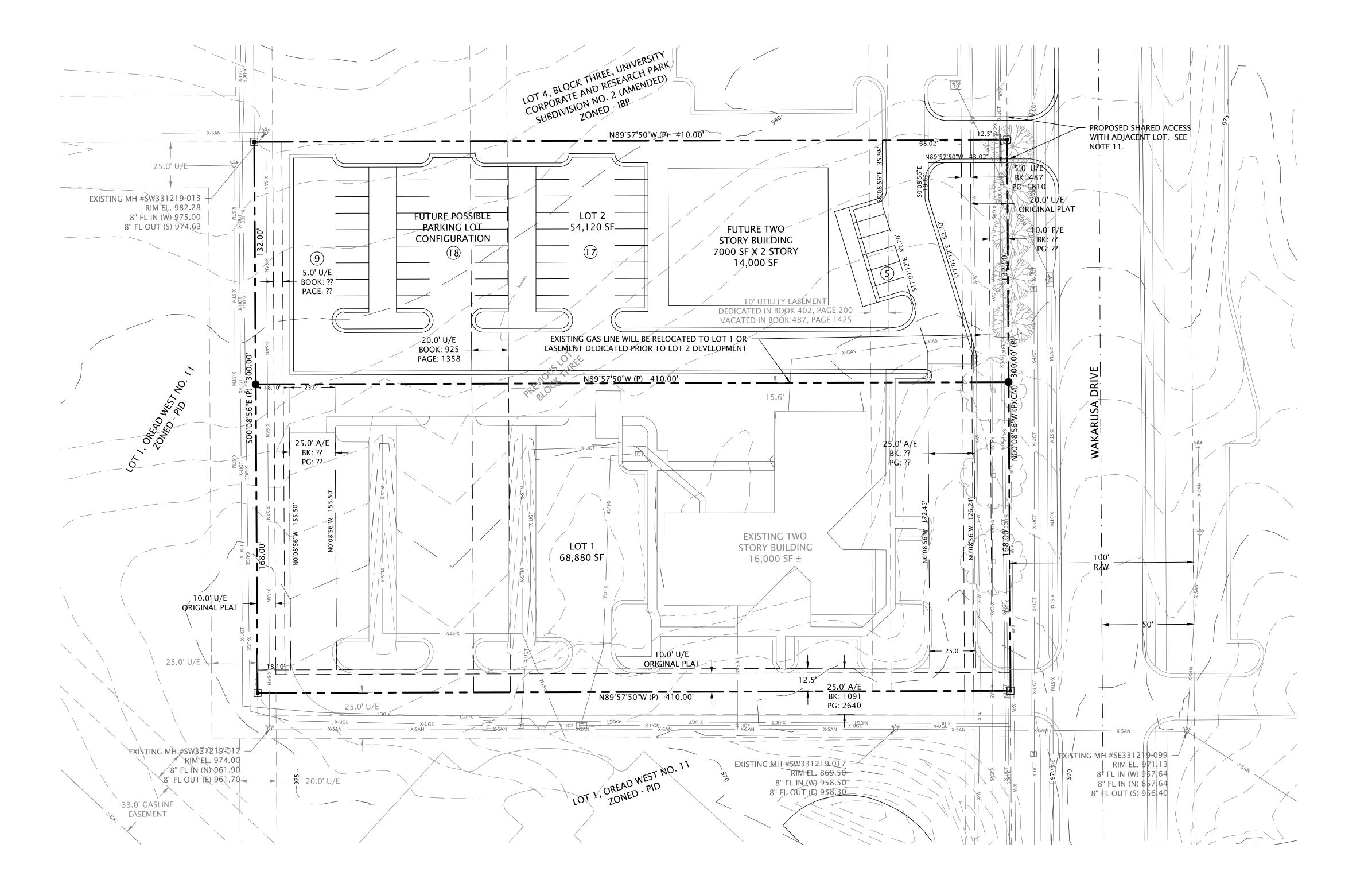
This lot was originally platted with access restrictions limiting curb cuts on lots which take direct access to Wakarusa Drive to shared points along adjacent property lines or no less than 300' apart. An existing access point to Wakarusa is located on the south end of proposed Lot 1. A second access is proposed at the north end of Lot 2 and configured to accommodate shared access with the adjacent property to the north. No direct access to Wakarusa Drive will be permitted at the common property lien between the new Lots 1 and 2.

#### MASTER STREET TREE PLAN

A Master Street Tree Plan and graphic were submitted and approved. The plan notes the required trees for each lot.

**Conclusion:** The Minor Subdivision, with approval of the variances requested and as conditioned, conforms to the approval criteria in Section 20-808(d) of the Subdivision Regulations.





**PROJECT BENCH MARK:** 

REFERENCED DOCUMENTS

CHISELED "[]" S.W. CORNER OF CURB INLET, 280' SOUTH OF WAKARUSA DRIVE & INVERNESS DRIVE ON WEST SIDE OF WAKARUSA DRIVE. ELEV. = 874.06

. A final plat of UNIVERSITY CORPORATE AND RESEARCH PARK

SCALE: 1 inch = 30 feet

SUBDIVISION NO. 2 (Amended), recorded with the Douglas County Register of Deeds in Book 15, Page 173, on October 3, 1986.

## **LEGAL DESCRIPTION**

LOT 3, BLOCK 3, UNIVERSITY CORPORATE AND RESEARCH PARK SUBDIVISION NO. 2 (Amended), A SUBDIVISION IN THE CITY OF LAWRENCE, DOUGLAS COUNTY, KANSAS. THE ABOVE CONTAINS 2.824 ACRES, MORE OR LESS.

- 1. Basis of Bearings for this Minor Subdivision is the East Section Line for the SW Quarter Section 33-T12S-R19E, UNIVERSITY CORPORATE AND RESEARCH PARK SUBDIVISION NO. 2 (Amended), (N 00°08'56" W).
- 2. This Minor Subdivision is a replat of Lot 3, Block 3, UNIVERSITY CORPORATE AND RESEARCH PARK SUBDIVISION NO. 2 (Amended). Further division or consolidation of any Lots contained in this Minor Subdivision/Replat is prohibited, and shall be processed as a Major Subdivision, unless the action meets the exception noted in Section 20-808(c)(5)(i).
- 3. Aerial and topographic information obtained from aerial survey performed by Sanborn Mapping for the City of Lawrence and Douglas County 2006 and 2009, respectively. Specific boundary information for property obtained from field survey provided by All Points Surveying, March 2013.
- 4. Street trees shall be provided in accordance with the Master Street Tree Plan filed with the Register of Deeds Book \_\_\_\_\_\_, Page\_\_\_\_\_. If street trees die, the property owner is responsible for replanting trees within one year. No trees on the right-of-way can be removed without the permission of the City of Lawrence Parks Department. Trees within the right-of-way require tree root protection within 10' radius of the tree trunk. Street trees shall have a minimum 8' separation from any public sanitary sewer line.
- 5. Typical Soil Types: Wh Wabash Silty Clay
- 6. The property within this Minor Subdivision/Replat is zoned IBP. All new construction shall conform to the setback regulations of IBP zoned district as defined by the City of Lawrence Development Code.
- 7. The lots will be pinned prior to recordation of the Minor Subdivision/Replat at the Register of Deeds Office (per Section 20-811(k)).
- 8. No portion of existing Lot 3 is located within a designated "Special Flood Hazard Area" per FEMA Map Number: 20045C0158D, Map Revised: August 5, 2010.
- 9. This Minor Subdivision/Replat does not modify the existing right-of-way for
- Wakarusa Drive. No Street improvements are proposed.
- 10. Off-site easements are shown for general information purposes only. This plat
- does not modify or verify off-site easements.
- 11. Curb cuts on Lots which take direct access to Wakarusa Drive shall be limited to shared access along adjacent property lines of the south property line for Lot 1 and abutting platted property and the north property line along Lot 2 and the abutting property. Access shall not be allowed to be shared between Lots 1 and 2 of this Minor Subdivision.
- 12. On May 20, 2013 the Lawrence/Douglas County Planning Commission approved a variance from right-of-way requirements in Section 20-810(e)(5) and Section 20-808(d)(2) of the Subdivision Regulations to allow the replatting of this property with 100 feet of right-of-way currently provided for Wakarusa Drive and for lot widths of 168' for Lot 1 and 132' for Lot 2. (PENDING)

# LEGEND

—— онw ——	— онw ——	OVERHEAD WIRE	9Å1	SANITARY MANHOLE	B/B	BACK OF CURB TO BACK OF CURB
—— ОНЕ ——	— OHE ——	OVERHEAD ELECTRICAL	A.	STORM MANHOLE	ROW	
UGT	— UGT ——	UNDERGROUND TELEPHONI	<b>₽</b>	STORM DRAIN	C/L D/E	CENTERLINE DRAINAGE EASEMENT
GAS	GAS	GAS	<b>Ø</b> GA	GUY ANCHOR	U/E	UTILITY EASEMENT
w	w	WATERLINE	٥	UTILITY POLE	A/E	ACCESS EASEMENT
SAN	SAN	SANITARY SEWER LINE	Ø <sup>WM</sup>	WATER METER	P/E (P)	PEDESTRIAN EASEMENT PLATTED
ss	ss	SANITARY SEWER SERVICE		WATER VALVE	(M)	MEASURED
STM	STM	STORMWATER LINE	Ø <sup>FH</sup>	FIRE HYDRANT	(CM)	
		PROPERTY LINE	- 8€	TRAFFIC SIGNAL STR.		MEASUREMENTS
- · - · - · - · -		SECTION LINE	<b>Ø</b> GV	GAS VALVE		SET <sup>1</sup> / <sub>2</sub> " x 24" REBAR
		CENTERLINE	<b>⊘</b> GM	GAS METER	•	W/CAP "APS 1391"
		FEATURE/PAVEMENT LINES	<b>Ø</b> LP	LIGHT POLE	_	FOUND 1 DEDAD
		UTILITY EASEMENT	-	SIGN		FOUND ½" REBAR ORIGIN UNKNOWN
BSB	—— BSB ——	BUILDING SETBACK LINE	E	ELECTRIC BOX		
NOTE: "Y" IN LITH I	TV I INE DENOTI	ES EXISTING FEATURE	C	CABLE TV BOX		
NOIE. A IN OTILI	I I LINE DENOTI	ES EXISTING FEATURE				

# SUPPLEMENTAL DRAWING

UNIVERSITY CORPORATE AND RESEARCH PARK SUBDIVISION NO. 3, A MINOR SUBDIVISION/REPLAT OF LOT 3, BLOCK 3, UNIVERSITY CORPORATE AND RESEARCH PARK SUBDIVISION NO. 2 (Amended)

a subdivision in the  $SW_4$  of Section 33, Township 12 S,

Range 19 E, in the City of Lawrence, Douglas County, Kansas

Prepared May 3, 2013



April 1, 2013

Sandra Day Planning & Development Services Department P.O. Box 708 Lawrence, KS 66044

(i) RE: Request for Variance for Minor Subdivision of Lots 1 & 2, University Corporate and Research Park Subdivision No. 3, A Minor Subdivision/Replat of Lot 3, Block 3, University Corporate and Research Park Subdivision No. 2 (Amended)

Dear Sandra,

On behalf of Lawrence Business Park, LLC, I am requesting a Variance from Article 8, Section 20-810-(e)(5), which specifies an 150-foot right-of-way for principal arterial streets, and from Article 6, Section 20-601-(b), which specifies the minimum lot width of 200 feet in IBP zoning districts. The following comments address the criteria of Section 20-813(g) for variance requests, shown below.

- i. Strict application of these regulations will create an unnecessary hardship upon the Subdivider.
  - 1. The existing right-of-way at this location is 100'. Generally all right-of-way along Wakarusa Drive is 100 feet except at some intersection locations. Strict application of the specified 150-foot right-of-way width for principal arterial streets would cause the existing parking lot drive to be in non-conformance due to the minimum setback regulations, thus make it difficult to further develop the site.
  - 2. The existing lot is 300 feet wide with a total area of 123,000 square feet. The variance would allow lot widths for Lot 1 and Lot 2 of 168 feet and 132 feet, respectively. The area of the smaller Lot 2 at 54,120 square feet would still be 2.7 times larger than the minimum allowable lot area of 20,000 square feet. Strict application of the minimum lot width would make development of the open area of the existing lot difficult and separate ownership impossible.
- ii. The proposed variance is in harmony with the intended purpose of these regulations.
  - 1. The regulations specify a 150-foot right-of-way to allow for the wider principal arterial streets currently being constructed in the expanding limits of the city. The subject property is located in a mostly developed area along Wakarusa Drive, so it is highly unlikely that Wakarusa Drive would be significantly widened in the future. The right-of-way width does not exceed 100 feet at any point along the full extent of

Wakarusa Drive excepts where additional right-of-way was dedicated at major intersections.

- 2. The Density and Dimensional Standards specify a minimum lot width of 200 feet for Industrial Business Park which far exceeds the requirement for any other commercial or industrial district. An additional building could be constructed on the existing lot and would be the same as it would be if the variance was granted, but would allow for separate ownership.
- iii. The public health, safety and welfare will be protected.
  - 1. Maintaining the existing right-of-way width will not jeopardize public health, safety, or welfare, nor would increasing the width serve to improve them. Wakarusa Drive functions adequately and there are no plans for future improvements which would require additional right-of-way.
  - 2. The overall width of the lot will not jeopardize public health, safety, or welfare. The originally platted and proposed entrance along the north line of Lot 2 will still provide the desired 300 feet between entrances on the west side of Wakarusa Drive and maintain clear sight distances.

We appreciate your consideration in this matter. We look forward to hearing from you soon. If you are in need of assistance or require additional information, please do not hesitate to call me at (785) 856-1900.

Sincerely yours,

J. Dean Grob, P.E.

J Dean Lob

**Principal** 

Grob Engineering Services, LLC

Kansas Professional Engineer License No. 12769

cc: Ted Timsah, Owner



## **Table of Contents**

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## 1. Background

The City of Lawrence has grown from a population of 65,608 people in 1990 to 93,944 people in 2012, a growth of 43% in 22 years. With this population growth, an increase in residential, commercial and industrial development has followed. Concerns were raised in the 1990's that retail growth was out-pacing population growth. Language was included in *Horizon 2020* in the mid-1990's that required the City to maintain an inventory of commercial space as well as general language requiring impact analysis studies for certain projects. The City commissioned a study in 1997, "Retail Market Dynamics", by Professor Kirk McClure that analyzed the retail market in response to numerous requests for development, specifically in the South Iowa district. This report analyzed the retail stock in all zoning districts, as well as retail sales tax figures.

In 2004, *Horizon 2020*, specifically Chapter 6: Commercial Land Use, was revised to include more specific language in Policy 3.13 that pertained to the requirement for the monitoring of retail space in the City and requiring retail market studies to be submitted for projects that add 150,000 square feet or more of retail space to the City. In 2005, the City hired Development Strategies Inc. (DSI) to perform an update to the retail market analysis performed in the late 1990's.<sup>2</sup> This report analyzed retail stock in all zoning districts, and used population and income to determine demand in the market.

The City adopted the *Land Development Code* on July 1, 2006, and it contains provisions in Section 20-1107 that require a retail market analysis be completed for a zoning or site plan application that could result in 50,000 square feet of retail space being added to the City. It defines a retail business as one of the following NAICS (North American Industrial Classification System) codes:

- 44-45 Retail Trade,
- 722 Food Services and Dining Places,
- 811 Repair and Maintenance, and
- 812 Personal and Laundry Services.

Examples of Non-retail businesses that typically locate in commercial zoning areas are professional offices, hotels, and banks.

In order to get an effective picture of the retail market, it is necessary to look at both the supply side of market, as well as the demand within the market. This

<sup>&</sup>lt;sup>1</sup> Population figures for 1990 provided by the U.S. Census Bureau. Population figure for 2012 is estimated by the Lawrence-Douglas County Planning Department.

<sup>&</sup>lt;sup>2</sup> http://www.lawrenceplanning.org/documents/RetailMarketStudy.pdf

retail market analysis aims to measure the amount of space and type of businesses that are located in commercial zoning districts throughout the City, which makes up the supply side of the equation. The retail market is extremely dynamic and therefore this inventory is merely a snapshot in time taken in December 2012. On the demand side, measures of population, income, and retail sales growth are computed in order to determine demand. This report serves as a follow-up to the 2006 Retail Market Report<sup>3</sup> completed in 2007 that uses the same methodology and the 2010 Retail Market Report produced in October 2010.<sup>4</sup>

This report has been updated to reflect the Downtown Retail Market Analysis issued in 2011<sup>5</sup>. Prior to that report, the downtown district in the city wide reports included some commercial zoned property outside of the main Commercial Downtown (CD) zoned areas as well as some of the Government, Public and Institutional (GPI) zoned properties. The 2011 Downtown Retail Market Analysis corrected that and removed those properties from the downtown district. This report corrects the data back to 2006 and updates all the tables to reflect this. This explains why the overall square footage decreased when looking at previous reports, but increases in this report over time based on the corrected data.

Planning staff has developed a model of collecting and analyzing data that integrates Geographic Information Systems (GIS) with databases to help provide the entire picture. The development of this model sets a foundation for the information to be updated annually using consistent methods.

For a healthy retail economy, it is important for there to be similar growth in income, population, retail sales tax dollars and inventory of stock. *Horizon 2020* and the *Land Development Code* both mandate that the inventory and analysis be updated annually. By practice, however, staff tries to update the report biannually or as resources allow.

<sup>&</sup>lt;sup>3</sup> http://www.lawrenceks.org/planning/documents/2006Retail.pdf

<sup>&</sup>lt;sup>4</sup> http://www.lawrenceks.org/planning/documents/2010Retail.pdf

<sup>&</sup>lt;sup>5</sup> http://www.lawrenceks.org/planning/documents/DowntownRetailMemo.pdf

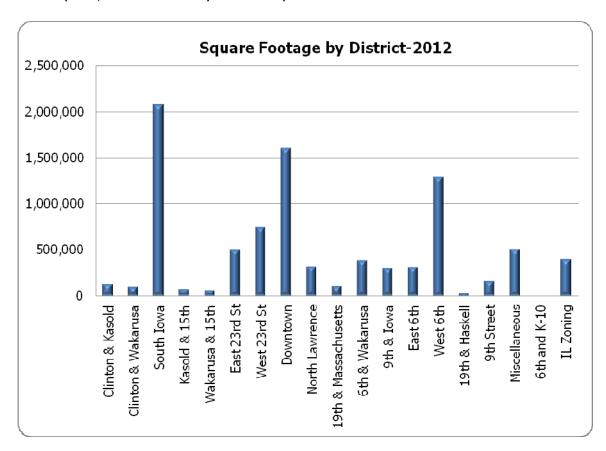
#### 2. Supply

#### 2.a. Square footage of retail space

The City of Lawrence is split into different zoning classifications and retail uses are primarily permitted in commercial zoning districts. This study aims to determine the amount of built square footage that is located within these commercial zoning districts, including CN1, CN2, CO, CD, CC200, CC400, CR, CS, and any PCD or Commercial PUD. In addition to the commercial zoning districts, the IL zoning district also permits some retail uses and therefore space in the district is included in this report in District 19. In order to better analyze the data, the market was split into seventeen distinct geographical districts. Districts 17 (Miscellaneous) and 19 (IL Zoning) have parcels that are scattered throughout the city and are therefore not geographically contiguous.

Table 2-1: Square footage by District							
District	District	Total	% Share of				
ID	Name	Square	Total Market				
		Footage	Square Footage				
1	Clinton & Kasold	132,156	1.5%				
2	Clinton & Wakarusa	98,032	1.1%				
3	South Iowa	2,077,377	22.8%				
4	Kasold & 15th	71,600	0.8%				
5	Wakarusa & 15th	58,300	0.6%				
6	East 23rd St	497,599	5.5%				
7	West 23rd St	748,725	8.2%				
8	Downtown	1,602,321	17.6%				
9	North Lawrence	318,876	3.5%				
10	19th & Massachusetts	105,737	1.2%				
11	6th & Wakarusa	387,375	4.3%				
12	9th & Iowa	299,699	3.3%				
13	East 6th	312,987	3.4%				
14	West 6th	1,287,720	14.1%				
15	19th & Haskell	31,412	0.3%				
16	9th Street	165,710	1.8%				
17	Miscellaneous	507,225	5.6%				
18	6th and K-10	0	0.0%				
19	IL Zoning	402,300	4.4%				
	Overall Total	9,105,151					

Overall, the City has a total of 9,105,151 square feet of space in commercial zoning districts. Of the nineteen geographic districts, the South Iowa district contains the most space, with 2,077,377 square feet, or a 23% share of the market. The Downtown district contains 1,602,321 square feet of space or an 18% share of the market. The third largest district is the West 6<sup>th</sup> Street district, which contains 1,287,720 square feet or a 14% share of the market. The 6<sup>th</sup> and K-10 district was recently annexed and zoned for up to 600,000 square feet of retail space, but is currently undeveloped.



The following map provides an illustrative breakdown of the districts. The table above shows the corresponding name that goes with each district identification number in the legend.

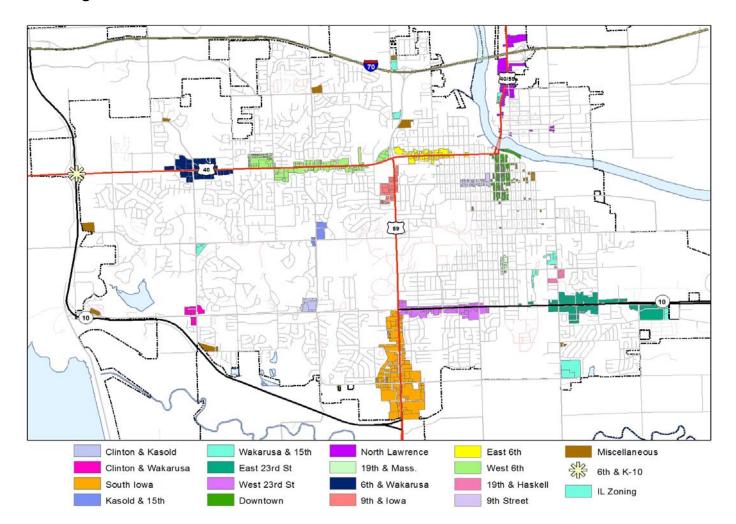


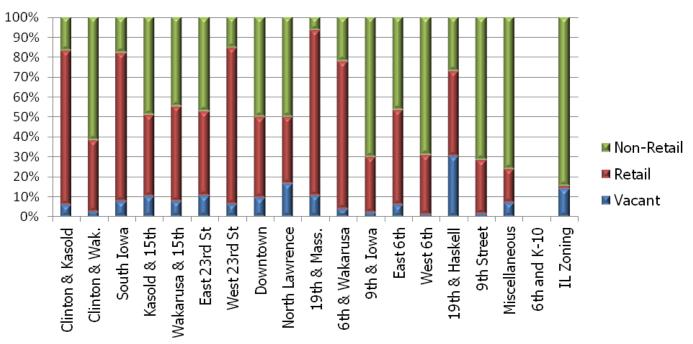
Figure 2.1: District Breakdown

The market as a whole contains 653,222 square feet of vacant space, which equates to a 7.2% vacancy rate for all built space within commercial zoning districts. The 19<sup>th</sup> and Haskell district (30.2%) and the North Lawrence district (16.4%) have the highest vacancy rates.

As a whole, the entire market contains 4,430,580 (48.7%) square feet of space occupied by retail uses as defined by the *Land Development Code*, and 4,019,349 (44.1%) square feet of space occupied by non-retail uses. This breakdown varies greatly by district, with the West 23<sup>rd</sup> Street district, the 19<sup>th</sup> & Massachusetts Street district, 6<sup>th</sup> and Wakarusa, Clinton and Kasold and the South Iowa district having over 70% retail uses. The IL Zoning and Miscellaneous district contained the lowest percentage of retail uses.

Table 2-2	2: Percent of squar	e footage by	district by	use				
		Total	Vaca	ant	Reta	il	Non-R	etail
District	District	Square		%	44-45, 722,	%		%
ID	Name	Footage	Sq. Ft	Sq. Ft	811, 812	Sq. Ft.	Sq. Ft	Sq. Ft
1	Clinton & Kasold	132,156	8,000	6.1%	101,616	76.9%	22,540	17.1%
2	Clinton & Wak.	98,032	2,500	2.6%	35,032	35.7%	60,500	61.7%
3	South Iowa	2,077,377	162,171	7.8%	1,541,562	74.2%	373,644	18.0%
4	Kasold & 15th	71,600	7,200	10.1%	29,300	40.9%	35,100	49.0%
5	Wakarusa & 15th	58,300	4,550	7.8%	27,750	47.6%	26,000	44.6%
6	East 23rd St	497,599	51,700	10.4%	211,711	42.5%	234,188	47.1%
7	West 23rd St	748,725	45,814	6.1%	587,027	78.4%	115,884	15.5%
8	Downtown	1,602,321	149,927	9.4%	652,530	40.7%	799,864	49.9%
9	North Lawrence	318,876	52,379	16.4%	107,217	33.6%	159,280	50.0%
10	19th & Mass.	105,737	11,105	10.5%	87,602	82.8%	7,030	6.6%
11	6th & Wakarusa	387,375	15,000	3.9%	285,877	73.8%	86,498	22.3%
12	9th & Iowa	299,699	6,528	2.2%	82,712	27.6%	210,459	70.2%
13	East 6th	312,987	18,500	5.9%	148,421	47.4%	146,066	46.7%
14	West 6th	1,287,720	14,300	1.1%	382,144	29.7%	891,276	69.2%
15	19th & Haskell	31,412	9,500	30.2%	13,412	42.7%	8,500	27.1%
16	9th Street	165,710	2,000	1.2%	45,406	27.4%	118,304	71.4%
17	Miscellaneous	507,225	35,748	7.0%	84,861	16.7%	386,616	76.2%
18	6th and K-10	0	0	0.0%	0	0.0%	0	0.0%
19	IL Zoning	402,300	56,300	14.0%	6,400	1.6%	339,600	84.4%
	Overall Total	9,105,151	653,222	7.2%	4,430,580	48.7%	4,019,349	44.1%

# Percent of Square Footage by District by Use - 2012



#### 2.b. Historical Trends

As previously stated, this study aims to determine the amount of square footage that lies within the Commercial Zoning districts. In trying to analyze historical trends with the data, it is important to note that some retail uses are permitted in other zoning districts, and for that reason the IL zoning district was also included since retail uses are also allowed in that zoning district.

Previous market studies completed before 2006 used different criteria in determining what square footage should be counted in their numbers. The market study report that was completed by an outside consultant (DSI) for the City in 2005 tried to identify space that was designed for retail uses, independent of their location. The study conducted by Professor Kirk McClure in 1997 also identified space in distinct districts throughout town that were designed for retail uses. Since both of those two previous studies did not identify space with respect to the underlying zoning, and used interpretation to decide what spaces to include, the conclusions reached were based on different sets of assumptions. In addition, since the DSI report, McClure report, and this current report do not use the same assumptions when measuring retail space, it is difficult to compare square footage amounts over time.

As mentioned, this study follows a model developed by staff and used in the 2006 and 2010 Retail Market Reports. The intent is that from each year forward, the model will be followed yielding data that can be compared to reliably provide historical trend information.

The following table details historical trends with square footage amounts. It is important to keep in mind the above mentioned concerns with respect to data collection when analyzing this information, and therefore square footage amounts from 1993 to 2005 cannot be compared to the 2006, 2010 and 2013 numbers.

Table 2-3	3: Square Footage Tren	ds					
Year	Total Square	Avg. Annual					
	Footage	% Change					
		Sq. Footage					
2012	9,105,151	1.7%					
2010	8,800,567	5.3%					
2006							
2005	6,479,100	4.5%					
2000	5,299,404	6.1%					
1997	4,484,011	1.3%					
1995	4,372,183	4.9%					
1993	3,984,509						
Avg. Annu	ial 2006-2012 Change	4.3%					
Avg. Annu	Avg. Annual 2005-2010 Change 7.2%						
Avg. Annu	Avg. Annual 2000-2005 Change 4.5%						
Avg. Annu	ial 1995-2000 Change	4.2%					

While this table shows an increase of over 1.5 million square feet to the market from 2006 to 2010, the majority of that increase is due primarily to three factors: the addition of the IL Zoning district, the construction of new space (primarily on the northwestern side of Lawrence), and the addition of previously uncounted space, that should have been counted in the 2006 study.

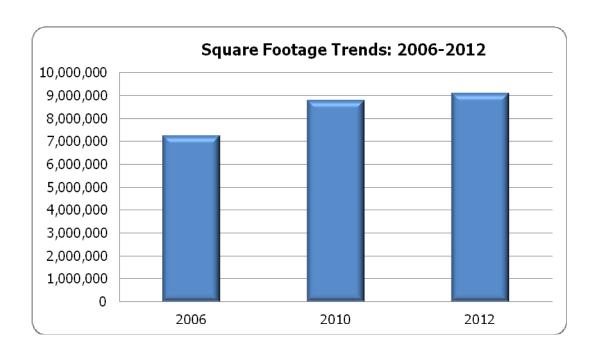
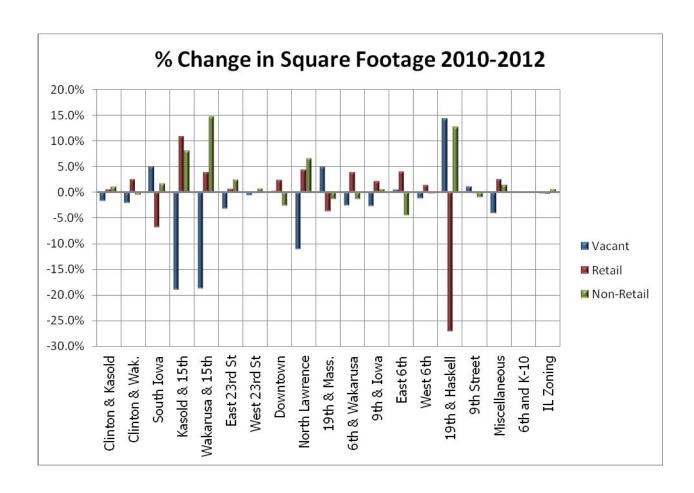


Table 2-	Table 2-4: Comparison of percent of square footage by district by use									
			Vacant	t		Retail		I	Non-Reta	il
		2010	2012		2010	2012		2010	2012	
District	District	%	%	%	%	%	%	%	%	%
ID	Name	Sq. Ft	Sq. Ft	Change	Sq. Ft.	Sq. Ft.	Change	Sq. Ft	Sq. Ft	Change
1	Clinton & Kasold	7.7%	6.1%	-1.7%	76.3%	76.9%	0.6%	15.9%	17.1%	1.2%
2	Clinton & Wak.	4.6%	2.6%	-2.0%	33.2%	35.7%	2.6%	62.2%	61.7%	-0.5%
3	South Iowa	2.7%	7.8%	5.1%	81.0%	74.2%	-6.8%	16.2%	18.0%	1.8%
4	Kasold & 15th	29.1%	10.1%	-19.0%	30.0%	40.9%	10.9%	40.9%	49.0%	8.1%
5	Wakarusa & 15th	26.4%	7.8%	-18.6%	43.7%	47.6%	3.9%	29.8%	44.6%	14.8%
6	East 23rd St	13.6%	10.4%	-3.2%	41.9%	42.5%	0.6%	44.5%	47.1%	2.6%
7	West 23rd St	6.7%	6.1%	-0.6%	78.6%	78.4%	-0.2%	14.7%	15.5%	0.8%
8	Downtown	9.1%	9.4%	0.3%	38.4%	40.7%	2.3%	52.6%	49.9%	-2.6%
9	North Lawrence	27.5%	16.4%	-11.0%	29.2%	33.6%	4.4%	43.3%	50.0%	6.6%
10	19th & Mass.	5.5%	10.5%	5.1%	86.6%	82.8%	-3.7%	8.0%	6.6%	-1.3%
11	6th & Wakarusa	6.5%	3.9%	-2.6%	69.9%	73.8%	3.9%	23.7%	22.3%	-1.3%
12	9th & Iowa	4.9%	2.2%	-2.8%	25.5%	27.6%	2.1%	69.6%	70.2%	0.6%
13	East 6th	5.4%	5.9%	0.5%	43.4%	47.4%	4.0%	51.2%	46.7%	-4.5%
14	West 6th	2.3%	1.1%	-1.2%	28.2%	29.7%	1.4%	69.5%	69.2%	-0.3%
15	19th & Haskell	15.9%	30.2%	14.3%	69.8%	42.7%	-27.1%	14.3%	27.1%	12.7%
16	9th Street	0.0%	1.2%	1.2%	27.6%	27.4%	-0.2%	72.4%	71.4%	-1.0%
17	Miscellaneous	11.2%	7.0%	-4.1%	14.2%	16.7%	2.6%	74.7%	76.2%	1.6%
18	6th and K-10	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
19	IL Zoning	14.3%	14.0%	-0.3%	2.0%	1.6%	-0.4%	83.8%	84.4%	0.6%
	Overall Total	7.3%	7.2%	-0.1%	49.0%	48.7%	-0.3%	43.7%	44.1%	0.4%

While the overall vacancy rate has remained relatively steady over the last six years, there have been wide fluctuations within certain districts between 2010 and 2012. Of note, the Kasold & 15<sup>th</sup> district went from a 29% vacancy rate in 2010 to a 10% vacancy rate in 2012, while the 19<sup>th</sup> and Haskell district went from a 16% vacancy rate in 2010 to a 30% vacancy rate in 2012.

The majority of the districts remained constant in their split between retail and non-retail uses, except the Wakarusa and  $15^{th}$  district and the  $19^{th}$  and Haskell districts , which both showed over 10% more non-retail uses than in 2010. The  $19^{th}$  and Haskell shift is primarily due to the large amount of vacancy in that center at the time of the survey.



## 2.c. Downtown District Analysis

This section provides a detailed analysis of the types of uses located in Lawrence's Downtown district. The data comes from this Retail Market Report, a re-survey of the Downtown district from May 2011, the 2010 Lawrence Retail Market Report, and the 2006 Lawrence Retail Market Report.

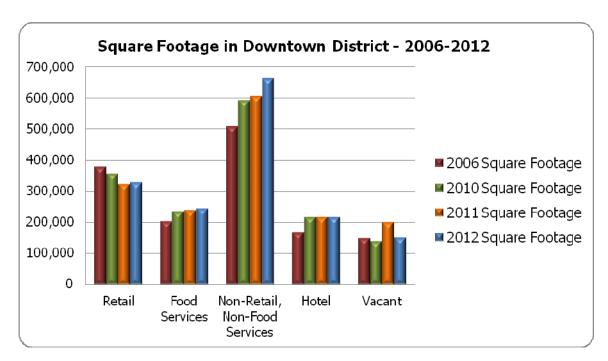
Table 2-5: Squ	Table 2-5: Square Footage by Use in Downtown District - 2006-2012								
Use	2006 Square Footage		2010 Squ Footag		2011 Squ Footag		<del>-</del>		
	#	%	#	%	#	%	#	%	
Retail	378,939	27%	356,205	23%	322,619	20%	328,863	21%	
Food & Beverage Services	202,050	14%	233,900	15%	238,225	15%	243,667	15%	
Non-Retail, Non-Food	F07.17F	260/	503 505	200/	606.045	200/	CC4 F20	410/	
Services	507,175	36%	592,595	39%	606,845	38%	664,530	41%	
Hotel	165,334	12%	215,334	14%	215,334	13%	215,334	13%	
Vacant	148,541	11%	139,305	9%	199,698	12%	149,927	9%	
Total	1,402,039		1,537,339		1,582,721		1,602,321		

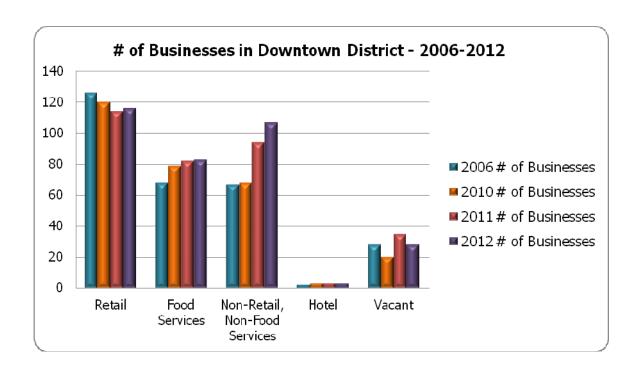
In the Downtown district, the largest use category is Non-retail, Non-food services, which, in 2012 makes up 41% of the total square footage in the Downtown district. Typical uses in this category would be professional offices, financial institutions, light manufacturing uses, religious institutions, and any residential uses. The percentage of total square footage in the Food Services use category, including restaurants, coffee shops and bars, has remained steady since 2006, occupying around 15% of the total square footage, even though the amount of square footage has grown by roughly 41,000 square feet since 2006. Vacant square footage was at 11% in 2006, fell to 9% in 2010, rose to 12% in 2011 and has fallen back to 9% in 2012.

The overall square footage of the downtown district has increased from 2006 to 2012. While only one new structure was physically built during that time, the changes are due to above ground floor spaces being converted to retail or office uses, changes in zoning, and more accurate square footage information being used. For this reason, staff believes comparing the percentage of square footage for each use category is more meaningful then comparing the actual square footage numbers.

Table 2-6: # of E	Table 2-6: # of Businesses by Use in Downtown District - 2006-2012								
Use		2006 # of Businesses		0 # of nesses	_			2 # of nesses	
	#	%	#	%	#	%	#	%	
Retail	126	43%	120	41%	114	34%	116	34%	
Food & Beverage									
Services	68	23%	79	27%	82	24%	83	25%	
Non-Retail, Non-									
Food Services	67	23%	68	23%	94	28%	107	32%	
Hotel	2	1%	3	1%	3	1%	3	1%	
Vacant	28	10%	20	7%	35	10%	28	8%	
Total	291		290		328		337		

While Non-retail, Non-food services uses make up the largest category in terms of square footage, it only makes up the second largest category in terms of the number of businesses. Retail uses have the highest number of businesses, while having only the second highest amount of square footage in the district. Food Services have 15% of the total square footage, but 25% of the total number of businesses.





Overall, the percentage of total square footage that strictly Retail uses are occupying has declined slightly since 2006, while the percentage of total square footage that Food Services uses are occupying have remained constant. The vacancy rate has fluctuated slightly since 2006, but has remained between 9% and 12%.

It should also be noted, that for the most part, only first floor spaces were included in the survey. Areas above the ground floor that were designed and/or occupied for retail uses, the former Riverfront Mall, and hotels were also included in the survey of the downtown area.

#### 3. Demand

# 3.a. Per Capita Analysis

Multiple factors can be used to determine the demand for retail goods within a market. One measure of demand involves population and the rate at which population growth corresponds with growth in retail sales and square footage. Usually this is measured as a *per capita* figure, or an average per person. For 2012, the per capita figures show that the City of Lawrence has roughly 97 square feet of commercial space per capita, and roughly 47 square feet per capita of retail uses within that commercial space. This is a 20% increase in commercial space per capita from 2006 to 2012.

Table	Table 3.1: Per Capita Analysis									
	Pop.	Total Sq.	Per Capita	Retail Sq.	Per Capita Retail Sq.	Total	Per Capita			
Year	Estimate	Footage	Sq. Ft.	Footage	Ft.	Sales Tax	Sales Tax			
2006	89,690	7,249,660	80.8	4,116,547	45.9	\$12,260,437	136.7			
2010	92,727	8,800,567	94.9	4,313,958	46.5	\$12,360,947	133.3			
2012	93,944	9,105,151	96.9	4,430,580	47.2	\$13,593,996	144.7			

There is an inherent difficulty in comparing the data in the Lawrence Retail Market Report with national and regional markets because of the differences in data collection. For example, the International Council of Shopping Centers (ICSC) compiles reports that list the national average for retail space per capita at 46.6 square feet in 2007<sup>6</sup>. This figure is based on data from National Research Bureau (NRB) which includes all shopping centers over a certain size and some free-standing retail establishments over a certain size. This is the same figure that is also used by the U.S. Census Bureau in their 2007 Economic Census and is probably the most closely related to the figure of 45.9 retail square feet per capita noted in table 3.1 above. The figure from the 2012 Retail Market Report is compiled by first calculating all of the space in zoning districts that allow retail uses, then subtracting out the square footage associated with uses that are actually non-retail in nature and dividing the remaining figure by the population. Therefore, the two methodologies differ and it is difficult to compare the figures in a meaningful or direct relationship.

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<sup>&</sup>lt;sup>6</sup> According to the *International Council of Shopping Centers* 

On average, \$145 in sales tax was spent in 2012 per capita. The latest reliable figures available are from the U.S. Census Bureau's Economic Census conducted in 2002, which puts the average per capita sales tax at \$123. The U.S. Census Bureau has stopped figuring a national per capita figure based on tax, and instead now compiles a number based on total dollars spent on retail goods. Trying to convert sales tax collected to amount spent on retail goods for the Lawrence market would be challenging for many reasons, including the fact that the City of Lawrence has multiple different sales tax rates and some were implemented midway through the 2009 collection year.

Table 3-2: Per Capita Sales Tax Trends							
Year	Population	Adjusted Sales	Per Capita				
	Estimates <sup>8</sup>	Tax Collections	Sales Tax				
		2012 Dollars					
2012	93,944	\$13,593,996	\$145				
2011	93,116	\$13,184,668	\$142				
2010	92,727	\$13,015,005	\$140				
2009	91,464	\$13,449,544	\$147				
2008	90,866	\$13,754,269	\$151				
2007	90,311	\$13,790,334	\$153				
2006	89,690	\$13,962,914	\$156				
2005	88,664	\$13,921,096	\$157				
2004	87,184	\$13,903,101	\$159				
2003	85,282	\$13,618,530	\$160				
2002	83,495	\$13,770,331	\$165				
2001	81,457	\$13,923,313	\$171				
2000	80,098	\$13,797,066	\$172				
1995	73,419	\$12,695,769	\$173				
1990	65,608	\$10,692,721	\$163				
Avg. F	er Capita Sale	es Tax 2002-2012	\$152				
Avg. F	er Capita Sale	es Tax 2005-2012	\$149				
Avg. F	Avg. Per Capita Sales Tax 2000-2005 \$164						
Avg. F	Avg. Per Capita Sales Tax 1995-2000 \$173						
Avg. F	er Capita Sale	es Tax 1990-1995	\$168				

<sup>-</sup>

<sup>&</sup>lt;sup>7</sup> U.S. Census Bureau

<sup>&</sup>lt;sup>8</sup> Population Estimates produced by Planning and Development Services Staff

## 3.b. Sales Tax Analysis

As of July 1, 2010, the State of Kansas collects an 8.85% sales tax on goods and services in the City of Lawrence. 6.3% of the total tax goes to the State of Kansas, 1% goes to Douglas County, 1% goes to the City of Lawrence and a special .55% sales tax goes to the City of Lawrence for infrastructure and transit improvements. Sales tax is a measure by which to determine the demand of retail goods and services. There are, however, limitations to the data. Most businesses choose to report their sales tax using a "reporting address", which may or may not be the physical location where the goods or services were sold. In addition, businesses with more than one location need only submit one form to the state. These two problems are inherent to the sales tax system and limit the reliability to which sales tax data may be analyzed. Also, there are confidential limitations to the data that prevents the data from being broken down by district and then broken down again by NAICS category.

Starting with the 2006 Lawrence sales tax collection file provided by the State of Kansas Department of Revenue, each sales tax account number was coded to a district based on address, known name of business, alias, and any other identifying features. For single records that were reporting for multiple locations, a ratio of square footage was used to split the sales tax across all locations. There were numerous records that were either out of state sales shipped to Lawrence locations, or were unidentifiable as Lawrence businesses. The sales tax for those "other" records was incorporated into the totals keeping the same market share percentages of each district intact. Based on those limitations to the data, it is best to determine demand at the district level by comparing the 2006, 2009 and 2012 breakdowns to each other in order to look for variations over time.

Table 3-3	3: Retail Sales Tax	by distric	ct							
			2006	_		2009	_		2012	
			% of			% of			%	of
		% of	Market	Ratio	% of	Market	Ratio	% of	Market	Ratio
		Market	Share	Sales	Market	Share	Sales	Market	Share	Sales
				Tax			Tax			Tax
District	District	Share	Sales	to Sq.	Share	Sales	to Sq.	Share	Sales	to Sq.
ID	Name	Sq. Ft	Tax	Sq. Ft.	Sq. Ft	Tax	Ft.	Sq. Ft	Tax	Ft.
1	Clinton & Kasold	1.6%	3.3%	3.5	1.5%	2.4%	2.3	1.5%	2.3%	2.4
2	Clinton & Wak.	1.4%	0.1%	0.1	1.1%	1.0%	1.3	1.1%	0.9%	1.2
3	South Iowa	27.4%	43.6%	2.7	22.7%	37.0%	2.3	22.8%	38.4%	2.5
4	Kasold & 15th	1.0%	0.6%	1.0	0.8%	0.4%	0.7	0.8%	0.4%	0.8
5	Wakarusa & 15th	0.7%	0.6%	1.4	0.6%	0.5%	1.2	0.6%	0.5%	1.2
6	East 23rd St	5.7%	4.9%	1.4	5.7%	4.6%	1.2	5.5%	4.7%	1.3
7	West 23rd St	9.5%	18.3%	3.3	8.1%	16.3%	2.9	8.2%	16.4%	3.0
8	Downtown	19.3%	13.6%	1.2	17.5%	14.6%	1.2	17.6%	15.0%	1.3
9	North Lawrence	3.8%	1.3%	0.6	3.6%	0.7%	0.3	3.5%	0.4%	0.2
10	19th & Mass.	1.3%	0.5%	0.7	1.1%	0.6%	0.7	1.2%	0.5%	0.6
11	6th & Wakarusa	3.7%	0.8%	0.4	4.3%	8.9%	3.0	4.3%	9.4%	3.3
12	9th & Iowa	3.2%	1.7%	0.9	3.4%	1.6%	0.7	3.3%	1.5%	0.7
13	East 6th	3.7%	1.5%	0.7	3.5%	1.4%	0.6	3.4%	1.2%	0.5
14	West 6th	11.0%	7.1%	1.1	14.6%	6.2%	0.6	14.1%	5.9%	0.6
15	19th & Haskell	0.3%	0.1%	0.3	0.4%	0.6%	2.4	0.3%	0.2%	0.9
16	9th Street	2.2%	0.7%	0.6	1.9%	1.2%	0.9	1.8%	0.9%	0.7
17	Miscellaneous	4.2%	1.2%	0.5	5.6%	1.8%	0.5	5.6%	1.2%	0.3
18	6th and K-10	N/A	N/A	N/A	0.0%	0.0%	0.0	0.0%	0.0%	0.0
19	IL Zoning	N/A	N/A	N/A	3.7%	0.2%	0.1	4.4%	0.2%	0.1
Lawrenc	e Market Overall			1.7			1.4			1.5

Of note, the 6<sup>th</sup> and Wakarusa District increased its share of the market square footage by .6% from 2006 to 2012, but increased its share of the market sales tax by 8.6% during that same time period. Also, the Downtown market remained very stable from 2006 to 2012 with its ratio of sales tax to square feet remaining almost the same; around 1.2 to 1.3. Overall, the ratio of sales tax to square footage market wide has remained steady, hovering between 1.5 and 1.7.

## 3.c. Pull Factors Analysis

A City Trade Pull Factor is an economic indicator that measures the balance of trade. It is computed by dividing the per capita sales tax of the city or county by the statewide per capita sales tax. A perfectly balanced area has a pull factor of

1.00, meaning that the same amount that people spend outside of the area on goods is offset by the amount that people from out of the area come in to the area to purchase. A pull factor less than 1.00 means that more money is being spent elsewhere than is being brought into the area and is seen as an unfavorable balance of trade. A positive pull factor, or one that is greater than 1.00 means that more purchases are being made from people coming from outside of the area than by residents who leave the area to make their purchases. A positive pull factor is seen as a favorable balance of trade.

The Kansas Department of Revenue develops annual reports that detail city and county pull factors. In fiscal year 2009, the City of Lawrence had a pull factor of .99, which was an 11% decline from 2005 to 2009. However, Lawrence's pull factor began increasing in 2010, to a current pull factor if 1.07 for 2012, resulting in a favorable balance of trade.

Table 3.4	Table 3.4: Lawrence Trade Pull Factors and Trade Capture Area Figures									
	Collections	Per Capita	Pull Factor	Trade Area	% of County	Population <sup>9</sup>				
				Capture	Sales					
FY 2012	\$79,524,295	\$896	1.07	94,639	93.0%	88,727				
FY 2011	\$74,699,896	\$852	1.07	93,560	92.8%	87,643				
FY 2010	\$61,696,381	\$674	1.02	93,630	92.4%	91,611				
FY 2009	\$67,723,146	\$696	.99	89,630	92.3%	90,083				
FY 2008	\$63,864,019	\$714	.99	88,638	92.5%	89,415				
FY 2007	\$61,894,678	\$702	1.02	89,985	92.4%	88,168				
FY 2006	\$60,892,108	\$748	1.12	90,982	91.3%	81,379				
FY 2005	\$58,300,971	\$716	1.11	90,058	90.9%	81,417				

In addition, the Kansas Department of Revenue calculates Trade Area Capture Figures that measures the trade area served by the community. It is figured by multiplying the city's population by the pull factor. This number helps to identify the percent of county sales that the city has. In the case of Lawrence, the share that Lawrence has of county sales has risen slightly from 90.9% in 2005 to 93% in 2012.

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<sup>&</sup>lt;sup>9</sup> These population estimates are from the Kansas Department of Revenue.

<b>Table 3.5:</b>	Historical City & County	Trade Pull Factors		
	City of	Douglas		
	Lawrence	County		
FY 12	1.07	.91		
FY 11	1.07	.91		
FY 10	1.02	.86		
FY 09	.99	.85		
FY 08	.99	.85		
FY 07	1.02	.87		
FY 06	1.12	.97		
FY 05	1.11	.99		
FY 04	1.10	.96		
FY 03	1.06	.93		

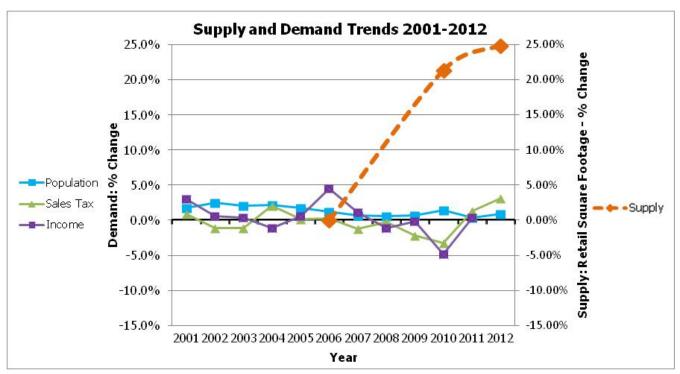
#### 3.d. Historical Trends

It is possible to look at historical data on population, income and sales tax dollar collections since the method for collecting this data has not changed over time. From 2006 to 2011, the population of the City of Lawrence grew an average of .8% a year; however, there was a 1.1% average annual decrease in sales tax collections and a .9% average annual decrease in income after adjusting both monetary figures for inflation. Simply stated, the population generally has been growing at a faster pace than dollars being spent on retail goods and income earned. Most recently, in 2011 and 2012, sales tax figures have been showing positive growth.

Table	3-6: Popula	tion, Sales Tax	and Income Tre	nds		
Year	Population	Avg. Annual	Adjusted Sales	Avg. Annual	Adjusted Per	Avg. Annual
	Estimates <sup>10</sup>	% Change	Tax Collections	% Change	Capita Income	% Change
		Population	2012 Dollars	Sales Tax	2011	Income
2012	93,944	0.9%	\$13,593,996	3.1%		
2011	93,116	0.4%	\$13,184,668	1.3%	\$33,379	0.4%
2010	92,727	1.4%	\$13,015,005	-3.2%	\$33,262	-4.8%
2009	91,464	0.7%	\$13,449,544	-2.2%	\$34,927	-0.2%
2008	90,866	0.6%	\$13,754,269	-0.3%	\$34,989	-1.1%
2007	90,311	0.7%	\$13,790,334	-1.2%	\$35,380	1.1%
2006	89,690	1.2%	\$13,962,914	0.3%	\$35,008	4.5%
2005	88,664	1.7%	\$13,921,096	0.1%	\$33,507	0.6%
2004	87,184	2.2%	\$13,903,101	2.1%	\$33,311	-1.1%
2003	85,282	2.1%	\$13,618,530	-1.1%	\$33,669	0.4%
2002	83,495	2.5%	\$13,770,331	-1.1%	\$33,530	0.6%
2001	81,457	1.7%	\$13,923,313	0.9%	\$33,327	3.0%
2000	80,098		\$13,797,066		\$32,342	
1995	73,419		\$12,695,769		\$27,320	
1990	65,608		\$10,692,721		\$25,048	
Avg. A Chang	nnual e 2006-2011	0.8%		-1.1%		-0.9%
Avg. A Chang	nnual e 2000-2005	2.1%		0.2%		0.7%
Avg. A Chang	nnual e 1995-2000	1.8%		1.7%		3.7%
Avg. A Chang	nnual e 1990-1995	2.4%		3.7%		1.8%

<sup>-</sup>

<sup>&</sup>lt;sup>10</sup> Population Estimates produced by Planning and Development Services Staff



# 4. Conclusion

On the supply side, the City of Lawrence contains over 9 million square feet of space in commercial zoning districts, with the South Iowa, West 6<sup>th</sup> Street, and Downtown districts combined making up more than half of the market. Of that 9 million square feet of space in commercial zoning districts, 49% is occupied by strictly retail uses. The overall Citywide vacancy rate for space in commercial zoning districts is 7.2%. This vacancy percentage is less than the 8% threshold established by *Horizon 2020* and the Land Development Code and remains relatively steady when compared to the 2006 vacancy number of 6.9% and 7.3% in 2010.

The City has numerous projects (over 50,000 square feet) that have received various levels of approvals and are therefore "in process". Together, these projects total roughly 900,000 square feet of retail space being added to the City. These projects are all called out as appropriate land uses in *Horizon 2020*.

Table 4.1: Proposed Projects						
Project	Square					
	Footage					
North Mass <sup>11</sup>	215,000					
Mercato (NE Corner 6 <sup>th</sup> and K-10)	359,640					
Gateway (NW Corner 6 <sup>th</sup> and K-10)	155,000					
Fairfield Farms	200,000					
Total	929,640					

On the demand side, population growth has been slowing down from historical highs of over 4% in the 1990's to an average of less than 1% a year for the last 5 years. The same is true for both incomes and sales tax revenues. The increase in pull factors for the City of Lawrence the last couple of years indicates that there is a fair balance of trade, meaning more money is being spent inside the City than in previous years.

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 $<sup>^{\</sup>rm 11}$  Square footage listed for North Mass is approximate only.

# Memorandum City of Lawrence Planning & Development Services

**TO:** Planning Commission

FROM: Planning Staff

Date: For May 20, 2013 Planning Commission Meeting

RE: CPA-13-00067: Horizon 20202 Chapter 6 and Revised Southern

**Development Plan and** 

Z-13-00071: RM12 to CR: Menards

This memo addresses the various issues related to a request to revise Horizon 2020, the revised Southern Development Plan and rezone property to CR for commercial development. This memo identifies specific development actions/options the Planning Commission could take to support the request as well as provides clarification for items discussed by the Planning Commission during their regular meeting on April 22, 2013.

# Staff Recommended Option if the comprehensive plan amendment and rezoning requests are recommended for approval:

Option 3c: Approve application with the following conditions:

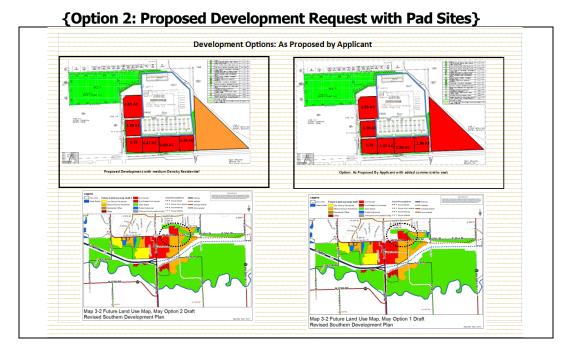
- 1. Condition CR to include 200' buffer along north property line, permitting a reduction in the size of out lots on the Menards site, and designate the adjacent property to the east for future commercial development in the Revised Southern Development Plan.
- 2. Restrict uses to ensure compatibility.

The Planning Commission may take the following actions with regard to the proposed requests:

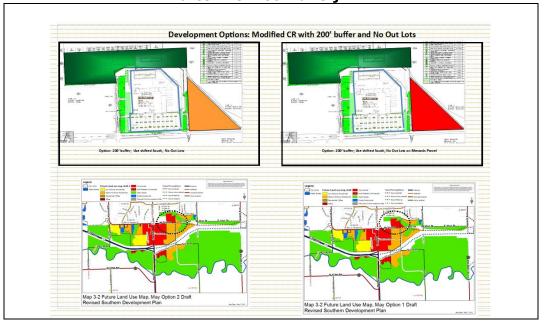
# **Development Options:**

- 1. Deny the applications.
- 2. Approve applications as proposed by applicant.
- 3. Approve applications with conditions:
  - a. Require a 200' buffer along the north property line, limit the development to a single use big box tenant [move building and parking lot forward to frame 31<sup>st</sup> Street] and exclude out lots.
  - b. Require a 200' buffer, single use big box tenant [move building and parking lot forward to frame 31<sup>st</sup> Street], and designate adjacent property to the east for future commercial development.
  - c. Require a 200' buffer, permitting a reduction in the size of out lots on the Menards property, and designate the adjacent property to the east for future commercial development in the Revised Southern Development Plan.

The following graphics depict the Menards project as proposed both with and without the inclusion of commercial land to the east (Snodgrass property). An option for consideration is approving the proposed CR request and amending the Revised Southern Development Plan to extend the commercial area to the east property line of the Menards site and retain medium density residential land use east of the subject property. If approved, the Commission may want to consider expanding the commercial designation to the east incorporating the western portion of the Snodgrass property as shown below. The existing floodplain is designated on the Revised Southern Development Plan as open space. The floodplain/floodway would be a clear terminating feature of commercial use along the north side of W. 31<sup>st</sup> Street.



**{Option 3a and 3b: Proposed Development Request without Pad Sites on Menards Parcel with 200' Buffer}** 



Development Options: Modified CR with 200' buffer and Out Lots

Option: 300' buffer, Pad size storage (togget) Read, Use shifted South

Option: 200' buffer, Pad size storage (togget) Read, Use shifted South

Option: 200' buffer, Pad size storage (togget) Read, Use shifted South

May 3.2 Future Land Use May, May Option 2 Draft
Revised Southern Development Plan.

May 9.2 Future Land Use May, May Option 1 Draft

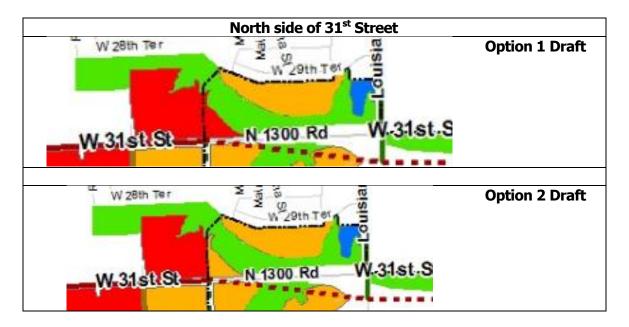
{Option 3c: Proposed Development Request with Pad Sites on Menards Parcel with 200' Buffer}

The submitted concept plan reflects an open area used for stormwater/borrow pit in the northwest portion of the site. It also reflects a 55' wide open space along the remaining north property line. There are a number of ways to provide transitions to less intensive uses, such as berms with dense landscaping, open space, fences, etc. The green space represented in the option above is intended to represent 200' along the north property line. This area abuts existing residential homes. The area also includes an open channel of a tributary to Naismith Creek that is prone to flooding. It is not within the regulatory floodplain. This green space buffer could accommodate passive uses such as stormwater management and multi-modal connection of the bicycle path between 31st Street and Naismith Park.

The remaining portion of this report provides responses and clarification to issues identified at the April PC meeting.

# 1. Land Use Patterns (Refer to attachments Map 3-2 Revised Southern Development Plan Option 1 Draft and Option 2 Draft)

Attached to this memo are revised land use maps for the Revised Southern Development Plan. The regulatory floodplain within the boundary of the Revised Southern Development Plan Area is a significant feature influencing land use patterns, utility extensions, and access.



# a. North Side of 31st Street

The city is actively engaged in acquiring the eastern 5.6 acres of the Snodgrass property for future utility improvements. Utility improvements are typically platted and zoned GPI (General Public and Institutional) District reflecting the public nature of the land use. This known land use will preclude commercial development at the northwest corner of 31<sup>st</sup> Street and Louisiana Street. The attachments show land use along the north side of 31<sup>st</sup> Street updated with a future utility pump station located on the northwest corner of Louisiana Street and 31<sup>st</sup> Street. (Blue Map Area)

The area abutting the Indian Hills neighborhood continues to be reflected as medium density residential in both Option 1 and Option 2. This area is paired with a text discussion in the plan that defines the land use recommendation to not more than 8 dwelling units per acre for density and that building type should be limited to detached, duplex, triplex and rowhouses (Page 24, Revised Southern Development Plan). (Orange Map Area)

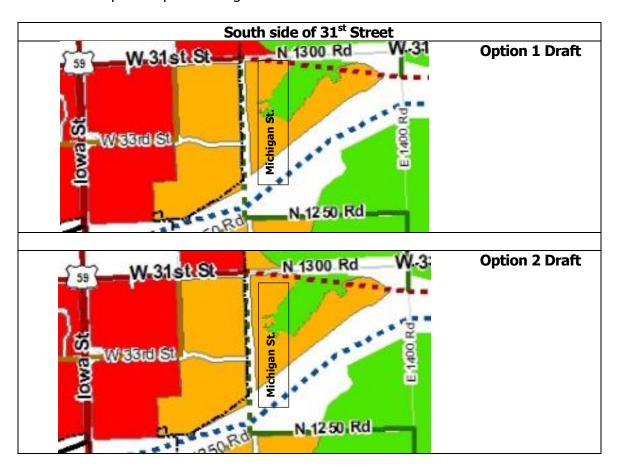
Both options of Map 3-2 show the Menards property as commercial with designated open space along the north property line. The open space shown in this plan reflects the current floodplain boundaries within the study area and recommended open spaces areas as a transitional land use between high intensity and lower intensity land uses. (Green Map Area)

Commercial use is shown for the Menards application as an option noted in the beginning of this memo. The two maps depict that commercial area with and without the addition of the western portion of the Snodgrass property included. (Red Map Area)

#### b. South Side of 31st Street

Residential Land Use along the south side of  $31^{st}$  Street east of Ousdahl Road has been set with the existing development. Commercial uses to the west are bound by Ousdahl Road. The area between Ousdahl Road and Michigan Street has been platted, site planned and constructed as a medium density residential use. The Medium Density residential designation allows residential development to be clustered along  $31^{st}$  street and retain a larger connected open space that is needed for stormwater and flood protections.

Development east of Michigan, south of 31<sup>st</sup> Street is not recommended to change land use in the Revised Southern Development Plan but to continue to be appropriate for medium density residential development. The residential zoning provides a greater protection to the environmentally sensitive floodplain by more rigorous regulatory requirements and by allowing clustered development to offset the wider open space areas. It would mitigate the aesthetic of commercial strip development along 31<sup>st</sup> Street.



#### 2. Land Use transition between commercial and residential uses.

If the Commission finds that the commercial zoning for the Menards project should be supported, then appropriate transition and buffering between the proposed commercial development and the existing residential development should be applied.

# a. Transition and Buffering:

Buffering can be created through the application of multiple techniques including use limitations, setbacks, distance separation, landscaping and screening or a combination of these elements. This application is unique with respect to the proximity to existing development and regulatory floodplain. An appropriately wide buffer will accommodate the needed transition between uses and will provide options to address stormwater along the north property line. Additionally, this area can be used to connect the recreation path between 31st Street and Naismith Park.

## b. Bike Path Connection to be designed

The City's adopted Transportation Plan has for several years shown a future connection between  $31^{\rm st}$  Street and the Naismith Recreation path. Regardless of the type of development this connection is important to the community. This bikeway along the Naismith/Michigan Corridor helps to connect the KU and Haskell campuses, provides a

bikeway corridor parallel to Iowa, will help connect the KU campus and neighborhoods south of campus to the SLT pathway, and helps to build the bikeway network so cycling can become more useful for utilitarian trips. This and all the other bikeway segments the MPO shown on approved **Transportation** 2040 Bikeway System Map are planned for transportation purpose first and are designed to be part



of the region's multimodal transportation system.

## c. Floodplain and Stormwater Requirements

This area is encumbered by regulatory floodplain of Naismith Creek. The creek flows to the south east crossing the northeast corner of the subject property and diagonally through the abutting property to the east. A tributary of Naismith Creek is located along the north property line of the subject property. This tributary is not within the regulatory floodplain. The creek depth along the north property line is not large enough to offset additional impervious surface that will result from development. The provision of a wider riparian area (in the form of a dedicated green space area) will provide an opportunity to alleviate existing and potential drainage issues in this area.



As part of the review of this proposed CR zoning request, preliminary review comments were provided to the applicant regarding the conceptual development of the property. It is important to remember that a formal development submission has not been made other than the specific zoning application. Specific comments provided to the applicant included the following from the City's Stormwater Engineer:

- The Hydrologic & Hydraulic Study dated 2-19-2013 meets the specified requirements and is approved. This H&H Study is for the Naismith Creek floodplain determination only and applies to the zoning request. An additional drainage study will be required for the site proper, specifically the channel running along the north side of the property.
- 2. A Letter of Map Revision (LOMR) will need to be filed with FEMA to revise the floodplain.

The applicant has provided concept plans to staff along with very preliminary grading and stormwater information. The specific development project has not been submitted for official floodplain or site plan review at this time. Based on information contained in the concept plan staff has identified several issues with regard to floodplain regulations that are not compliant with the City's Development Code, one being that the floodplain regulations prohibit fill within the setback areas.

The setbacks for the CR district:				
Front Yard:	25'			
Side Yard Setback:	0' interior when adjacent to a non-residential zone 45' when adjacent to a residential zone			
Rear Yard setback:	30'			

For reference, the applicant's revised plan represents a 55' setback from the north property line.

The floodplain regulations also prohibit storage of materials within the floodplain. This will have an impact on the site design that will be considered with the submission of a subdivision plat and site plan for the site. In addition, the applicant will need to submit an Hydrologic & Hydraulic study for review that shows no change in the water surface elevation.

Any development of this property, regardless of use, will be required to address drainage. If approved, and controlled by one entity, staff recommends that an Hydrologic & Hydraulic study be prepared for the combined properties of the Menards request and the western portion of the Snodgrass property so that floodplain management is considered comprehensively in this area.

The developer should be aware that in addition to local floodplain and stormwater requirements other state and federal permits are required for this property including a 404 permit from the Corps of Engineers, a fill permit from the Division of Water Resources, and a Division of Water Resources Stream Obstruction permit.

The conceptual plan includes a large area along the northwest portion of the property to be excavated for fill to raise the site above the base flood elevation and to further elevate the site closer to the existing street grade. To achieve an elevated pad site, fill, borrowed from within the

site, will result in a deep pond area that will not drain and will be subject to anaerobic activity that results in attracting mosquitos and that can be a safety hazard depending on final design.

The depth and configuration of this borrow pit area should be designed to maximize the stormwater improvements needed in the area. By making the area wider and shallower, the capacity for stormwater is increased and the overall drainage system in an area prone to flooding is improved.

# 3. SLT and the Surrounding Street Network (Refer to attached KDOT Map for reference)

Construction of the east leg of the SLT is expected to begin in December 2013 with completion of the project in 2016. The project includes construction of the east leg of the SLT, construction of 31<sup>st</sup> Street on an offset alignment south of the current centerline between Louisiana Street and the eastern revised alignment of Haskell Avenue.

#### a. Louisiana Street.

Louisiana Street will not have access to the SLT. It will be relocated to the west for the portion south of 31<sup>st</sup> Street and intersect 31<sup>st</sup> Street as a "T" intersection from the north. Louisiana Street will be stop controlled allowing traffic to flow free along 31<sup>st</sup> Street. Appropriate turn lanes will be constructed to accommodate intersection movements. Existing Louisiana Street improvements between 31<sup>st</sup> Street and the Wakarusa River will be removed. The existing ROW will be vacated and added to the adjacent wetlands. A new road segment will be constructed to connect Louisiana Street south of the river to 31<sup>st</sup> Street on an alignment of Michigan Street. This ROW will bridge over the SLT. (SLT Map reference 5.)

Louisiana Street as a bypass for regional traffic and truck traffic is not anticipated. Engineers project that traffic will be reduced over time as travel patterns normalize post SLT/31<sup>st</sup> Street construction. This should not be taken to mean that traffic will decrease on Louisiana Street.

#### b. Haskell Avenue

Haskell Avenue is designed as a folded diamond interchange with SLT and is intended to be desirable to heavier traffic and through traffic in the community. This intersection is designed to be preferable access over Louisiana Street. (SLT Map reference 13).

#### c. 31st Street

A portion of the existing 31st Street improvements will be removed. A new 31st Street will be constructed parallel to the SLT (SLT Map reference 9). Specific access points will be further evaluated as final development proposals along the 31st Street Corridor are developed and submitted. General expectations for access should be considered as the area is platted and site planned to design within these known parameters.

As the area along 31st Street builds out, Louisiana Street intersection improvements such as a traffic signal may be necessary. Traffic will be evaluated through a traffic study AFTER construction AND after traffic patterns have normalized post construction. If approved, the applicant could be required to participate in a future benefit district for specific intersections. This is accomplished through the execution of an agreement not to protest the formation of a benefit district for specific public improvements. This condition is often a standard requirement of the subdivision process.

Direct access to  $31^{st}$  Street is restricted along segments of the corridor per right-of-way acquisition for the SLT project and through adopted access management policies of the City. As such, access to individual parcels will be shared on common property lines or from intersecting side streets.

If the request for CR is approved, it is likely that a 9-acre parcel along the east property line would also be considered for CR zoning (west portion of the Sndograss property). This parcel is currently accessed via an existing residential driveway to 31<sup>st</sup> Street. Land Use Development of the western portion of the Snodgrass property would presume to have shared/common access to 31<sup>st</sup> Street along the west property line or the Michigan Street alignment extended north. This may be developed as a short street extension similar to Ousdahl Road or may be constructed as a commercial driveway with access extended to either property to the east and west.



#### 4. Uses in the CR District

The April Staff Report suggested use restrictions if approved. Certain uses associated with heavy and continuous traffic and noise are not recommended in this specific location because of the proximity to residential uses. If approved, Staff suggests uses be restricted as shown on the attached Table.

#### 5. Retail Market Study Update

**Retail Market Study:** The applicant submitted a project specific retail market study in November 2012 that was reviewed, in the staff report for CPA-13-00067, against the latest available data at that time from the 2010 Retail Market Report. Staff has been in the process of updating the city wide report and the Planning Commission requested that project specific retail market analysis for Menards be updated with the new figures when the item was brought back to their May 2013 meeting. Staff has issued the 2012 Retail Market Report<sup>1</sup> and the following serves as an update to the information presented in the CPA-13-00067 staff report, using the 2012 Retail Market Report figures as a base. The market study includes this analysis for the addition of a Home Improvement Store (189,988 sf) to be located in Phase I of the development. The report also indicates that an additional 65,350 sf will be built as part of Phase II, for a total of 255,328 sf.

Horizon 2020, Policy 3.13 (b) states that, "The project shall not be approved if the market study indicates the commercial project or any proposed phase cannot be absorbed into the

http://www.lawrenceks.org/assets/agendas/cc/2013/05-14-13/cm\_report\_retail\_market\_study.pdf

community within three years from the date of its estimated completion, or that it would result in a community-wide retail vacancy rate greater than eight percent." The Development Code uses a vacancy rate threshold of 8% as one factor in order to determine market health, and the most recent citywide market study (2012) figured the city-wide vacancy rate at 7.2% The addition of this project to those figures show that, when completed and entirely vacant, the construction of the 189,988 sf home improvement store will push the city-wide vacancy rate to 9.1%. If the total square footage for both Phase I and II were constructed (255,328), and vacant, the city-wide vacancy rate would rise to 9.7%. If Phase I were considered occupied, but Phase II were considered vacant, the city-wide vacancy rate would be 7.7%. Staff conducted additional analysis to take into consideration other commercial projects that have received approvals, but have not been constructed to date. The below table illustrates the impact that other projects that have been approved will have on the overall vacancy rate:

	Total Square Feet	Total Occupied Square Feet	Total Vacant Square Feet	City-wide Vacancy Rate
Total Current Retail Inventory	9,105,151	8,451,929	653,222	7.2%
Gateway - NW Corner 6 <sup>th</sup> & K-10 Node	155,000	0	155,000	
Mercato - NE Corner 6th & K-10 Node	359,640	0	359,640	
Fairfield Farms	200,000	0	200,000	
North Mass	215,000	0	217,337	
31 <sup>st</sup> & Ousdahl – Phase I (Mendards)	189,988	0	189,988	
31 <sup>st</sup> & Ousdahl – Phase II	65,340	0	65,340	
Total	10,290,11 9	8,451,929	1,840,527	17.9%

If all commercial space that has been approved were to be constructed and assumed vacant, the city-wide vacancy rate would rise to 17.9%.

Demand factors, such as income, employment and population were also updated with the completion of the 2012 Retail Market Report. From 2006-2011, population increased an average of .8% annually. However, during that same time period retail sales tax collections had an average annual decrease of 1.1% and per capita income had an average annual decrease of .9%, adjusting all dollar figures for inflation. On the supply side of the market, retail stock has shown an average annual increase of 4.3% from 2006-2012. What is important to take away from the above number is that demand has not kept pace with supply as shown by the limited income, population, and retail sales growth.

With the 2012 retail Market Report, in Lawrence there are approximately 97 sf of retail space per capita in 2012. With the addition of this project's square footage to the market, there would be approximately 100 sf of retail space per capita. In Section 20-1107 (c)(3)(iv) of the Land Development Code, a maximum threshold of 100 square feet per resident is

established to help maintain market health. However, this analysis does not take into consideration any of the other approved commercial development. The addition of Mercato, Fairfield Farms, north side of  $6^{th}$  and the K-10, and the remainder of the Bauer Farm development that is approved, but not constructed, would result in a ratio of 110 retail square feet per capita.

The staff report presented at the April 2013 Planning Commission meeting included analysis on pull factors. That analysis showed that as of December 2012, the pull factor for Lawrence was 1.07. Those numbers were the most updated figures. The original staff report, using the 2010 Retail Market Report Data showed that if Phase I and II were constructed and entirely vacant upon completion, the city wide vacancy rate would rise to 9.7%. Using the updated 2012 Retail Market Report, the above analysis shows that the city wide vacancy rate would be 9.6% under the same circumstances. These updated numbers show little change to the original retail market analysis included in the CPA-13-00067 staff report.

# 6. Public testimony:

The hearing process has produced testimony from the public that is mixed. Some in the adjacent and nearby neighborhoods support the proposal as a preferred alternative to the potential for student-based housing and others prefer to maintain the potential for residential uses at the subject property. Members of the Indian Hills neighborhood have expressed concern for maintaining the floodplain/floodway crossing the Snodgrass property as a hard boundary if commercial uses are permitted as requested. This memo attempts to demonstrate that commercial uses east of the floodplain would be challenging for several technical reasons, as well as reasons associated with planning for compatible land uses south of the neighborhood.

#### **CONCLUSION:**

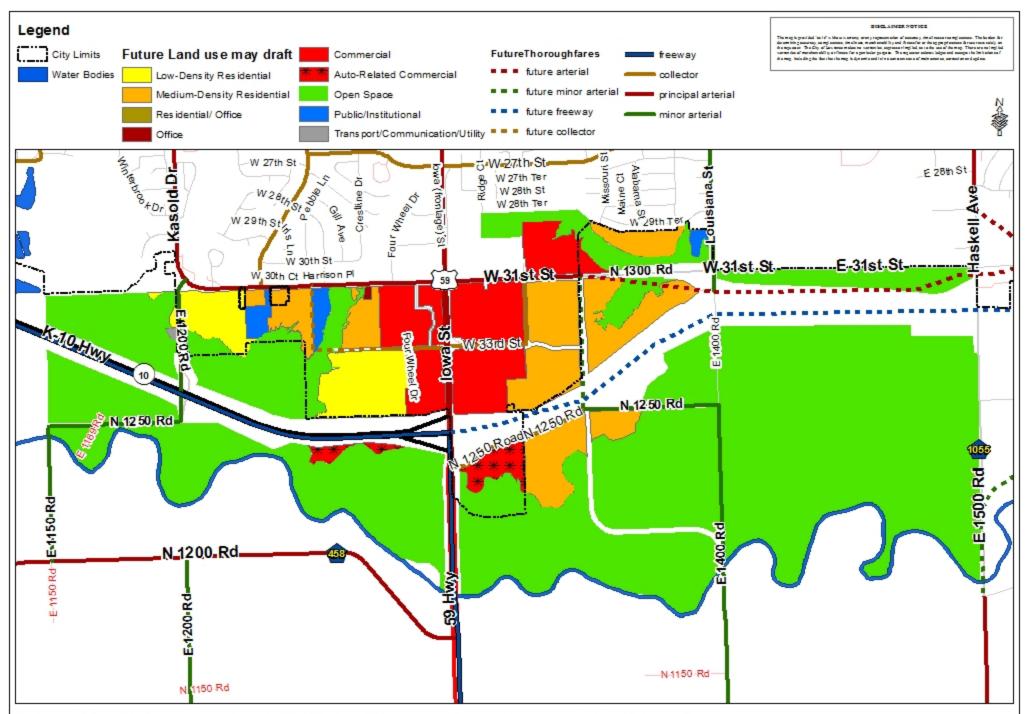
The Revised Southern Development Plan reflects compatible land uses; however, it may not be the only reasonable pattern given considerations exposed during the hearing process for this request. Items of note since the plan was adopted include:

- 1. The SLT is planned for construction, affecting the local street network within the planning area.
- 2. Approval of a student-based residential development on the subject site has left some in the surrounding neighborhoods considering whether commercial development with a transition buffer would be as, or more, compatible with the residences to the north.
- 3. The city has approved other areas for commercial use, but accommodating big box development remains limited to the market.

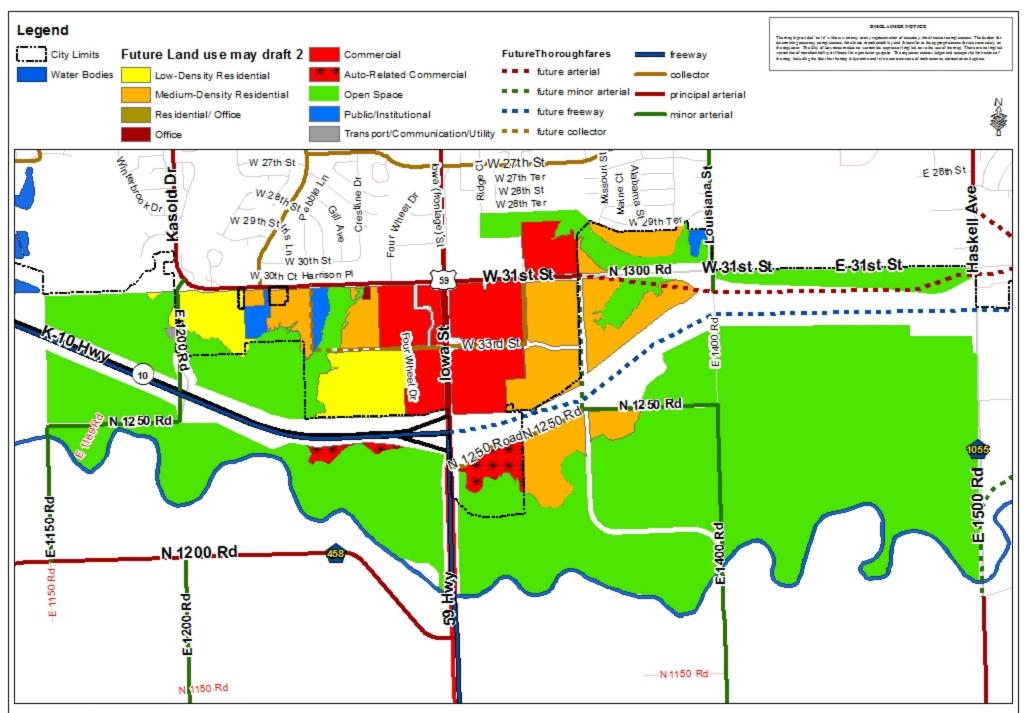
If the Planning Commission determines that the request should be supported, staff recommends that a 200' buffer be required along the north portion of the site, but that Menards have the ability to establish out lots on the remainder of the property. In relation to this, staff recommends that the west portion of the Snodgrass property be designated for commercial uses. Staff recommends that the other areas of the Revised Southern Development Plan be maintained as originally adopted.

The Planning Commission could find the following if the majority consensus is to support the request:

- 1. The subject site provides a reasonable alternative to accommodate a large retail use at a time when there is limited opportunity to locate such a use in the city.
- 2. Public testimony has demonstrated that the request is generally viewed as acceptable if certain conditions are placed on the request.
- 3. Modifying the adjacent property to the east for future commercial uses maintains a compatible pattern of land use and transportation relationships within the Revised Southern Development Plan.

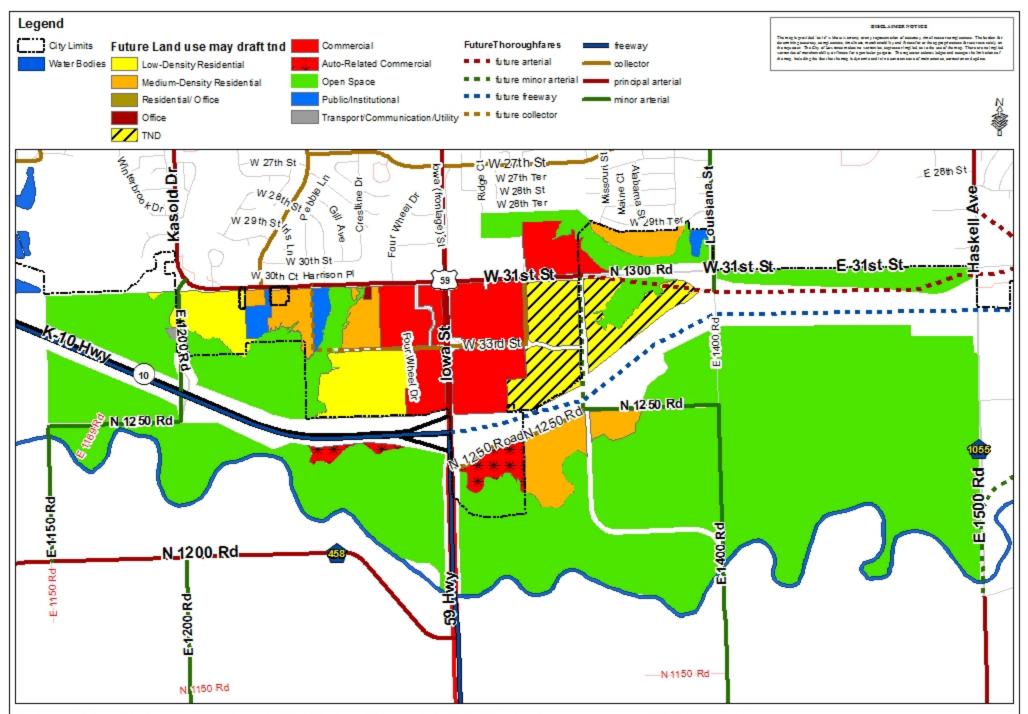


Map 3-2 Future Land Use Map, May Option 1 Draft Revised Southern Development Plan



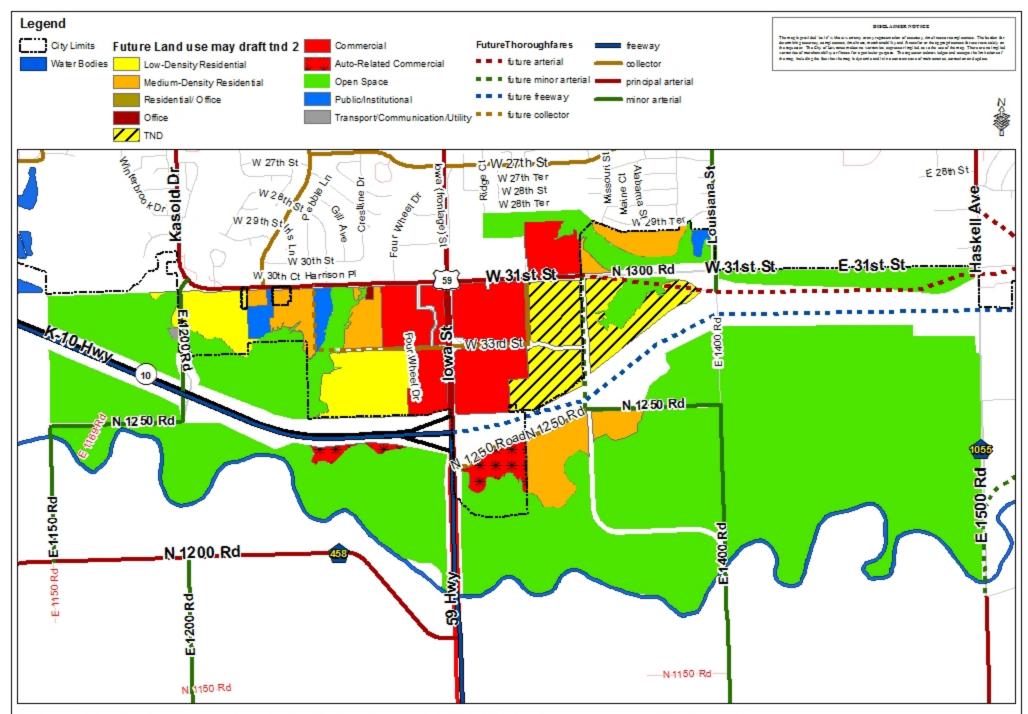
Map 3-2 Future Land Use Map, May Option 2 Draft Revised Southern Development Plan

Map Date: May 7, 2013



Map 3-2 Future Land Use Map, TND May Option 1 Draft Revised Southern Development Plan

Map Date: May 7, 2013



Map 3-2 Future Land Use Map, TND May Option 2 Draft Revised Southern Development Plan

Map Date: May 7, 2013

# PLANNING COMMISSION REPORT Regular Agenda – Public Hearing Item

PC Staff Report 4/22/13

# ITEM NO. 3: HORIZON 2020 CHAPTER 6 AND REVISED SOUTHERN DEVELOPMENT PLAN (MJL)

**CPA-13-00067**: Consider Comprehensive Plan Amendment, CPA-13-00067, to *Horizon 2020* Chapter 6 Commercial Land Use and Chapter 14 Specific Plans, *Revised Southern Development Plan*, to expand the S. Iowa Street commercial corridor east along W. 31<sup>st</sup> Street to include 1900 W 31<sup>st</sup> Street and identify the area as a Regional Commercial Center. Submitted by Menards, Inc.

**STAFF RECOMMENDATION:** Staff recommends denial of this comprehensive plan amendment to *Horizon 2020*, including the *Revised Southern Development Plan*, to change the designated land use from medium-density residential to commercial for the property located at 1900 W. 31<sup>st</sup> Street and recommends forwarding this comprehensive plan amendment to the Lawrence City Commission with a recommendation of denial.

#### **KEY POINTS**

- 1. The S. Iowa Street corridor is classified as an existing Regional Commercial Center with the intersection of S. Iowa and W. 31<sup>st</sup> Streets being a commercial node.
- 2. This is a request to accommodate a Menards home improvement store, as well as additional commercial retail space, at the northeast corner of W. 31<sup>st</sup> St. and Ousdahl Rd.
- 2. The S. Iowa Regional Commercial Center limits the amount of retail to 1.5 million square feet. The center currently contains 1,996,450 square feet and this request would add 255,328 retail square feet in an area outside the designated commercial center, bringing the total for the center to 2,251,778 square feet (2.25 million sf) of retail.
- 3. This area, since the 1970's and through multiple planning efforts, has been identified for residential development including the most recent *Revised Southern Development Plan*.
- 4. Policy 3.11(K) in Chapter 6 of *Horizon 2020* states that existing centers shall not intrude or expand into the surrounding residential or lower-intensity uses. The proposal would expand into a lower-intensity area along an arterial street.
- 5. Policy 3.1(B) in Chapter 6 of *Horizon 2020* states: "Strip Commercial Development: Stop the formation or expansion of Strip Commercial Development by directing new development in a more clustered pattern".
- 6. The submitted market study does not support increasing the amount of commercial use available in this center when other approved locations are taken into account.
- 7. There are limited commercial areas to accommodate a Menards store in the city. W. 6<sup>th</sup> and SLT is one location and there is the potential to extend the Regional Commercial Center south of the S. Iowa and SLT interchange to maintain commercial uses along the S. Iowa Street corridor while taking advantage of the planned S. Iowa St. and SLT interchange. Menards has stated that these locations do not meet their needs at this time.

#### PROJECT SUMMARY

This comprehensive plan amendment (CPA) was requested by Menards, Inc. in order to develop the former Gas Light Village mobile home park located at the northeast corner of W. 31<sup>st</sup> St. and Ousdahl Rd. commercial development. Currently Chapter 6 of *Horizon 2020* states, "Commercial property exists both east and west of S. Iowa Street along 31st Street. Emphasis shall be given to maintaining this commercial node and requests to extend the commercial corridor for additional retail development shall not be considered; however office and office research activities would be appropriate land uses along this arterial corridor." The *Revised Southern Development Plan* which is incorporated by reference into Chapter 14 – Specific Plans, identifies this property as medium-density residential uses.

#### **STAFF REVIEW**

S. Iowa Street corridor is classified as an existing Regional Commercial Center. A Regional Commercial Center attracts and serves a population greater than and beyond that of the community. Within the Regional Commercial Center, nodal development occurs. The S. Iowa Regional Commercial Center is an existing strip commercial development between 23<sup>rd</sup> Street and K-10 with nodal development specifically centering around the intersection of W. 31<sup>st</sup> and S. Iowa Streets. Nodal development requires the clear termination of commercial development within near proximity of an intersection.

#### Area History:

The S. Iowa Street Regional Commercial Center has had a long history of a large amount of commercial space that generally fronts S. Iowa Street, with a small amount of commercial use expanding west and east along W. 31<sup>st</sup> Street. The applicant is requesting extension of the S. Iowa and W. 31<sup>st</sup> Street node beyond its current boundaries to the east along W. 31<sup>st</sup> St. The argument was made that W. 6<sup>th</sup>, 23<sup>rd</sup> and Iowa Streets have similar commercial development and similar traffic counts as the area of S. Iowa and W. 31<sup>st</sup> Streets and should be developed with a similar strip commercial pattern. It was stated that the property east of the Home Depot site would be an island of residential before the undevelopable floodplain further east on W. 31<sup>st</sup> Street making the property suitable for commercial development. Long-range documents have made a point to discontinue strip commercial development along street corridors that are not already stripped out, in favor of nodal development.

Below is a timeline summary of planning and zoning recommendations and actions over the past 20+ years regarding this commercial center. The history reflects continuous support for limiting the commercial node from expanding along W. 31<sup>st</sup> Street. The current commercial uses at the intersection of W. 31<sup>st</sup> and S. Iowa are considered nodal development and is approximately .3 miles west and east of S. Iowa St., along W. 31<sup>st</sup> Street.

- <u>Plan '95</u> Approved in 1977. The plan identifies minimal commercial development on the northeast corner of the intersection of S. Iowa and W. 31<sup>st</sup> Streets and then stepdown of residential to the east. Policy 13 for Commercial Land Use states that strip commercial shall be avoided.
- <u>South Lawrence Trafficway Corridor Land Use Plan</u> Approved July 1989. The proposed land use map limits commercial development to the S. Iowa Street corridor.

- <u>Southern Development Plan</u> Approved January 1994. Commercial land uses were restricted to the corner of W. 31<sup>st</sup> and S. Iowa Streets with areas east along W. 31<sup>st</sup> Street identified for Planned Residential Development.
- <u>City Commission Resolution 5606</u> Approved March 1994. The resolution stated the City Commission endorsed the *Southern Development Plan* Land Use Policies and endorsed the Conceptual Land Use Map with the following amendment: "that no more than 25 acres of the land be used for commercial development in the area identified as PUD, that this commercial development be contiguous, be located as a commercial node at the SLT, and appropriately consider the existing mobile home park located south of 33<sup>rd</sup> Street." (The JC Penney/Cinema development was approved after adoption of the plan and contains approximately 22 acres.) The northeast corner of S. Iowa and W. 31<sup>st</sup> Street remained identified for Planned Residential Development.
- <u>Horizon 2020</u> Approved May 1998. Chapter 6 Commercial Land Use is built around the concept of nodal development. It states that nodal development is the antithesis of strip development and that nodal development concept requires the clear termination of commercial development within near proximity of an intersection. Discussion of the center as it exists today states that "Commercial property exists both east and west of S. Iowa Street along 31st Street. Emphasis shall be given to maintaining this commercial node and requests to extend the commercial corridor for additional retail development shall not be considered; however office and office research activities would be appropriate land uses along this arterial corridor."
- Home Depot Proposed Zoning Change Denied August 2000. Requested to rezone
  entire trailer park to commercial. The proposal was denied based on *Horizon 2020* and
  Southern Development Plan commercial development should not be extended
  east/west along W. 31<sup>st</sup> Street.
- Home Depot Proposed Zoning Change (smaller area) Modified version approved December 2001. The original request for 24 acres was approved with a reduction in commercial area and Tract A rezoned to PRD with a restriction that the property be only used for open space & right-of-way to specifically provide a boundary for the eastern limits of the commercial zoning along W. 31<sup>st</sup> Street.
- <u>Revised Southern Development Plan</u> Approved January 2008. The planning area for the <u>Revised Southern Development Plan</u> was expanded to include property along the W. 31<sup>st</sup> Street corridor to allow the consideration of future transportation issues. The plan identifies the north side of W. 31<sup>st</sup> Street between Ousdahl Road & Louisiana Street as appropriate for medium-density residential development.
- <u>Aspen Heights Development</u> Medium-density residential development approved for this site in 2012 but subsequently abandoned by the developer.

## Horizon 2020:

*Horizon 2020* states that a nodal development concept requires a clear termination of commercial development and has policies regarding the discontinuation of strip type commercial (Policy 3.1(B)). In 2001, when the Home Depot project was approved, the City Commission provided for that clear edge of the S. Iowa and W. 31<sup>st</sup> Street commercial node by zoning a tract at the edge of the development for open space and right-of-way for a transition to the residential to the east. If the subject property is changed to be the new edge of the node, a precedent may be set for requests for the continuation of commercial development east along W. 31<sup>st</sup> Street to Haskell Street where a new interchange is planned for the SLT. This would create strip commercial development similar to W. 6<sup>th</sup> and 23<sup>rd</sup> Streets. Below is a map showing the vacant properties which could potentially become a part of a strip commercial development pattern if requested and approved. The subject property is shown in blue stripe and the vacant or potentially redevelopable property is shown in pink and gray stripe.



The S. Iowa Street corridor is designated as a Regional Commercial Center. Policy 3.11 in Chapter 6 identifies criteria for Regional Commercial Centers. Policy 3.11(C)(3) limits these centers to a maximum of 1.5 million gross square feet of commercial space. Currently the center has 1,996,450 square feet and the addition of this property to the center would continue to be inconsistent with this policy, though intensification of the corridor itself is not necessarily negative given that S. Iowa is an existing strip commercial corridor. Policy 3.11(K) states that existing centers shall not intrude or expand into the surrounding residential or lower-intensity uses. The proposal would not be consistent with this policy.

### Retail Market Study:

The applicant has submitted a project specific retail market study as required by Section 20-1107 of the Land Development Code and Chapter 6, Commercial Land Use of *Horizon 2020*, specifically Policy 3.13. That market study includes all of the required information, including analysis based on vacancy rates, income trends, population trends, mix of businesses, etc. The market study includes this analysis for the addition of a Home Improvement Store (189,988 sf) to be located in Phase I of the development. The report also indicates that an additional 65,350 sf will be built as part of Phase II, for a total of 255,328 sf.

Policy 3.13 in *Horizon 2020* requires a project specific retail market study for projects that would create 150,000 square feet or more of commercial space. Section 20-1107 of the *Land Development Code* applies to zoning or site plan applications that could create 50,000 square feet of retail space. Staff is reviewing the market study based on the *Land Development Code*, in addition to the criteria in *Horizon 2020* and because the criteria in the *Land Development Code* is the most recently adopted set of criteria.

Horizon 2020, Policy 3.13 (b) states that, "The project shall not be approved if the market study indicates the commercial project or any proposed phase cannot be absorbed into the community within three years from the date of its estimated completion, or that it would result in a community-wide retail vacancy rate greater than eight percent." The Development Code uses a vacancy rate threshold of 8% as one factor in order to determine market health, and the most recent citywide market study completed in Fall of 2010 figured the city-wide vacancy rate 7%, slightly higher than the 2006 vacancy rate 6.7%. (http://www.lawrenceks.org/planning/documents/2010Retail.pdf) The market study for this

project shows that, when completed and entirely vacant, the the construction of the 189,988 sf home improvement store will push the city-wide vacancy rate to 8.9%. If the total square footage for both Phase I and II were constructed (255,328) and vacant, the city-wide vacancy rate would rise to 9.6%. Staff conducted additional analysis to take into consideration other commercial projects that have received approvals, but have not been constructed to date. The below table illustrates the impact that other projects that have been approved will have on the overall vacancy rate:

	Total Square Feet	Total Occupied Square Feet	Total Vacant Square Feet	City-wide Vacancy Rate
Total Current Retail Inventory	9,120,567	8,478,372	642,195	7.0%
<b>J</b>	155,000	0	155,000	
Approved Northwest corner – 6 <sup>th</sup> and K-10 Node	155,000	0	155,000	
Mercato	359,640	0	359,640	
Fairfield Farms	200,000	0	200,000	
North Mass	217,337*	0	217,337	
31 <sup>st</sup> & Ousdahl – Phase I (Menards)	189,988	0	189,988	
31 <sup>st</sup> & Ousdahl – Phase II	65,340	0	65,340	
Total	10,307,872	8,478,372	1,829,500	17.8%

If all commercial space that has been approved were to be constructed and assumed vacant, the city-wide vacancy rate would rise to 17.8%.

While the market study shows that the project, upon completion, will push the city-wide vacancy rate above 8%, this figure alone is not an adequate representation of the impact of this development. This figure is computed by assuming that the project will either be entirely vacant upon completion, or that it will cause the same amount of space to become vacant in other areas of town. Because the majority of the retail space is being built to satisfy a specific tenant, the applicant has stated that there is "no possibility" that the space will be vacant upon completion. While new commercial development can lead to vacancies in other parts of town, the current economic conditions have all but halted speculative commercial building in Lawrence. The current development trend is that buildings are built with known users or committed tenants and therefore, it is unlikely that the space will be vacant upon completion.

The applicant has also provided information on the mix of business types and the potential impact on the downtown area. While the main proposed use exists elsewhere in Lawrence, it is expected to have a limited impact on downtown. The only similar use downtown is a small scale hardware store that is not a direct comparison to the large home improvement store being proposed. It is possible that a large store of this use might pull some business away from other mixed-use or smaller scale hardware stores in the area, in addition to the immediately adjacent existing home improvement store, Home Depot. However, the exact impact that this development may have cannot be determined.

Other demand factors, such as income, employment and population need to be taken into account as well, when looking at the overall impact of this project on the market as a whole. The market study does show that from 2000 to 2010, population has grown 11%, income,

adjusted for inflation, has grown 11.3%, while retail sales have only increased 4.8% for the ten year period. On the supply side of the market, retail stock has increased 70% from 2000 to 2010, however, it is important to note that some of that increase is because of changes in the methodology for figuring total retail space. Supply has increased an average of 7% annually, while population and income have only increased an average of 1.1% annually and retail sales have increased only and average of .48% annually since 2000. What is important to take away from the above number is that demand has not kept pace with supply as shown by the limited income, population, and retail sales growth.

The market study also provides an analysis of "pull factors" or a measure of local commerce based on a comparison of local spending to the state as a whole. A pull factor above 1.00 indicates that a community attracts retail sales, while a factor below 1.00 indicates that the community is losing retail sales to outside areas. The Kansas Department of Revenue issues pull factor reports for all of Kansas. The most recent, issued in December 2012, states that Lawrence's pull factor was 1.07 in 2012. In 2000, the pull factor was 1.13, but as recently as 2009, the pull factor was .99. In addition, Douglas County's pull factor has been below 1.00 for the last decade and recently is marked at .90 for 2012. Before 2011 and 2012, the pull factors for both Lawrence and Douglas has been declining since 2000, indicating that the City was losing more retail sales to other areas outside of Douglas County. The marked increase in the City's pull factor these last two years now means that the City is attracting retail sales to the community.

The market study also provides a demand analysis based on the amount of square feet of retail space per capita. Currently, in Lawrence there are approximately 104 sf of retail space per capita. With the addition of this projects square footage to the market, there would be approximately 107 sf of retail space per capita. In Section 20-1107 (c)(3)(iv) of the Land Development Code, a maximum threshold of 100 square feet per resident is established to help maintain market health. It would take more than 5 years for the ratio to fall below 100 sf per capita if no more retail space were added to the market. However, this analysis does not take into consideration any of the other approved commercial development. The addition of Mercato, Fairfield Farms, NW Corner of 6<sup>th</sup> and the SLT, and the remainder of the Bauer Farm development that is approved, but not constructed, would result in a ratio of 117 retail square feet per capita.

The market study satisfies the submission requirements of the Land Development Code and *Horizon 2020*. In staff's opinion, proposals to add retail space should be carefully scrutinized with respect to the indicators associated with demand not keeping pace with supply and because vacancy rates are arguably reaching unhealthy levels. In light of the availability of other suitable commercially zoned sites, including Mercato, NW Corner of 6<sup>th</sup> and SLT, and Fairfield Farms, the fact that retail demand is not keeping pace with supply, the high retail space per capita figures, and a vacancy rate that is approaching unhealthy levels, this project is not supportable based on the market study.

### Other Considerations:

If the Planning Commission wishes to recommend approval of the CPA, staff has provided draft language to Chapter 6 and Chapter 14 - Specific Plans, *Revised Southern Development Plan* to address the requested changes.

The changes to Chapter 6 include revising on pg. 6-15 and 6-16 where the center should be permitted to expand east along W. 31<sup>st</sup> St.

The changes to Chapter 14 include the *Revised Southern Development Plan*, Future Land Use Maps 3-1 and 3-2, to change the current medium-density residential designation to commercial and the land use descriptions as to where the designations are located.

Copies of the revised Chapter 6: Commercial Land Use and Chapter 14: Specific Plans, *Revised Southern Development Plan* are attached to this staff report with the changes marked.

### COMPREHENSIVE PLAN AMENDMENT REVIEW

A. Does the proposed amendment result from changed circumstances or unforeseen conditions not understood or addressed at the time the Plan was adopted?

Applicant Response: When the plan was adopted, it was anticipated that commercial development could be pushed to the outskirts of the city limits and the market conditions would drive the need for more multifamily housing on the interior. Since the economic downturn multifamily housing has decreased significantly because it requires a developer with enough financing to build the housing units with no guarantee of occupancy. The subject tract is 41 acres and because of the shape it would have to be sold as a whole to ensure no parts of the property was not wasted. It is not longer a reasonable expectation that lenders will finance a project of such a large magnitude. Commercial development has also slowed significantly and retailers are becoming much more selective on the sites they choose. If the site will not be profitable they will not make the investment to build there. it is unreasonable to expect retailer to develop on sites that are on the outskirts of the town away from the consumers they are trying to serve. It is very common for retailers to locate near each other to promote multi trip shopping outings and competition. During the time the plan was adopted Lawrence was home to several national big box retailers and 17 acres of additional land required for a large store near the commercial center was not anticipated.

Staff's Response: Horizon 2020 anticipates changes and additions over time. Chapter 6 discusses current commercial developments and future developments. It also outlines how development and redevelopment should occur. The chapter is specific on requiring commercial development to be nodal and not continuing strip development as it has occurred in the past. Commercial nodes have been added or changed over time in order to address type and location. Past plans for this area and the city as a whole have supported nodal development vs. strip type development and not expanding the existing S. Iowa Regional Commercial Center west and east along W. 31<sup>st</sup> Street. The most recent plan, the *Revised Southern Development Plan,* which was approved in 2008, identified the subject property as medium-density residential. That designation was utilized with the recent Aspen Heights plan, though that potential developer choose not to develop at this time. Additionally the apartment complex at the southeast corner of W. 31<sup>st</sup> and Ousdahl established a residential pattern consistent with the sector plan.

Some may consider the approval and forward movement of the completion of the SLT project as a change in circumstances. A land use plan for the SLT corridor was completed in 1989 (*South Lawrence Trafficway Corridor Land Use Plan*) and in general, circumstances have not changed since the completion of this plan. Plans completed since 1989 have maintained limiting the commercial uses along S. Iowa St.

# B. Does the proposed amendment advance a clear public purpose and is it consistent with the long-range goals and policies of the plan?

Applicant Response: Yes, the existing subject property is a former mobile home park. the owner was under contract with another purchaser during 2011 and 2012, during that time the tenants left the park leaving about 10 holdouts, 25 abandoned trailers, and a lot of garbage. Trailer parks provide affordable housing to low income residents, however they also tend to have higher crime rates and are generally not maintained in the same first class condition as a single family house. The park that occupied the subject property was deteriorating and needed some major renovations to the roads and the housing units. Because the park is currently empty it is likely that it would stay that way until a residential developer stepped in with the capital to develop 41 acres of residential units. The second possibility is the park owners restart the former use as a trailer park and operate it under those conditions until it is sold to another user. The third option is that Menards purchases the property and develops all 41 acres into a commercial node attracting additional businesses to Lawrence in a well maintained development. Under this option the land would not site empty and would be developed into a first class retail development center that complements the city of Lawrence and fits well within the character of the neighborhood.

Staff's Response: The proposed amendment is not consistent with the goals and policies outlined in *Horizon 2020* or in the *Revised Southern Development Plan*. Chapter 6 specifically states that the commercial node at S. Iowa and W. 31<sup>st</sup> Streets shall be maintained. Recent amendments to *Horizon 2020* have given direction to offer large retail locations at the intersection of W. 6<sup>th</sup> St and SLT and included discussion regarding expanding the Regional Commercial Center designation south of the SLT on S. Iowa St. Specifically the Mercato development at the northeast corner of the intersection of W. 6<sup>th</sup> and SLT would be the only location that would be able to accommodate a store of that size.

The *Revised Southern Development Plan* identifies the subject property as medium-density residential and the commercial node at S. Iowa and W. 31<sup>st</sup> Street to be maintained.

In order for the proposal to be consistent with long-range plans, changes to the *Revised Southern Development Plan* and Chapter 6 will need to be made.

### C. Is the proposed amendment a result of a clear change in public policy?

Applicant's Response: Menards, Inc. is requesting the amendment because it does not conform with the future land use designation of this property. The long range goals listed in Horizon 2020 include Diversity, Pursuit of Quality, Compatibility, and Sustainability. These goals can be met through the comprehensive design of the development and the developments buildings, landscaping, and open space. The property location on a busy arterial road and access points are ideal for a commercial property however the future land use plan did not take these matters into consideration and designated the property residential. The comprehensive plan was designed to prevent unrestricted commercial growth and encroachment into residential areas. It is the intent of this project to prevent any impacts on the adjacent residential properties and increase the quality of living by providing a new aesthetically appealing commercial development.

Staff's Response: This policy from pg. 6-2 states: Nodal Development is the antithesis of "Strip Development". "Strip Development" is characterized by high-intensity, auto-oriented uses, shallow in depth and extending linearly along a street corridor, with little consideration given to

access management and site aesthetics. The Nodal Development concept requires the clear termination of commercial development within near proximity of an intersection. Further, Policy 3.1B states: "Strip Commercial Development: Stop the formation or expansion of Strip Commercial Development by directing new development in a more clustered pattern".

Public policy has not changed regarding nodal commercial development versus strip commercial development. The policy directs stand alone commercial uses to commercial nodes. In this case, a mostly built commercial center. The description of the commercial center states that commercial development along W. 31<sup>st</sup> Street should not expand in order to maintain the node in its current boundaries. A transitional area has been provided between the existing commercial node edge and planned medium-density residential on the north side of W. 31<sup>st</sup> Street and an existing medium-density residential development on the south side of W. 31<sup>st</sup> Street offers a boundary for the commercial node. A proposal for a medium-density residential development was approved in 2012 for this site and there was no discussion that this site would be more appropriate for commercial development during that process.

### In addition, the following shall be considered for any map amendments:

# A. Will the proposed amendment affect the adequacy of existing or planned facilities and services?

Applicant's Response: The proposed project and amendment will not have a negative impact on any facilities or services. There are no public facilities around the site that could be impacted by the change from residential to commercial. Menards, Inc. is performing the required due diligence on traffic impacts and will be responsible for maintaining adequate intersection operations. All utilities will be analyzed as part of the civil engineering plans and will be reviewed by the city engineering staff prior to any permits being issued.

*Staff's Response*: The property is currently served by existing facilities and services. Further review would be completed as part of site planning to address the potential issues but the property is generally able to be served.

# B. Will the proposed change result in reasonably compatible land use relationships?

*Applicant's Response:* Adjacent to the subject property to the west is the largest commercial node in the City of Lawrence. The Menards development project would extend this commercial development along a well traveled arterial road. The same development has taken place along 23<sup>rd</sup> St. to the north and 6<sup>th</sup> St. along the north edge of town. The land to the east is undevelopable due to the expansive floodway that runs through it, leaving this property as an island of residential in the city's largest commercial district.

Staff's Response: This development conflicts with the nodal development policy by extending an already existing commercial node and transforming it into strip development along W. 31<sup>st</sup> St. The proposal does not meet Goal 2 in Chapter 6 which is to ensure a compatible transition between the commercial development and less intensive uses. There is no transition in land use or zoning to the existing low-density, planned medium-density residential to the east or RS7 zoned property to the north.

# C. Will the proposed change advance the interests of the citizens of Lawrence and Douglas County as a whole, not solely those having immediate interest in the affected area?

Applicant's Response: Yes, the proposed commercial development will draw more consumers into the city of Lawrence increasing the economic impact on the entire community. The project will create 250 new jobs for the Menards store along and depending on the final uses at least 50-200 jobs when the outlots are developed. The city of Lawrence has on national home improvement retailer within 30 miles, this allows that retailer to sell merchandise at a non-competitive pricing. Competition would allow the consumers that will come from 25+ miles to shop in Lawrence to purchase goods at competitive prices increasing the economic value of each trip, and increasing the likely hood of a return trip.

Staff's Response: The expansion of this commercial node will provide new retail opportunities for the community as a whole, as well as potentially attract visitors to the city, contributing non-local dollars to the local economy which can be considered an advancement of the interests of the citizens of Lawrence and Douglas County if the potential is realized.

### PROFESSIONAL STAFF RECOMMENDATION

While staff welcomes the opportunity to accommodate Menards at an appropriate location, the request is not, in staff's opinion, compatible with the existing land use designations of the *Revised Southern Development Plan* and revising the plan is not appropriate for the reasons outlined in this report and when the comprehensive plan policies are reviewed as a whole.

Staff recommends denial of this comprehensive plan amendment to *Horizon 2020*, including the *Revised Southern Development Plan*, to change the designated land use from medium-density residential to commercial for the property located at 1900 W. 31<sup>st</sup> Street and recommends forwarding this comprehensive plan amendment to the Lawrence City Commission with a recommendation of denial.

Findings for recommendation of denial:

- 1. The S. Iowa Street corridor is designated as Regional Commercial Center which limits the amount of retail to 1.5 million square feet. The center currently contains 1,996,450 square feet and this request would add 255,328 retail square feet in an area outside the designated commercial corridor, bringing the total for the corridor to 2,251,778 square feet (2.25 million sf) of retail.
- 2. The proposal is in conflict with *Horizon 2020* Policy 3.11(K) which states that existing centers shall not intrude or expand into the surrounding residential or lower-intensity uses.
- 3. The proposal is in conflict with *Horizon 2020* policy 3.1B which states: "Strip Commercial Development: Stop the formation or expansion of Strip Commercial Development by directing new development in a more clustered pattern."
- 4. This development does not comply with the *Revised Southern Development Plan* which is adopted as part of *Horizon 2020*, Chapter 14: Specific Plans and identifies the subject property as medium-density residential. The applicant has not demonstrated a clear change in public policy or change in circumstances to support a change in the plan.
- 5. The submitted market study does not support increasing the amount of commercial use available at this center when other approved locations are taken into account.

In the event that the Commission desires to accommodate the proposed project, staff has provided draft language in order to make the necessary changes to *Horizon 2020*, including the *Revised Southern Development Plan*.

### CHAPTER SIX - COMMERCIAL LAND USE

The Plan's goal is to strengthen and reinforce the role and function of existing commercial areas within Lawrence and Douglas County and promote economically sound and architecturally attractive new commercial development and redevelopment in selected locations.

#### STRATEGIES: COMMERCIAL DEVELOPMENT

The principal strategies for the development and maintenance of commercial land use areas are:

- Support downtown Lawrence as the Regional Retail/Commercial/Office/Cultural Center with associated residential uses through the careful analysis of the number, scale, and location of other mixed-use commercial/retail developments in the community. Downtown Lawrence is the cultural and historical center for the community and shall be actively maintained through implementation of the adopted design guidelines that regulate the architectural and urban design character of this regional center.
- Establish and maintain a system of commercial development nodes at selected intersections which provide for the anticipated neighborhood, community and regional commercial development needs of the community throughout the planning period.
- Require commercial development to occur in "nodes", by avoiding continuous lineal and shallow lot depth commercial development along the city's street corridors and Douglas County roads.
- Encourage infill development and/or redevelopment of existing commercial areas with an emphasis on Downtown Lawrence and existing commercial gateways. Sensitivity in the form of site layout and design considerations shall be given to important architectural or historical elements in the review of development proposals.
- Improve the overall community image through development of site layout and accessibility plans that are compatible with the community's commercial and retail areas.
- Require new Commercial Centers in the unincorporated portion of Douglas
  County to be located at the intersection of two hard surfaced County Routes or
  the intersection of a hard surfaced county route and a state or federally
  designated highway and no closer than four miles to another Commercial Center
  in the unincorporated portion of Douglas County.

### **NODAL DEVELOPMENT**

The Goals and Strategies in this chapter center on the Nodal Development Concept for new commercial development and the definitions of the four different categories of commercial nodes: Neighborhood, CC200, CC400, and Regional Commercial. The Nodal Development Concept encompasses all four corners of an intersection, although all four corners do not need to be commercially developed. The concept of nodal development shall also be applied to the redevelopment of existing commercial areas when the redevelopment proposal enlarges the existing commercial area. The following text provides a detailed description of the appropriate uses and development patterns for each respective category of commercial development.

Nodal Development is the antithesis of "Strip Development". "Strip Development" is characterized by high-intensity, auto-oriented uses, shallow in depth and extending linearly along a street corridor, with little consideration given to access management and site aesthetics. The Nodal Development concept requires the clear termination of commercial development within near proximity of an intersection. Commercial development that does not occur directly at the corner of an intersection must be integrated, through development plan design and platting with the property that is directly at the intersection's corner. Termination of commercial development can be accomplished through a number of methods, including: 1) Placement of transitional uses, such as office and multi-family to buffer the adjoining neighborhood from the commercial area; 2) restricting the extension of new commercial uses past established commercial areas; and 3) defining the boundaries of the development through the use of "reverse frontage" roads to contain the commercial uses.

### **DESIGN STANDARDS**

The city shall strive to improve the design of shopping areas. The objective will be to work with commercial developers to achieve compact, pedestrian-oriented centers versus conventional strip malls. The overall goal of these standards is to improve community aesthetics, encourage more shopping per trip, facilitate neighborhood identification and support, and make shopping an enjoyable event.

New design standards shall be developed and adopted which better integrate the centers into the surrounding neighborhoods and create a focal point for those that live nearby. They should include elements that reflect appropriate and compatible site design patterns and architectural features of neighboring areas. Site design and building features shall be reflective of the quality and character of the overall community and incorporate elements familiar to the local landscape. Using a variety of building incentives to encourage mixed use development will bring consumers closer to the businesses

Design elements of particular interest that will receive close scrutiny include:

- 1. Site design features, such as building placement, open space and public areas, outdoor lighting, landscaping, pedestrian and bicycle amenities, interfacings with adjacent properties, site grading and stormwater management, parking areas and vehicular circulation (including access management).
- 2 Building design features, such as architectural compatibility, massing, rooflines, detailing, materials, colors, entryways, window and door treatments, backsides of buildings, service/mechanical/utility features and human-scale relationships.

### **COMMERCIAL CENTER CATEGORIES**

The Comprehensive Plan includes recommendations for the improvement of existing commercial areas and the development of compatible new commercial areas. It establishes a system of commercial and retail development that applies to both existing and new development locations. This system involves the designation of different types of commercial areas to distinguish between the basic role and types of land uses and the scale of development. These include the neighborhood, community and regional commercial classifications. The following descriptions are based upon recognized standards formulated by the Urban Land Institute (ULI) and knowledge gathered by the community through past experiences.

An integral component in the description of each commercial center category is the designation of an amount of commercial gross square footage deemed appropriate for each center classification. However, this plan recognizes that there will be instances in which a rezoning request for a commercial district will not be accompanied by a development plan showing the total amount of gross square footage associated with the rezoning request. In such circumstances, part of the commercial rezoning request shall include a statement regarding the maximum amount of commercial square footage that will be permitted with each particular commercial rezoning request.

### Commercial Uses

For the purposes of this section of the Plan, the term "commercial" means retail businesses as defined as one whose primary coding under the North American Industrial Classification System (NAICS) falls into at least one of the following sectors:

- 1. Sector 44-4S: Retail Trade;
- 2. Subsector 722: Food Services and Drinking Places;
- 3. Subsector 811: Repair and Maintenance; and
- 4. Subsector 812: Personal and Laundry Services

### ■ Downtown Commercial Center

The Downtown Commercial Center is the historic core of governmental, commercial, institutional, social and cultural activity. Transitions to adjacent neighborhoods are traditionally provided through alleyways or landscaping improvements rather than a change in use or density. The Downtown Commercial Center is restricted to the historic commercial core of Lawrence. The boundaries of Downtown Lawrence correspond with the boundaries outlined in the "Comprehensive Downtown Plan", and are described as: *starting at the Kansas River, south along Kentucky Street to just south of Vermont Towers, then east to Vermont Street, south along Vermont Street to North Park Street, east along North Park Street to Rhode Island Street, north along the New Hampshire Street alley to 9<sup>th</sup> Street, east on 9<sup>th</sup> Street to Rhode Island Street, then north on Rhode Island Street to the Kansas River.* 

The Downtown Commercial Center is the Regional Retail/Commercial/Office/Cultural Center for the community and is considered a destination driver that attracts and serves the area beyond that of the local community. The Downtown Commercial Center has an established development and architectural/urban design pattern. Unique among commercial centers in Lawrence, the Downtown Commercial Center combines a variety of land uses, including governmental, retail, office, public facilities, institutions, churches, and residential. Linear in

design, the Downtown Commercial Center is focused along Massachusetts Street with New Hampshire and Vermont Streets serving as secondary activity areas. General building patterns are urban. Mixed-use, multi-story buildings are the most common building form and parking is provided on-street and through community parking lots and parking structures.

Building designs and public improvements are focused on providing a pedestrian-oriented commercial experience. Massachusetts Street has a distinct streetscape with sawtooth parking and a focus on first floor (pedestrian oriented) retail use. Vermont and New Hampshire Streets provide the major vehicular movement patterns and provide access to the majority of the community parking areas. Alleyways, which provide service access, are one of the main character-defining elements that distinguish the Downtown Commercial Center from other commercial centers. To ensure there are a variety of commercial uses, the maximum footprint for an individual store is limited to approximately 25,000 gross square feet. One of the keys to the success of the Downtown Commercial Center is the ability to provide a wide range of leasable square footage that is both flexible and capable of being tailored to a specific use. Construction within the Downtown Commercial Center is regulated by a set of design guidelines administered through an Urban Conservation Overlay Zoning District.

An important ingredient to ensuring the continued viability of Downtown is keeping it the center of the city's social and institutional activities. To maintain downtown as the city and County's hub of governmental functions; uses and buildings such as City Hall, the County Courthouse, Municipal Library, Douglas County Senior Center, Fire/Medical Department's Main Office, Police and Sheriff Offices, the Municipal Pool and the Municipal and District Courts shall remain located in Downtown.

### Neighborhood Commercial Centers

The typical nodal development concept for Neighborhood Commercial Centers includes commercial on only one corner of an arterial/collector street intersection or arterial/arterial street intersection. The remaining corners are appropriate for a variety of other land uses, including office, public facilities and high density residential. Commercial development shall not be the dominant land use at the intersection or extend into the surrounding lower-density residential portions of the neighborhood. The surrounding residential area shall be provided adequate buffering from the commercial uses through transitional zoning or lower-intensity developments. Transitions shall be accomplished by using a number of methods, such as intensive landscaping and berming, grouping of lower-intensity developments, incorporation of existing natural land features into site layout and design (ex. open space along a creek), or a combination of these methods.

Neighborhood Commercial Centers may contain a variety of commercial uses, including a grocery store, convenience store, and other smaller retail shops and services such as a barbershop or beauty salon. To insure there are a variety of commercial uses and that no one use dominates a Neighborhood Commercial Center, no one store shall occupy an area larger than 40,000 gross square feet. The only exception is a grocery store, which may occupy an area up to 80,000 gross square feet.

A Neighborhood Commercial Center provides for the sale of goods and services at the neighborhood level. Neighborhood Commercial Centers shall contain no more than a total of 100,000 gross square feet of commercial space with the exception of Neighborhood Commercial Centers that include a grocery store. Neighborhood Commercial Centers that have a grocery store larger than 60,001 gross square feet may have up to a total of 125,000 gross square feet of commercial space.

To ensure that the commercial area in a new Neighborhood Commercial Center has adequate lot size and depth, any proposal for a commercial development shall have a length-to-depth ratio between 1:1 and 3:2.

In order to facilitate the orderly development of future commercial nodes, Lawrence shall attempt to complete "nodal plans" for each future commercial center in advance of development proposals.

If a nodal plan had not been created by the city, the need to create a nodal plan for a specific intersection shall be "triggered" by the first development request (rezoning, plat, preliminary development plan, etc.) submitted to the Planning Department for any portion of the node. The creation of the nodal plan may involve input from landowners within the nodal area, adjoining neighborhoods and property owners, and appropriate local and state entities. The appropriate governing body (City or County Commission) shall approve the nodal plan before development approval within the nodal area can move forward.

### ■ Mixed-Use Redevelopment Center

The City of Lawrence includes areas where existing structures that have not been utilized for their original purposes for an extended period of time, have experienced a high turnover rate, or have remained vacant for an extended period of time and, therefore, are suitable for redevelopment. Such areas present potential opportunities for redevelopment into mixed-use centers, offering a mix of residential, civic, office, small-scale commercial, and open space uses. This mixed use is encouraged in individual structures as well as throughout the area.

Mixed-use redevelopment centers shall include a mix of uses designed to maintain the character of the surrounding neighborhood, achieve integration with adjacent land uses, and be no larger than six acres in size. As such, retail uses within mixed-use redevelopment centers shall not exceed 25% of the net floor area within the subject area, and a single retail shop or tenant shall not occupy more than 16,000 square feet of a ground-floor level, net floor area. Neighborhood integration shall also be accomplished by providing transitions through alleyways and use and landscaping buffers, and by ensuring existing structures are incorporated into the new center where possible. New development shall respect the general spacing, mass, scale, and street frontage relationships of existing structures and surrounding neighborhoods. The City's Historic Resources Administrator shall be contacted if it is likely that historic structures exist within or near the project area.

Centers shall provide multi-modal services, allowing bicycle, pedestrian, vehicular, and, if available, transit options. Pedestrians should be able to navigate the site safely and efficiently, and travel to and from the site with ease. Pedestrian-scaled street furnishings, plantings, and gathering places shall be utilized to allow for social activity in public places. Bicycle parking shall be provided when required by the Zoning Regulations, and transit services shall be incorporated into the design where necessary.

### Mixed-Use Districts

The City of Lawrence includes areas where infill and new development opportunities exist that would appropriately be developed or redeveloped as a mixed-use district. Such areas present

potential opportunities for development and redevelopment as mixed-use districts, offering a mix of residential and non-residential uses. This mixed use is encouraged in individual structures as well as throughout the area. There are also areas that are currently mixed use in nature that should be preserved.

Mixed-use districts shall include a mix of uses designed to maintain the character of the surrounding neighborhood, achieve integration with adjacent land uses, and be no larger than 20 acres in size. Neighborhood integration may also be accomplished by providing transitions through alleyways, variation among development intensity, implementation of landscaping buffers, or by ensuring existing structures are incorporated into the development where possible. New development shall respect the general spacing, mass, scale, and street frontage relationships of existing structures and surrounding neighborhoods. The City's Historic Resources Administrator shall be included in the review process if it is likely that historic structures exist within or near the project area.

Mixed use districts shall provide multi-modal services, allowing bicycle, pedestrian, vehicular, and transit options. Pedestrians should be able to navigate the site safely and efficiently, and travel to and from the site with ease. Pedestrian-scaled street furnishings, plantings, and public spaces shall be planned to be utilized to allow for social activity. Bicycle parking shall be provided when required by the Zoning Regulations, and transit services shall be incorporated into the design where necessary.

### ■ Inner-Neighborhood Commercial Centers

A subcategory of this section is Inner-Neighborhood Commercial Centers. Typically, this is an existing commercial area within an established neighborhood. Existing Inner-Neighborhood Commercial Centers are located at:

- Southeast corner of 12<sup>th</sup> Street and Connecticut Street
- West side of the intersection of 14<sup>th</sup> Street and Massachusetts Street
- Intersection of N. 7<sup>th</sup> Street and Locust Street
- 6<sup>th</sup> Street between Indiana Street and Mississippi Street
- E. 9<sup>th</sup> Street corridor starting at Rhode Island and going east
- Northeast corner of Barker Street and 23<sup>rd</sup> Street
- 7<sup>th</sup> Street and Michigan Street.
- Northeast corner of 13<sup>th</sup> and Haskell

Redevelopment of these existing Inner-Neighborhood Commercial Centers should be facilitated through the use of alternative development standards that allow for reductions in required parking, open space, setbacks, lot dimensions and other requirements that make it difficult to redevelop existing commercial areas

### ■ Community Commercial Center

A Community Commercial Center provides goods and services to several different neighborhood areas. It requires a site of sufficient size to accommodate buildings, parking, stormwater detention and open space areas. Although it may include a food or drug store, it is likely to provide a broad range of retail uses and services that typically generate more traffic and require

larger lot sizes then found in a Neighborhood Commercial Center. Community Commercial Center uses may include hardware stores, video outlets, clothing stores, furniture stores, grocery store, movie theaters, home improvement stores, auto supply and services, athletic and fitness centers, indoor entertainment centers, etc.

### Community Commercial Center (under 200,000 square feet): CC200

The primary purpose of the CC200 category is to provide for the expansion and redevelopment of existing Community Commercial Centers. However, a new CC200 Center can be designated. Expansion of an existing CC200 Center shall not intrude into surrounding residential areas or lower-intensity land uses. Any proposal for commercial expansion or redevelopment occurring in an area designated as a CC200 Center shall include a plan for reducing curb cuts, improving pedestrian connections, providing cross access easements to adjacent properties, and creating and/or maintaining buffering for any adjacent non-commercial uses.

All corners of CC200 Center intersections should not be devoted to commercial uses. CC200 Centers should have a variety of uses such as office, employment-related uses, public and semi-public uses, parks and recreation, multi-family residential, etc.

To insure that there are a variety of commercial uses and that no single store front dominates the CC200 Center, no individual or single store shall occupy more than 100,000 gross square feet. A general merchandise store (including discount and apparel stores) that does not exceed 65,000 gross square feet in size may be located in a CC200 Center. The sum of the gross square footage for all stores that occupy space between 40,000 and 100,000 cannot exceed 50 percent of the gross commercial square footage for the corner of the intersection where it is located. To provide adequate access and adequate circulation, CC200 Centers shall be located at an arterial/collector street intersection or arterial/arterial street intersection.

CC200 Centers shall be located with primary access designed to occur from arterial or collector streets, with secondary access occurring from neighborhood feeder streets or reverse frontage roads. The purpose of the secondary access is to collect internal neighborhood traffic so that accessibility from the adjoining neighborhoods does not require exiting the neighborhood to access community shopping. These secondary access points are intended only for neighborhood traffic. The surrounding street design shall be done in a manner to discourage access to the Commercial Center by non-neighborhood traffic. Pedestrian and bike connection to the neighborhood shall be emphasized along the secondary routes.

In order to facilitate the orderly development of future commercial nodes, Lawrence shall attempt to complete "nodal plans" for each future commercial center in advance of development proposals.

In the absence of a city created nodal plan, the need to create a nodal plan for a specific intersection will be "triggered" by the first development request (rezoning, plat, preliminary development plan, etc.) submitted to the Planning Department for any portion of the node. The creation of the nodal plan may involve input from landowners within the nodal area, adjoining neighborhoods and property owners, and appropriate local and state entities. The appropriate governing body (City or County Commission) shall approve the nodal plan before approval of the development within the nodal area can move forward.

### Community Commercial Center (under 400,000 square feet): CC400

The second category of Community Commercial Centers is the CC400 Center. Although these centers usually average 150,000 gross square feet, they may be as large as 400,000 gross square feet of retail commercial space if justified by an independent market study. CC400 Centers shall be located at the intersection of two arterial streets that have at least a four-lane cross-section or the intersection of a four-lane arterial with a state or federally designated highway.

CC400 Centers shall be located with primary access designed to occur from arterial or collector streets, with secondary access occurring from neighborhood feeder streets or reverse frontage roads. The purpose of the secondary access is to collect internal neighborhood traffic so that accessibility from the adjoining neighborhoods does not require exiting the neighborhood to access community shopping. These secondary access points are intended only for neighborhood traffic. The surround street design shall be done in a manner to discourage access to the Commercial Center by non-neighborhood traffic. Pedestrian and bike connection to the neighborhood shall be emphasized along the secondary routes.

The nodal development concept for CC400 Centers includes the possibility of commercial development on more than one corner of an intersection. The non-commercial corners of a community commercial node are appropriate for a variety of non-commercial retail uses including office, public or religious facilities, health care, and medium- to high-density residential development. Community Commercial development shall not extend into the surrounding lower-density residential portions of neighborhoods. The adjoining residential area shall be provided adequate buffering from the commercial uses through transitional zoning or development. Transitions may be accomplished by using a number of methods, including extensive landscaping and berming, grouping of lower-intensity uses, incorporation of existing natural land features into site layout and design (ex. open space along a creek), or a combination of these methods.

To insure that a specific intersection complies with the CC400 Center nodal standards, a nodal plan for each new CC400 Center must be created. The nodal plan will define the area of the node and provide details including: 1) existing natural features; 2) appropriate transitional uses; 3) appropriate uses for each specific corner of the intersection; 4) access points for each corner; 5) necessary infrastructure improvements; 6) overall flow of traffic in and around the node and the surrounding area; and 7) any other necessary information.

A key element to a nodal plan is the designation of the appropriate uses for each corner of the node, which shall be governed by the above-listed details. Those details will be used to analyze a potential node. The analysis of the node may readily reveal the appropriate use for each specific corner. However, the analysis may reveal that no one use is appropriate for each specific corner, but instead a variety of uses may be considered appropriate for a specific corner. In a situation where all the corners maybe considered appropriate for commercial uses, the location of the commercial space will be dictated by the timing of the development application and the development standards located in this chapter.

In order to facilitate the orderly development of future commercial nodes; Lawrence shall attempt to complete "nodal plans" for each future commercial center in advance of development proposals.

If the city has not created a nodal plan, the need to create a nodal plan for a specific intersection will be "triggered" by the first development request (rezoning, plat, preliminary development plan, etc.) submitted to the Planning Department for any portion of the node. The creation of the nodal plan may involve input from landowners within the nodal area, adjoining neighborhoods and property owners, and appropriate local and state entities. The appropriate governing body (City or County Commission) shall approve the nodal plan before approval of the development within the nodal area can move forward.

At least 95 percent of the commercial gross square footage in a new CC400 Center shall be located on two corners of the intersection. The remaining five percent shall be located on one of the remaining two corners. To comply with the square footage maximum for a CC400 Center and to ensure that the commercial area has adequate lot size and depth, any commercial development proposal for a single corner shall have a length-to- depth ratio between 1:1 and 3:2 and be a minimum of 20 acres in size. Proposals in which the commercial gross square footage is less than ten percent of the total square footage of the proposal do not have to meet the minimum acreage and lot length-to-depth ratio requirements.

No one store in a CC400 Center shall occupy more than 175,000 gross square feet. The sum of the gross square footage for all stores that occupy space between 100,000 gross square feet and 175,000 gross square feet shall not exceed 70 percent of the gross commercial square footage for the corner of the intersection. If a proposal for a corner of the intersection includes more than 100,000 gross square feet of commercial space, the proposal shall include a single store building that has at least 40,000 gross square feet of commercial space.

### Community Commercial Center (under 600,000 square feet): CC600

The third category of Community Commercial Centers is the CC600 Center. The primary purpose of the CC600 center is to provide opportunities for development of new Community Commercial Centers for fringe areas as neighborhoods grow and develop,

These centers allow a maximum of 600,000 square feet of commercial retail space and shall be located at the intersection of two state or federally designated highways. Other uses of a non-retail nature do not have a space limitation. A maximum of 90 percent of the commercial retail square footage in a CC600 center shall be located on two corners of the intersection. The remaining 10 percent shall be located on one or both of the remaining two corners.

CC600 centers should be developed in a nodal development pattern and be part of a specific land use plan that includes the node. The nodal plan shall also address surrounding land uses and provide for adequate transitioning of uses.

### Regional Commercial Centers

A Regional Commercial Center may provide the same services as a Community Commercial Center but should provide a greater variety and number of general merchandise, apparel and furniture stores, among other tenants. Because of the overall scale and mix of uses, a regional retail commercial center attracts and serves a population greater than and beyond that of the

community.

The minimum area for a commercial development plan on any corner is 40 acres and the minimum street frontage is 1,400 linear feet. This will ensure a new Regional Commercial Center is capable of development with the critical mass mixture, including sites for multiple big box buildings, required parking, stormwater detention, and open space areas. A Regional Commercial Center node shall not contain more than 1.5 million gross square feet of retail commercial space. The only location for the next Regional Commercial Center is at the intersection of either two state or federal highways, or the intersection of a street identified on the Major Thoroughfares Map as an arterial street and a state or federal highway.

Development of another Regional Commercial Center will have significant impacts on the Lawrence/Douglas County community and its existing retail centers, and will place increased service demands on the community's infrastructure system. Due to these impacts, consideration of a Regional Commercial Center by the Planning and City Commissions shall utilize the best available information in the analysis, public hearing and decision making process. Therefore, when the next Regional Commercial Center is proposed, an independent market analysis shall be required at the review and analysis stage and prior to public hearing. The entity proposing the Regional Commercial Center shall provide the funds necessary for the city to hire an independent consultant, selected by the applicant from a list of approved consultants established by the city, to perform the market analysis study.

The market analysis study shall be required, at a minimum, to analyze the proposed Regional Commercial Center based on the following criteria: 1) the overall viability of the commercial proposal and the impact of the proposal on the economic vitality and health of the community in the form of impacts on existing commercial centers; 2) the appropriate phasing or timing of development of the ultimate center size based on the community's ability to absorb additional commercial square footage over a three year period; 3) a comparison of the private costs versus public infrastructure and services costs to develop the commercial center proposed; and 4) other factors identified as relevant impacts on the market by either the developer or the city. The three year time period is a typical cycle for a commercial development to go from a concept to the opening of a store.

As with the Community Commercial Center, in order to insure that a specific intersection complies with the Regional Commercial Center nodal standards, a nodal plan for a new Regional Commercial Center shall be created. The nodal plan shall define the area of the node and provide details, including: 1) existing natural features; 2) appropriate transitional uses; 3) appropriate uses for each specific corner of the intersection; 4) access points for each corner; 5) necessary infrastructure improvements; 6) overall flow of traffic in and around the node and the surrounding area; and 7) any other necessary information.

A key element to a nodal plan is the designation of the appropriate uses for each corner of the node, which shall be greatly governed by the above-listed details. Those details will be used to analyze a potential node. The analysis of the node may readily reveal the appropriate use for each specific corner. However, the analysis may reveal that no one use is appropriate for each specific corner, but instead a variety of uses may be considered appropriate for a specific corner. In a situation where all the corners may be considered appropriate for commercial uses, the location of the commercial space will be dictated by the timing of the development application and the development standards located in this chapter.

If the city has not created a nodal plan, the need to create a nodal plan for a specific

intersection shall be "triggered" by the first development request (rezoning, plat, preliminary development plan, etc.) submitted to the Planning Department for any portion of the node. The creation of the nodal plan may involve input from landowners within the nodal area, adjoining neighborhoods and property owners, and appropriate local and state entities. The appropriate governing body (City or County Commission) shall approve the nodal plan before development approval within the nodal area can move forward.

### ■ Existing Strip Commercial Developments

Existing strip commercial development areas are characterized by developments that do not meet current standards for lot dimensions and area, lot frontage, curb cut location(s), or the presence of internal frontage roads for cross access. These areas developed at a time when development standards permitted smaller lots, shallower lot depth, minimum spacing between curb cuts and multiple access points from a site to an arterial street; traffic studies were also not required prior to development at that time. These strip commercial development areas have become obsolete as a result of their inability to adjust to increased traffic volumes and congestion, current needs for site area and depth for redevelopment, and the changing patterns of shopping of the motoring public. As these strip areas become less desirable locations, the ability to redevelop individual lots becomes a matter of both property owner and community concern. The community concern is primarily with the creation of vacant, undeveloped or underdeveloped commercial areas that have the potential to blight the city's gateways.

A combination of innovative tools should be developed to assist owners of lots within the existing strip development areas to redevelop. These tools need to include regulations that provide accommodations for shallow lot depth, the combination of lots and access points, and the creation of cross access between lots to minimize the need for individual lot access to arterial streets. In addition, other tools of a policy nature which would be helpful to redevelopment need to be considered and, where appropriate, adopted by the appropriate governing bodies. These tools may include the ability for establishment of public/private partnerships, special overlay districts, modified development standards for redevelopment based on an adopted redevelopment plan, tools to assist in lot consolidation and purchase, adopted access management plans and access point relocations, special benefit districts for sidewalks and public transportation stops, assistance in acquiring cross access easements, and similar tools providing community benefit.

Existing Strip Commercial Development areas shall not be permitted to expand or redevelop into the surrounding lower-intensity areas. Redevelopment within Strip Commercial Development areas shall be approved only when the redevelopment complies with any adopted redevelopment plan or access management plan for the area. Cross access easements and curb cut consolidation should be considered a standard element of any redevelopment plan, as shall a solid screen or buffer along all property lines that adjoin residentially zoned or developed areas.

### Auto-Related Commercial Centers

A unique type of commercial development is an Auto-Related Commercial Center. These centers include a wide variety of uses such as auto sales and repair, restaurants, hotels, and other similar uses that attract a large amount of the traveling public. However, these uses are not limited to Auto-Related Commercial Centers. A common feature of all these uses is that

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they typically have a small amount of commercial square footage under roof, but require a large amount of acreage for parking or sales display.

Because these centers have a limited variety of uses and a relatively small amount of commercial square footage, Auto-Related Commercial Centers do not fit within the definition of a Community or Regional Commercial Center. These types of centers are very intensive and therefore need to be directed to areas that have an ability to handle the intensive nature of an Auto-Related Commercial Center.

Auto-Related Commercial Centers shall be located at the intersection of two state or federally designated highways. To ensure that the Auto-Related Commercial Centers develop in a planned manner that provides a positive benefit to the community, Auto-Related Commercial Centers shall have a lot length-to-depth ratio between 1:1 and 3:2 and must be a minimum of 20 acres in size.

All the potential locations of an Auto-Related Commercial Center are in areas that serve as "gateways" into the city. Since they are in "gateway" areas, any proposal for an Auto-Related Commercial Center shall be closely scrutinized for architectural appearance, landscaping, signage, etc.

#### Recreational Uses

Commercial uses that are primarily physical recreation in nature (uses such as go-karts, skating rinks, bowling alleys, basketball arenas, soccer arenas, miniature golf, pitch and putt golf, etc.) may be located in the appropriate Commercial Center classification. High levels of noise and light can be generated by Recreational Uses. Because of this high level of noise and light, Recreational Uses shall be compatible with the surrounding existing or planned uses. Proposals for such uses do not need to meet the size or ratio requirements stated in the respective Commercial Center definitions. Proposals for Recreational Uses shall provide adequate buffering for adjacent non-commercial uses, shall use a minimal number of curb cuts, and provide cross access easements to adjoining properties.

If a Recreational Use is proposed in a Neighborhood or CC200 Center, the amount of commercial gross square footage occupied by the Recreational Use shall be counted toward the maximum amount of commercial gross square footage allowed. A Recreational Use located in a CC200 can occupy up to 50,000 gross square feet. The purpose of regulating the size of Recreational Uses in Neighborhood and CC200 Centers is to preserve and protect the smaller, neighborhood scale associated with these types of Centers.

The amount of commercial gross square footage occupied by Recreational Uses located in a CC400 or a Regional Commercial Center shall not be counted toward the maximum amount of gross commercial square footage allowed in the respective Commercial Center. The square footage of a Recreational Use is not included in the total commercial square footage because CC400 and Regional Commercial Centers are typically larger-scale commercial developments. This reduces the impact of the Recreational Use on the scale and massing of the CC400 or Regional Center.

The acreage used to accommodate a Recreational Use may be used to meet the minimum acreage requirements for a respective Commercial Center, if the Recreational Use and

additional commercial uses at the corner of the node are integrated together.

Community facility-type recreational facilities can be located in non-commercial areas if given the extra scrutiny that is associated with the issuance of a special permit such as a Special Use Permit.

### LAWRENCE - EXISTING COMMERCIAL AREAS

Lawrence currently has a number of commercial and retail development areas:

- Downtown Lawrence
- N. 2<sup>nd</sup> Street and N. 3<sup>rd</sup> Street
- Iowa Street (Harvard Street to W. 6<sup>th</sup> Street)
- S. Iowa Street (23<sup>rd</sup> Street to the South Lawrence Trafficway)
- W. 23<sup>rd</sup> Street (Iowa Street to the existing commercial development east of Louisiana Street)
- E. 23<sup>rd</sup> Street (Learnard Street to Harper Street)
- W. 6<sup>th</sup> Street (Alabama Street to Iowa Street)
- W. 6<sup>th</sup> Street (Iowa Street to Kasold Drive)
- W. 6<sup>th</sup> Street and Monterey Drive
- W. 6<sup>th</sup> Street and Wakarusa Drive
- Clinton Parkway and Kasold Drive
- Clinton Parkway and Wakarusa Drive
- 19<sup>th</sup> Street and Massachusetts Street
- 19<sup>th</sup> Street and Haskell Drive
- 15<sup>th</sup> Street and Kasold Drive
- 15<sup>th</sup> Street and Wakarusa Drive
- 9<sup>th</sup> Street (Kentucky Street to Mississippi Street)

Existing commercial areas in Lawrence will need to be upgraded in the future to remain viable in the marketplace. The Plan calls for the incremental improvement of these existing developments through the addition of landscaping and aesthetic improvements as uses change. Some existing developments may be converted to other uses as needs change within the community. Specific land use recommendations for the existing commercial development areas are provided below.

### Downtown Lawrence

Throughout the development of this Plan, the need to preserve, improve and enhance Downtown Lawrence has been shown to have broad community support. Goals and policies in the Plan are written to ensure Downtown Lawrence remains competitive and viable as a Regional Retail Commercial Center. Downtown Lawrence shall remain the Regional Retail/Commercial/Office/Cultural Center because it is: 1) a physical and cultural symbol of the strength of the community; 2) a gathering point for many civic and cultural functions; 3) the "historic core" of the community which establishes a vital continuity between the past and the present community; and 4) the site of major public and private investment.

The Comprehensive Downtown Plan reiterates the specific functions of a downtown. These

functions include provisions for a retail core, office space, entertainment services, peripheral residential development, cultural facilities (including performing arts, museums and libraries) community social needs (including club and organizational meeting facilities), government offices and facilities, health services, convention and hotel facilities. The Comprehensive Downtown Plan also states this area should provide, "the economic, physical and aesthetic environment around which the populace can develop an intense pride in the community, a focal point for identification and drawing together for common interests, a meeting place where people can communicate and relax -- the heart of the city".

To distinguish Downtown Lawrence from other commercial and retail areas, and to preserve and enhance its role in the community, Downtown Lawrence is designated as the Regional Retail/Commercial/Office/Cultural Center and shall be the only location within the planning area developed for such use. Gateways to Downtown Lawrence should be emphasized and enhanced to contribute to the "sense of place" of this unique area of the community.

The distinction as the Regional Retail/Commercial/Office/Cultural Center, above and beyond other commercial areas within the community, is significant. Downtown Lawrence serves the greater needs of the community as a focal point for social, community and governmental activities. The Plan's goals and policies encourage the continued development of a broad mix of uses in downtown Lawrence with an emphasis on retail as a major land use. It is vital to the community's well-being that Downtown Lawrence remain the viable Regional Retail Commercial Center.

For Downtown Lawrence to remain economically stable and vital there is a need to expand the boundaries beyond the current configuration illustrated in the adopted Comprehensive Downtown Plan. This anticipates the need to provide additional parking areas and locations for commercial and public-related development in the future. At this time, the Comprehensive Plan does not recommend areas for downtown expansion, but opportunities for expansion and redevelopment do exist within the current boundaries of Downtown Lawrence. Action to expand Downtown Lawrence can only be reasonably undertaken following a comprehensive reevaluation of downtown needs, assets, growth potentials, use mix, and preferred locations for conservation and development. Re-study of the Comprehensive Downtown Plan should explore the following options to improve Downtown Lawrence: development of a comprehensive parking plan and implementation schedule, evaluation of transportation options, improvement of access to downtown from the east, west and south, and inclusion of more uses along the river and integration of these developments into downtown.

### • N. 2<sup>nd</sup> Street and N. 3<sup>rd</sup> Street

The Comprehensive Plan recommends that N. 2<sup>nd</sup> Street and N. 3<sup>rd</sup> Street play an enhanced role in the community as a commercial corridor, acting as an important entryway/gateway to Lawrence. This corridor is considered to be an Existing Strip Commercial area. The Comprehensive Plan identifies the intersection of the N. 3<sup>rd</sup> Street and I-70 as a possible location for an Auto-Related Commercial Center.

Marginal, obsolete and underutilized sites and incompatible uses along this corridor should be redeveloped or reconstructed. For example, existing heavy industrial uses along the northern portion of the corridor should be relocated within the planning area and the sites redeveloped with compatible commercial, service or retail uses. New development and redevelopment shall

include improved parking, signage and landscaping improvements that enhance the overall aesthetic and environmental conditions along the corridor. The city should encourage and work with land owners to undertake property improvement within the area. The city should consider special financing mechanisms, such as benefit districts or tax increment financing to assist in private and public improvement projects for the area.

Historically, the North Lawrence area including the N. 2<sup>nd</sup> and N. 3<sup>rd</sup> Street corridor has had repeated floodwater and stormwater problems. The Comprehensive Plan recommends that a comprehensive drainage study be completed as soon as possible and before any additional new development occurs along the N. 2<sup>nd</sup> Street and N. 3<sup>rd</sup> Street corridor. The study shall be a joint project between the city and private property owners. The drainage study shall provide a plan for addressing existing flooding and stormwater problems, as well as devising a plan for dealing with additional runoff from future development in the area.

# • N. Iowa Street (Harvard Road to W. 6<sup>th</sup> Street)

N. Iowa Street is considered an existing Community Commercial Center limited to 200,000 square feet of commercial gross square footage (CC200 Center). The N. Iowa Street area includes a variety of independent developments and the Hillcrest Shopping Center. Most parcels within the northern segment are already developed. Future development and redevelopment shall occur within the existing commercially zoned areas and shall emphasize coordinated access control and transition yard improvements with adjoining residential areas.

### • S. Iowa Street (23<sup>rd</sup> Street to K-10)

S. Iowa Street is considered an existing Regional Commercial Center. S. Iowa is a strip development that is intensely development between 23<sup>rd</sup> Street and K-10. The corridor connects with existing commercial development along 23rd Street. With recent development at the northeast corner of 31<sup>st</sup> Street and Iowa Street, and the location of several discount stores in close proximity to one another, this commercial corridor has evolved into a Regional Commercial Center, serving regional shopping and entertainment needs.

K-10 provides a physical barrier and edge to the commercial corridor that has developed. Additional retail commercial uses shall not occur south of the highway, except for the possible location of an Auto-Related Commercial Center. Two of the four corners of the intersection have existing auto-related uses. Located at the northwest corner is a hotel and an automobile dealership is located on the northeast corner. Because of access to two major highways (K-10 and US-59) the area south of K-10 could be a location for an Auto-Related Commercial Center. Both corners are an appropriate location for an Auto-Related Commercial Center, provided that the floodplain issues for the southwest corner can be addressed.

Commercial property exists both east and west of S. Iowa Street along 31st Street. Emphasis shall be given to maintaining this commercial node and requests to extend the commercial corridor for additional retail development shall not be considered; however office and office research activities would be appropriate land uses along this arterial corridor.

In general, development and redevelopment along the Iowa Street segment shall emphasize consolidated access, frontage roads, coordinated site planning and design, and high quality development. Development signage should be in scale with sites and should complement and

not compete with signage of adjoining parcels. Improved landscaping would enhance the visual appeal of the corridor. Landscaped transition yards should be established between residential and non-residential uses.

# • W. 23<sup>rd</sup> Street (Iowa Street to the existing commercial development east of Louisiana Street)

The W. 23<sup>rd</sup> Street corridor is an Existing Strip Commercial area. The commercial development along W. 23<sup>rd</sup> Street is the prototypical "strip development" that is centered on the automobile. This area was once considered to be one of Lawrence's most desirable locations for a retail business. However, the status of the W. 23<sup>rd</sup> Street corridor as a highly desirable retail location has been supplanted by retail developments at South Iowa and in the western portion of the city.

The 23<sup>rd</sup> Street corridor will remain an important commercial location in the city. For the segment of the corridor between S. Iowa Street and Tennessee Street, the Plan emphasizes visual site improvements related to signage, landscaping and development design. A key factor in the long-term stability of this area is the improvement of traffic access and operations as properties along this corridor redevelop. If access and circulation are not simplified and the area made comfortable to the motorist, shoppers may seek other portions of the community in which to do business. In cooperation with property owners, the city should undertake parkway landscaping improvements. This action, coupled with placing utility lines underground (wherever practical), will help to improve the physical image of the area. All new development or redevelopment occurring along this corridor shall be required to consolidate curb cuts and provide access easements to adjoining properties.

Landscape and screening improvements between commercial and residential areas are particularly important along this segment where development is compact and differing land uses are situated in close proximity.

# • E. 23<sup>rd</sup> Street (Learnard Street to Harper Street)

E. 23<sup>rd</sup> Street is an Existing Strip Commercial Development. Redevelopment and infill opportunities are available along the entire corridor and are emphasized along the older commercial segment of 23<sup>rd</sup> Street, east of the Santa Fe Railroad. This area has historically been a "fringe location" and has not been developed as intensively as the western section of 23rd Street. The Comprehensive Plan recommends the area maintain a community commercial focus. A substantial amount of property exists between Haskell Avenue and Harper Street that should be redeveloped to geographically balance commercial development occurring in other areas of the community. The area should become more retail and office in orientation. Future development and redevelopment shall include parcel consolidation and re-subdivision to establish properly sized and configured commercial sites to encourage a coordinated and unified development pattern.

Like the Iowa Street corridor, emphasis is also placed on improved and coordinated signage in scale with development, as well as on minimizing curb cuts on 23rd Street.

# • W. 6<sup>th</sup> Street (Alabama Street to Iowa Street)

This is the oldest section of the W. 6<sup>th</sup> Street corridor and is an Existing Strip Commercial Development. There are a variety of uses along this corridor, but the primary two are fast food restaurants and medical offices and supplies. This section is typical strip development with small individual lots, each with a curb cut onto W. 6<sup>th</sup> Street. The Comprehensive Plan does not recommend the expansion of this area beyond the property currently zoned commercial or office. All new development or redevelopment occurring along this corridor shall be required to consolidate curb cuts and provide access easements to adjoining properties.

# • W. 6<sup>th</sup> Street (Iowa Street to Kasold Street)

This portion of the W. 6<sup>th</sup> Street corridor is an Existing Strip Commercial Development. The development patterns along this section of W. 6<sup>th</sup> Street are newer than eastern portion of W. 6<sup>th</sup> Street. However, the commercial area is still a "strip development", characterized by numerous curb cuts and intensive retail development fronting the majority of W. 6<sup>th</sup> Street. The Comprehensive Plan does not recommend the expansion of this area beyond the property currently zoned commercial or office. All new development or redevelopment occurring along this corridor shall be required to consolidate curb cuts and provide access easements to adjoining properties.

# • W. 6<sup>th</sup> Street and Monterey Way

The intersection of W. 6<sup>th</sup> Street and Monterey Way is an existing Neighborhood Commercial Center with a nodal development pattern. The Comprehensive Plan does not recommend expanding the commercial uses beyond the existing commercially zoned property.

### • W. 6<sup>th</sup> Street and Wakarusa Drive

The intersection of W. 6<sup>th</sup> Street and Wakarusa Drive is an existing Community Commercial Center limited to 200,000 square feet of commercial gross square footage (CC200 Center) with a nodal development pattern. While this intersection is designated a CC200 Center, there already exists more commercial gross square footage at the intersection than is recommended for a CC200 Center.

Portions of the intersection of W. 6<sup>th</sup> Street and Wakarusa Drive are still developing. However, the southern half of the intersection is almost completely developed and shall not be expanded beyond Congressional Drive to the west. The northern half of the intersection is undeveloped. Commercial development of this portion of the intersection shall not extend beyond Overland Drive (extended) to the north, Congressional Drive (extended) to the west; and Champion Lane (extended) to the east. Development proposals for the northern portions of the intersection shall include not only commercial uses, but also a variety of other uses including office, community, recreational and multi-family uses.

### • Clinton Parkway and Kasold Drive

The intersection of Clinton Parkway and Kasold Drive is an existing Neighborhood Commercial Center with a nodal development pattern. The Comprehensive Plan does not recommend expanding the commercial uses beyond the existing commercially zoned property.

# • Clinton Parkway and Wakarusa Drive

The intersection of Clinton Parkway and Wakarusa Drive is an existing Neighborhood Commercial Center with a nodal development pattern. The Comprehensive Plan does not recommend expanding the commercial uses beyond the existing commercially zoned property.

### • E. 19<sup>th</sup> Street and Massachusetts Street

The intersection of 19<sup>th</sup> Street and Massachusetts Street is an existing Neighborhood Commercial Center with a nodal development pattern. The Comprehensive Plan does not recommend expanding the commercial uses beyond the existing commercially zoned property. New development and redevelopment proposals for this area shall include plans for the consolidation of curb cuts and provision of cross access easements to adjoining properties.

### • E. 19<sup>th</sup> Street and Haskell Avenue

The southeast corner of the intersection of E. 19<sup>th</sup> Street and Haskell Avenue is an existing Neighborhood Commercial Center with a nodal development pattern. The commercial zoning at this intersection includes the city park property on the southwest corner of the intersection. The Comprehensive Plan does not recommend expanding the commercial uses beyond the current commercial zoning at the southeast corner. Enhancement of the corner's existing retail space is highly encouraged. Like the Inner-Neighborhood Commercial Centers, this area would benefit from a reduction in development standards that would increase the potential for redevelopment.

### • W. 15th Street and Wakarusa Drive

The intersection of W. 15<sup>th</sup> Street and Wakarusa Drive is an existing Neighborhood Commercial Center with a nodal development pattern. The southeast corner is commercially zoned. The current uses at this corner are a bank and small shopping center. The Comprehensive Plan does not recommend expanding the commercial uses beyond the existing commercially zoned property.

### • W. 15th Street and Kasold Drive

The northeast corner of the intersection of W. 15<sup>th</sup> Street and Kasold Drive is an existing Neighborhood Commercial Center with a nodal development pattern. The commercial zoning at this intersection includes the southwest corner. The Comprehensive Plan does not recommend the expansion of commercial uses beyond the footprint of the existing retail uses on the northeast corner.

# • W. 9<sup>th</sup> Street (Kentucky Street to Illinois Street)

This area is an existing Neighborhood Commercial Center with a strip development pattern that serves as a gateway into Downtown Lawrence. The group of buildings at the northeast corner of W. 9<sup>th</sup> Street and Indiana Street has a scale and configuration of structures similar to Downtown Lawrence. The majority of the development along this corridor is characterized by stand-alone structures with multiple curb cuts. New development and redevelopment proposals

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along this corridor shall include consolidation of curb cuts and cross access easements to adjoining properties. Because the corridor serves as a gateway to Downtown Lawrence, the Downtown Architectural Design Guidelines should be amended to specifically address this area.

Existing Commercial Areas	Strip	Nodal	Approximate Built Square Footage*	Neighborhood Commercial	Existing Strip Commercial	CC200	CC400	Regional Commercial
Downtown	X		1.3 million					Х
N. 2 <sup>nd</sup> St and N. 3 <sup>rd</sup> St	Х		225,000		X			
Iowa (Harvard Rd to W. 6 <sup>th</sup> St)		Χ	190,000			Х		
S. Iowa (23 <sup>rd</sup> St to K-10)	Χ		1.3 million					X
W. 23 <sup>rd</sup> St (Iowa St to Louisiana St)	Χ		660,000		Х			
E. 23 <sup>rd</sup> St (Learnard St. to Harper St.)	Χ		190,000		Χ			
6 <sup>th</sup> St (Alabama to Iowa St)	Χ		140,000		X			
W. 6 <sup>th</sup> St (Iowa to Kasold)	Χ		209,000		Χ			
W. 6 <sup>th</sup> St & Monterey Way		Χ	100,000	X				
W. 6 <sup>th</sup> St &Wakarusa Dr		Χ	400,000			X		
Clinton Pkwy & Kasold Dr		Χ	110,000	Χ				
Clinton Pkwy & Wakarusa Dr		Χ	28,000	Χ				
E. 19 <sup>th</sup> St & Massachusetts St		Χ	95,000	Χ				
E. 19 <sup>th</sup> St & Haskell Ave		Χ	27,000	Χ				
W. 15 <sup>th</sup> St & Kasold Dr		Χ	50,000	Χ				
W. 15 <sup>th</sup> St & Wakarusa Dr		Χ	19,000	Χ				
9 <sup>th</sup> St (Kentucky St to Illinois St)	Χ		40,000	Χ				

<sup>\*</sup> This column includes all approved gross square footage of commercial space.

Linear and Nodal development definitions follow the definitions found on page 6-2.

The definitions of Neighborhood, Existing Strip Commercial, CC200, CC400, and Regional Commercial Centers are on pages 6-3 through 6-12.

A list of existing Inner-Neighborhood Commercial Centers is found on page 6-7.

### **LAWRENCE - NEW COMMERCIAL AREAS**

All new commercial and office development shall occur in accordance with the plan recommendations. New commercial, retail and related uses shall be developed as a node with shared parking areas, common access drives, and related design and appearance. Nodes shall be positioned and oriented to the primary street intersections where they are located, avoiding a "strip" pattern as a result of extension of commercial uses along the streets from where the node originated.

Commercial nodes include other important community services and facilities, such as satellite post offices, police, fire and emergency services, religious facilities, community centers and other services and institutions. Inclusion of these uses assists the integration of the commercial area into the overall neighborhood, serving multiple communities and service needs in a single location, and creating physically distinctive use areas apart from traditional commercial areas.

The Comprehensive Plan includes recommendations for the location of new commercial development. As the community grows, it may be necessary to change the recommended location of a Commercial Center(s) or not use a designated intersection for a commercial uses. If there is a need to move the recommended location of a Commercial Center or downgrade the recommended size of a center, the Comprehensive Plan shall be amended. Through the amendment process, the proposed location and/or change in size of the Commercial Center will be reviewed based on the effects the change will have on infrastructure systems, the surrounding land uses, the neighborhood and the community-at-large.

The Comprehensive Plan does not support increasing the size or number of new Commercial Centers, however small, new inner-neighborhood centers are possible and/or anticipated as part of an overall new planned neighborhoods.

### • Inner-Neighborhood Commercial Centers

New Inner-Neighborhood Commercial Centers shall be allowed in very unique situations, such as when Center is part of an overall planned neighborhood development or can be easily integrated into an existing neighborhood. Inner-Neighborhood Commercial Centers are to be an amenity to the adjacent residents and serve only the immediate neighborhood.

A new Inner-Neighborhood Commercial Center shall have no gas pumps, drive-thru or drive-up facilities. The Center shall be pedestrian oriented and have no more than 3,000 gross square feet of commercial space. The Center shall be located on a local, collector or arterial street. It may also take access from an alley. Inner-Neighborhood Commercial Center uses may include book stores, dry cleaning services, food stores, beauty salons, etc. Inner-Neighborhood Commercial Centers may also include residential uses.

New Inner-Neighborhood Commercial Centers shall be designed as an integrated part of the surrounding neighborhood so that appearance of the commercial area does not detract from the character of the neighborhood.

Horizon 2020 does not specifically indicate the location of new Inner-Neighborhood Commercial Centers due to their unique situations.

### • Neighborhood Commercial Centers

The Comprehensive Plan recommends the following intersections as potential locations for new Neighborhood Commercial Centers.

- 1. Franklin Road extended and E. 28th Street extended
- 2. E 1500 Rd and N 1100 Rd
- 3. E 1000 Rd and N 1000 Rd
- E 1000 Rd and N 1200 Rd
- 5. Clinton Parkway and K-10
- 6. W. 15<sup>th</sup> Street and K-10
- 7. E 800 Rd and at the potential east/west arterial 1 mile north of US-40
- 8. E 700 Rd and US-40
- 9. E 800 Rd and N 1500 Rd
- 10. E 1000 Rd and N 1750 Rd
- 11. E 1500 Rd and US Highway 24/40

These areas are all intended for development as small, compact commercial nodes that provide goods and services to the immediately adjoining neighborhood areas. They shall be developed in a manner that is consistent with the goals, policies and recommendations of the Comprehensive Plan.

### • Community Commercial Centers (CC200)

The Comprehensive Plan recommends the following intersection as potential location for a new CC200 Centers.

1. E. 23<sup>rd</sup> Street and O'Connell Road

### • Community Commercial Centers (CC400)

The Comprehensive Plan recommends the following intersections as potential locations for new CC400 Centers.

- 1. Eastern leg of the SLT and K-10 (southeast of the intersection of E 1750 Rd and K-10)
- 2. US-59 and N 1000 Rd

The development of these nodes shall carefully follow the commercial goals and policies. Commercial development shall not occur in advance of market conditions that would support such development, nor shall it be permitted to occur in a manner that is contrary to adopted city infrastructure plans.

### • Community Commercial Centers (CC600)

The Comprehensive Plan recommends the following intersection as potential location for a new CC600 Center.

1. W. 6<sup>th</sup> Street and K-10

### • Auto-Related Commercial Centers

The Comprehensive Plan recommends the following intersections as potential locations for new Auto-Related Centers.

- 1. I-70 and K-10
- 2. US-59/40 and I-70
- 3. US-59 and K-10

### • Regional Commercial Centers

The need for development of a new Regional Commercial Center within the community is not anticipated within the planning period. Consideration of requests to expand existing commercial areas shall include the potential for development of additional Regional Commercial Centers and the impact of such expansion and development on the existing commercial inventory. The need for additional regional commercial development within the community shall be evaluated on a regular basis, based upon updated land use and population data. Before a new Regional Commercial Center is considered, the Comprehensive Plan shall be amended to include the possibility of a new Regional Commercial Center.

#### UNINCORPORATED DOUGLAS COUNTY - EXISTING COMMERCIAL AREAS

Unincorporated Douglas County currently maintains a variety of commercial areas. Each of these areas provides neighborhood level retail goods and services to both farm and non-farm residents. As the rural areas of Douglas County continue to receive new non-farm residential development, demands will increase for retail goods and services.

It is recommended that these commercial locations be developed as small convenience service nodes, providing products to meet the day-to-day requirements of rural residents. The development of these nodes shall follow the basic principles described for commercial development or redevelopment. It is important that these commercial locations provide for adequate wastewater treatment facilities in the future. Any new or expanded developments shall utilize treatment systems that minimize potential environmental impacts.

The design of these locations should be consistent with the rural character of Douglas County. Therefore, design and development standards should promote larger, more spacious settings and encourage building and site design reflective of the unique characteristics surrounding each location.

### UNINCORPORATED DOUGLAS COUNTY - NEW COMMERCIAL AREAS

Commercial locations in both unincorporated Douglas County and Douglas County communities together provide reasonable accessibility in terms of distance and the type of goods and services available. As Douglas County continues to urbanize, the need for additional commercial space in the unincorporated portions of Douglas County will increase. New commercial areas shall not be located within a four mile radius of any existing commercial area. There are already a number of existing commercially zoned areas in the unincorporated portions of Douglas County. Most of these locations are well placed at the intersection of a hard surfaced County Route and a state or federally designated highway.

Areas that are already zoned commercially and are located at the intersection of a hard surfaced county route and state or federally designated highway should be expanded to serve any increased demand for commercial space in the county. The Comprehensive Plan recommends that only one new commercial area be created in the unincorporated portion of the county. The southeastern area of the county does not have any commercially zoned areas. To serve this area a commercial development could be located at the intersection of US-56 and K-33 or US-56 and County Route 1061.

A limiting factor to the size of any commercial development in unincorporated Douglas County will be the availability of utilities, particularly water and sanitary sewer. Any on-site treatment system shall be designed to minimize its impacts on the environment. The amount of gross square footage of a commercial development shall be limited to a total of 15,000 gross square feet to serve the surrounding rural area.

Commercial activities related to conference, recreational, or tourism uses associated with Clinton Lake, Lone Star Lake, or Douglas County Lake shall be exempt from the locational criteria applied to new commercial areas or expansions of existing commercial areas. A commercial area serving the recreational needs (boat rental, bait shop, lodging, etc.) of persons using the county's lake facilities may be located at an entrance point to a lake.

Conference, recreational, or tourism uses located in the Rural Area, and which include some significant level of urban development, shall satisfy the criteria listed in Chapter Four. Such uses shall also include a mandatory minimum 200' natural buffer area or other appropriate distance as determined by the Board of County Commissioners. Proposed conference, recreational, or tourism facilities shall include a site specific site plan with rezoning applications to demonstrate that the criteria listed in Chapter 4, and the 200' buffer area, have been met.

# Revised Southern Development Plan

April 2013 Draft

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### INTRODUCTION

### **Background and Purpose**

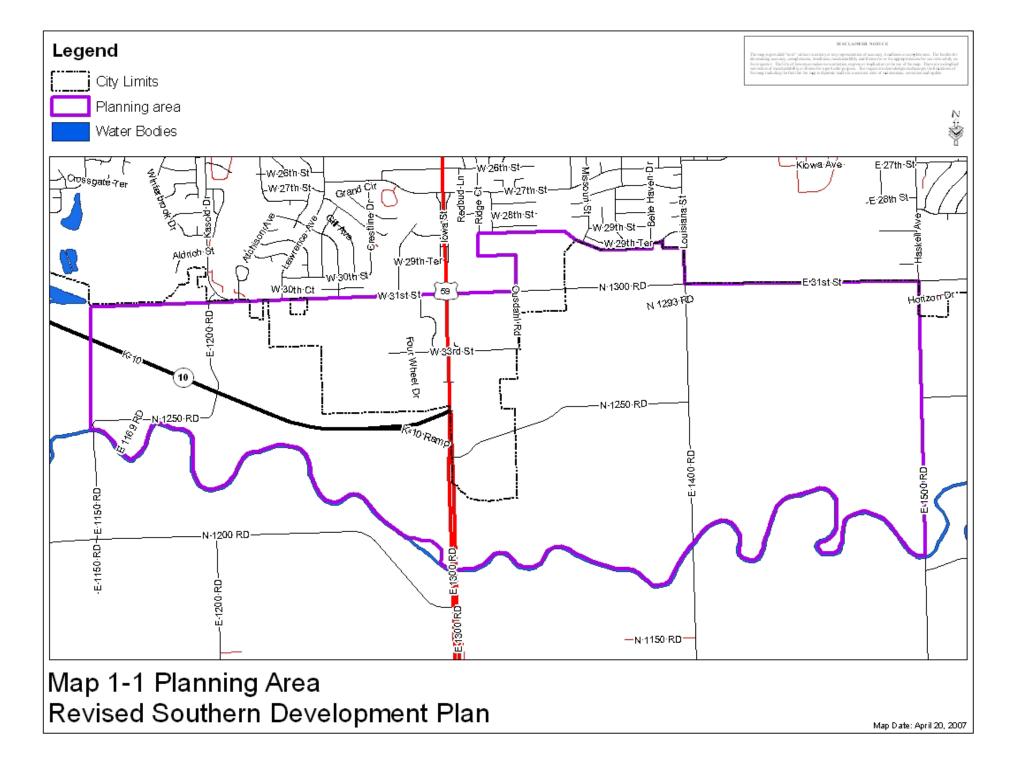
The original Southern Development Plan was adopted March 1, 1994 by the Lawrence City Commission. This plan covered an area roughly bounded on the north by W. 31<sup>st</sup> Street, to the west by Kasold Drive, to the south by the north bank of the Wakarusa River, and to the east by Louisiana Street. This land was historically used for agricultural purposes and with the growth of the city moving south and west, a guide for development was needed. The study area has not developed to the extent that the Southern Development Plan had anticipated, and the plan needs to be updated.

The purpose of the *Revised Southern Development Plan* is to update the boundaries of the study area and update the plan regarding land use, existing facilities, and transportation to show current information. Also, updated land use policies, and future land use maps are needed to reflect the current conditions and current community visions.

### **Description of Planning Area**

The planning area for the *Revised Southern Development Plan* has been expanded to include property along the W. 31<sup>st</sup> Street corridor to allow the consideration of future transportation issues. The adjusted planning area for the *Revised Southern Development Plan* contains approximately 2,260 acres, and is shown on Map 1-1. The planning area is contained as follows:

- to the north: W. 31<sup>st</sup> Street and the properties north of W. 31<sup>st</sup> Street between Ousdahl Road and Louisiana Street;
- to the west: E. 1150 Road extended;
- to the south: the north side of the Wakarusa River;
- to the east: E. 1500 Road (Haskell Avenue).



## **Policy Framework**

Horizon 2020 serves as the overall planning guide and policy document for this plan. In addition to Horizon 2020, guiding policy is also obtained in other adopted physical element plans. Together, these plans serve as the general "umbrella" policies under which the plan is developed. Listed, these plans are:

- Horizon 2020, The Comprehensive Plan for Lawrence and Unincorporated Douglas County. Lawrence-Douglas County Metropolitan Planning Office. 1998.
- Transportation 2025, Lawrence/Douglas County Long Range Transportation Plan. Lawrence/ Douglas County Metropolitan Planning Office and LSA Associates. September 2002.
- Lawrence-Douglas County Bicycle Plan, Lawrence/ Douglas County Metropolitan Planning Office. May 2004.
- Lawrence Parks & Recreation Department A Comprehensive Master Plan.
   Leon Younger & PROS. 2000.
- 31<sup>st</sup> Street Corridor Study, Iowa Street to County Route 1057. TransSystems Corporation. January 28, 2003.
- City of Lawrence, Kansas Water Master Plan. Black & Veatch. December 2003.
- City of Lawrence, Kansas Wastewater Master Plan. Black & Veatch. December 2003.

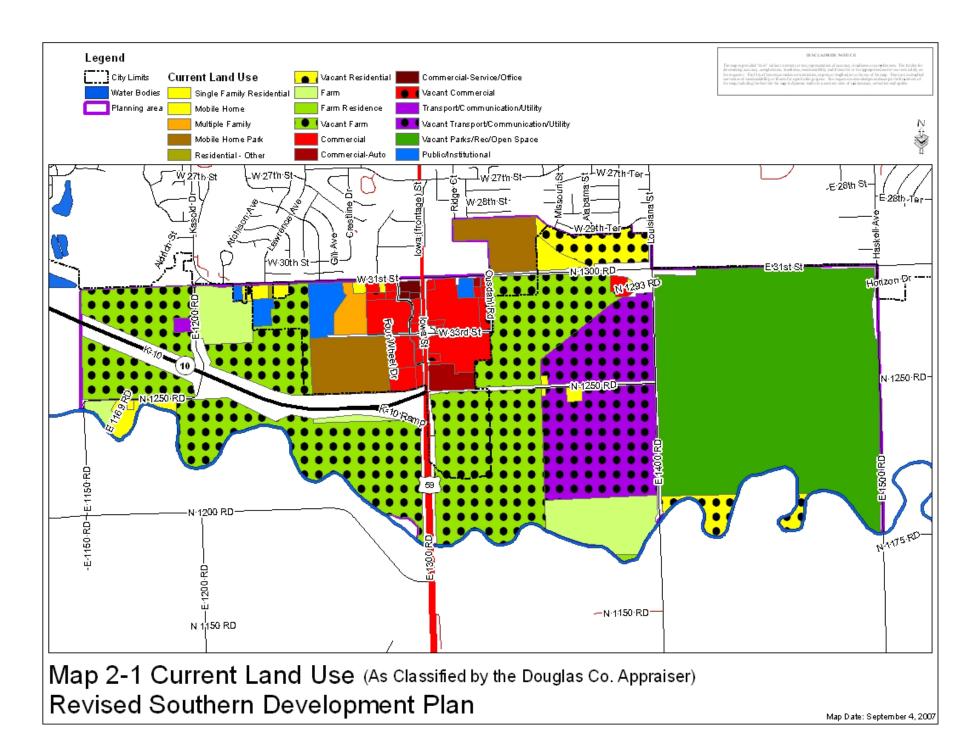
## **EXISTING CONDITIONS**

#### **Current Land Use**

The *Revised Southern Development Plan's* current land uses vary from farmland to commercial uses within its approximately 2,260 acres. According to the Douglas County Appraiser's Office, the majority of the acreage is categorized as Parks/Rec/Open Space and Commercial land uses. These two uses comprise of over half of the planning area's acreage. The appraiser's land use acreage totals excludes most road right-of-ways.

Table 2-1

Appraiser's Land Use Classification	Acres
Single Family Residential	37.03
Mobile Home	0.74
Multiple Family	16.48
Mobile Home Park	96.87
Residential - Other	0.87
Vacant Residential	63.44
Farm	111.40
Farm Residence	1.41
Vacant Farm	692.24
Commercial	104.16
Commercial-Auto	13.69
Commercial-Service/Office	4.38
Vacant Commercial	8.10
Transport/Communication/Utility	3.51
Vacant Transport/Communication/Utility	89.08
Vacant Parks/Rec/Open Space	763.22
Public/Institutional	31.52
TOTAL	2,038.13



## **Current Zoning**

The City of Lawrence *Land Development Code* and the *Zoning Regulations* for the Unincorporated Territory of Douglas County are intended to implement the goals and policies in *Horizon 2020* in a manner that protects the health, safety, and general welfare of the citizens. The *Land Development Code* and the Douglas County *Zoning Regulations* establish zoning regulations for each land use category which development must follow.

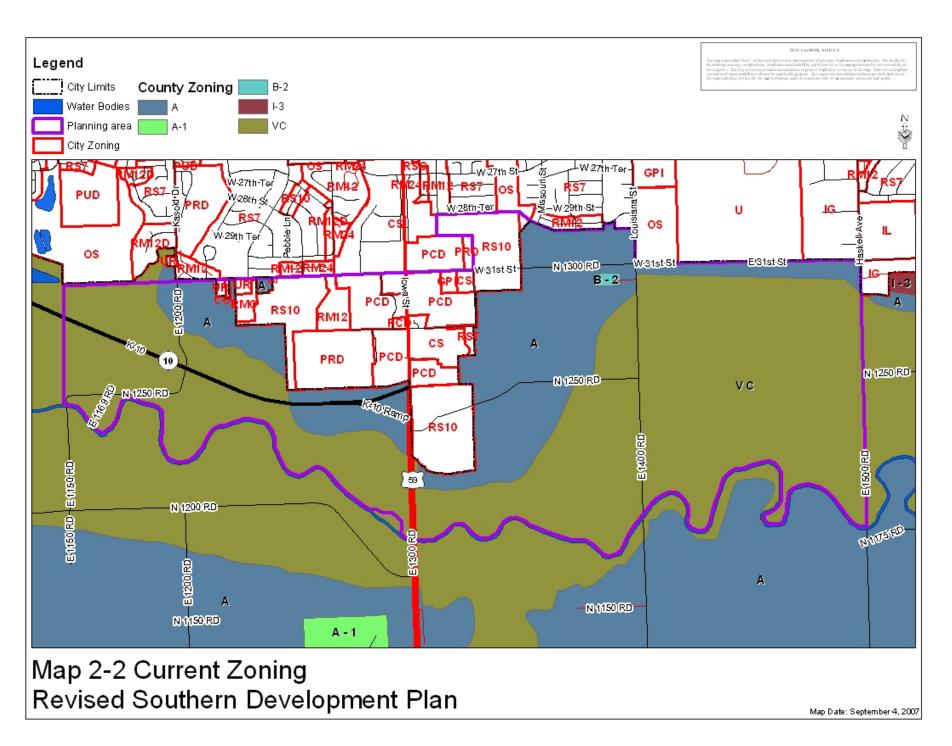
The *Revised Southern Development Plan* planning area is located partially in the county and partially within the city. Map 2-2 shows the current zoning designations and the tables below describe the map designations.

Table 2-2

City Zoning	District Name	Comprehensive Plan Designation
RS10	Single-Dwelling Residential (10,000 sq. feet per dwelling unit)	Low-Density Residential
RS7	Single-Dwelling Residential (7,000 sq. feet per dwelling unit)	Low-Density Residential
RM12	Multi-Dwelling Residential (12 dwelling units per acre)	Medium-Density Residential
PRD	Planned Residential Development	N/A
СО	Office Commercial	Office or Office/Research
CS	Strip Commercial	N/A
PCD	Planned Commercial Development	N/A
GPI	General Public and Institutional	N/A
UR	Urban Reserve	N/A

Table 2-3

County Zoning	District Name	Comprehensive Plan Designation
А	Agricultural District	Agriculture
B-2	General Business District	N/A
V-C	Valley Channel District	N/A



#### **Current Infrastructure**

#### Water

City water is supplied to most of the planning area that is within the city limits. The portions of the planning area that are located in the county are not located in a rural water district. These properties are obtaining water from wells located on the property. The City water lines are shown on Map 2-3.

## Sanitary Sewer

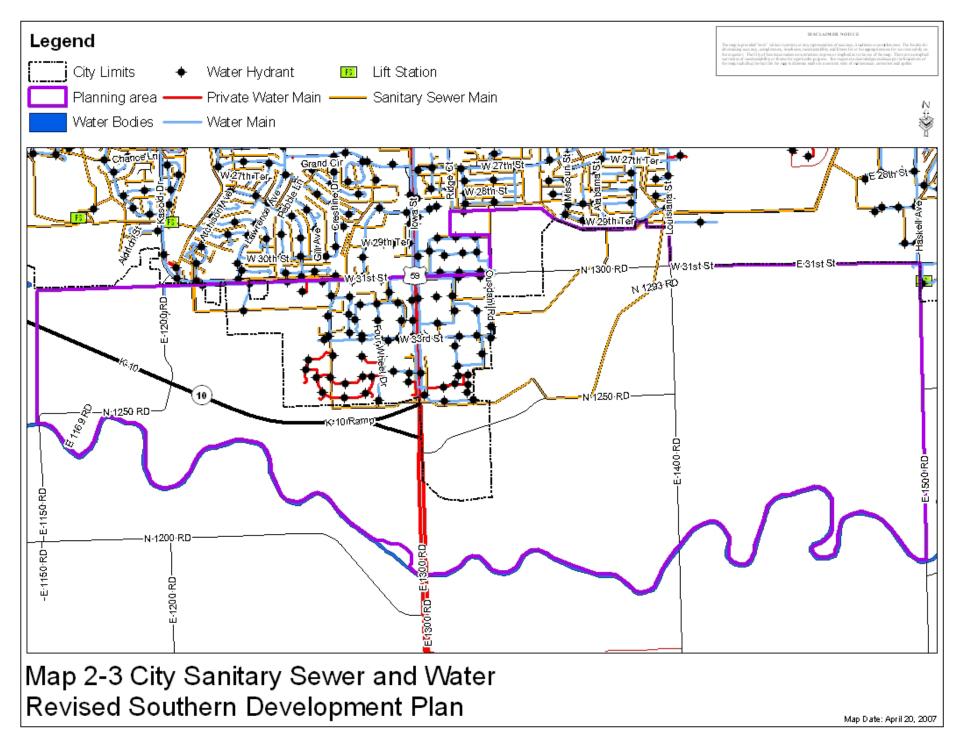
City sanitary sewer is supplied to most of the planning area that is within the city limits and to limited areas in the county. The portions of the planning area located in the county that are not serviced by City sanitary sewer are serviced by private septic systems. The City sanitary sewer lines are shown on Map 2-3.

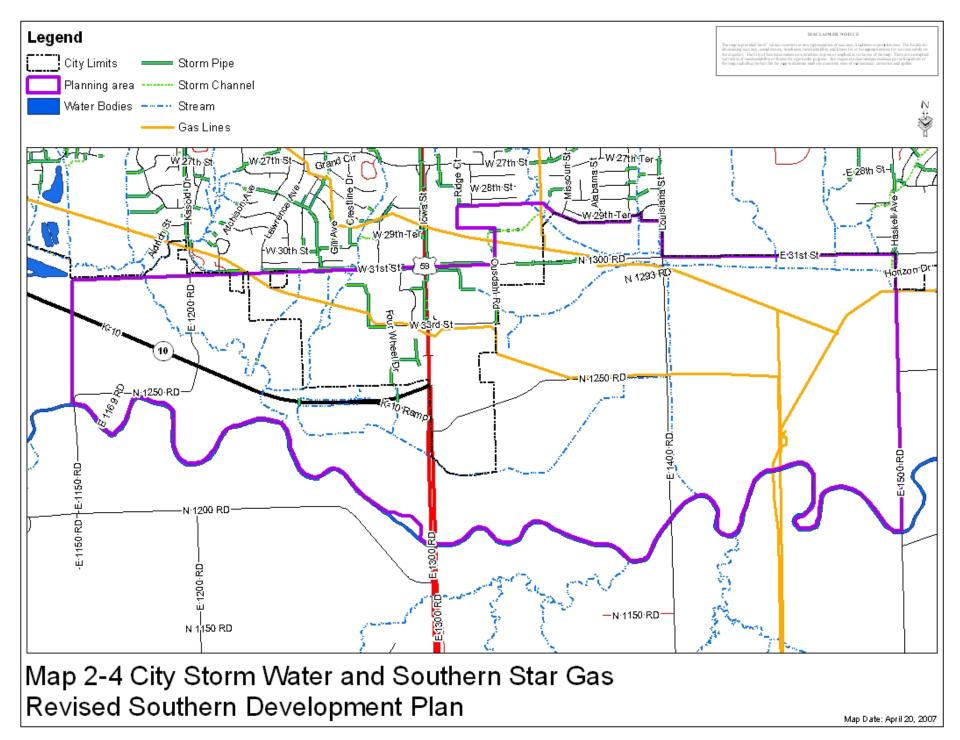
## Storm Sewer

City storm sewer is provided throughout the planning area that is within the city limits by storm pipes, storm channels, or by way of streams. The portion of the planning area that is in the county is partially serviced by way of streams. The City storm sewer and streams are shown on Map 2-4.

## Gas

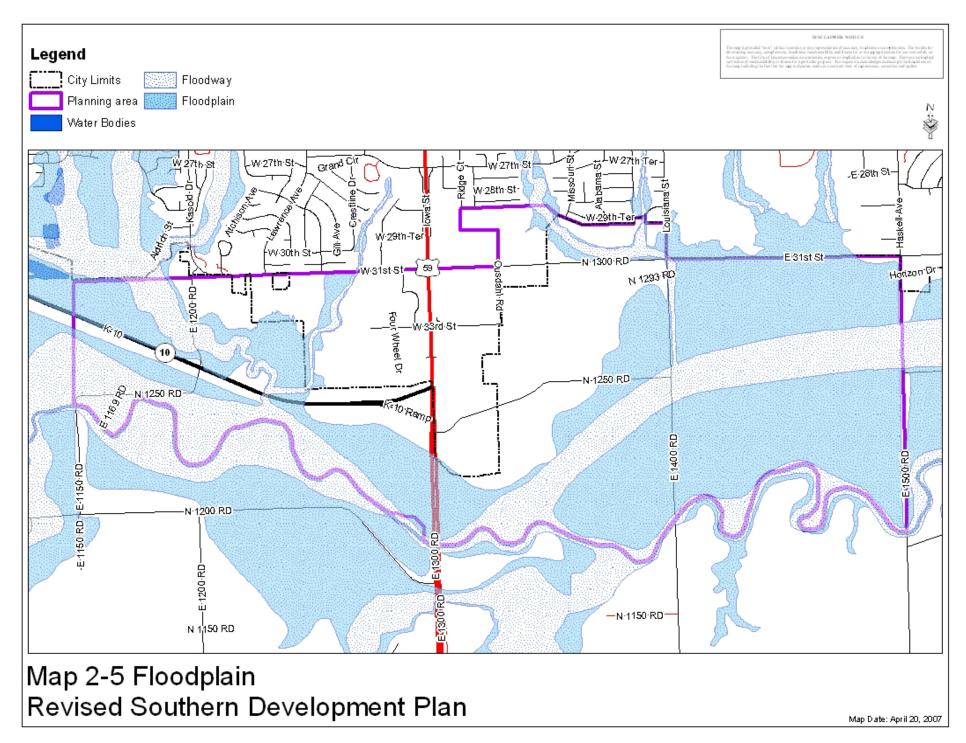
Southern Star Gas has pipes that pass though a large portion of the planning area. These pipelines are shown on Map 2-4.





## Floodplain

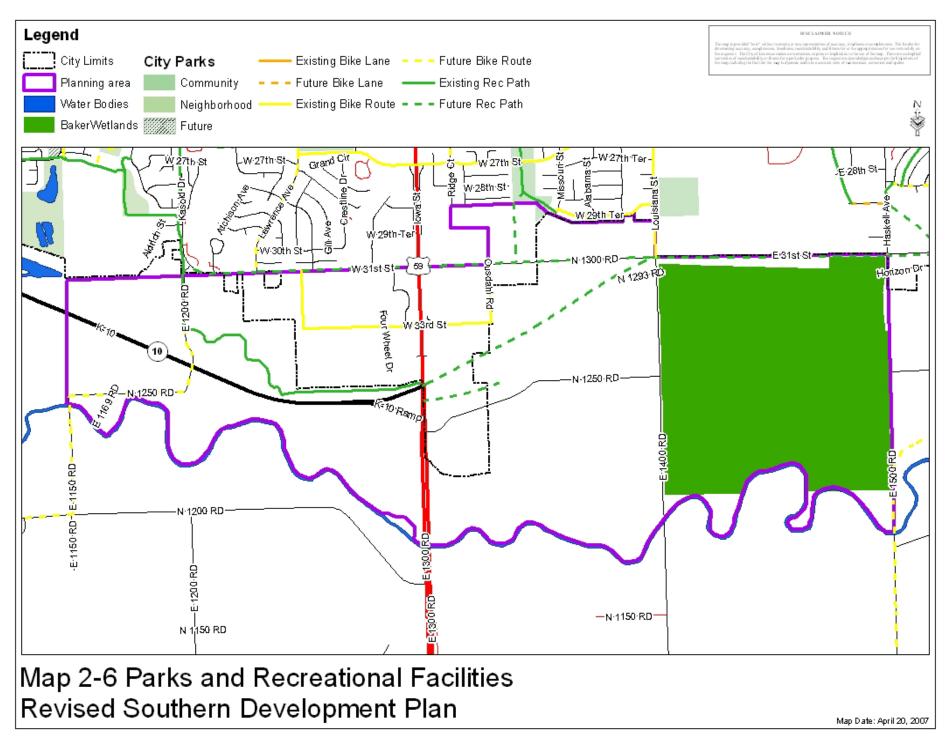
The FEMA (Federal Emergency Management Agency) designated special flood hazard area makes up a large portion of the *Revised Southern Development Plan* planning area and is shown on Map 2-5. Of the total 2,260 acres within the planning area, 1,464 acres are located within the floodplain and/or the floodway. The floodplain is any land area susceptible to being inundated by flood waters from any source. The floodway is the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Developing in the floodplain is allowed both in the City and in the County based on the corresponding regulations. No development is allowed in the floodway except for flood control structures, road improvements, easements and rights-of-way, or structures for bridging the floodway.



## **Parks and Recreational Facilities**

The planning area of the *Revised Southern Development Plan* includes one park and recreational facility shown on Map 2-6. The planning area includes existing and future bike routes and recreational paths. Bike routes are a network of streets to enable direct, convenient, and safe access for bicyclists. A Recreational path is a separate path adjacent to and independent of the street and is intended solely for non-motorized travel.

The Haskell-Baker Wetlands is located on the eastern edge of the planning area and includes approximately 583 acres of wetlands. These wetlands are jointly owned by Baker University, Haskell Indian Nations University, the Kansas Department of Wildlife and Parks, and University of Kansas. The wetlands are a National Natural Landmark and they support 471 documented species of vascular plant, 254 species of bird, and 61 additional vertebrate species. A self guided tour of the wetlands via a boardwalk is provided through the wetlands.



## **Transportation**

#### Streets

Transportation 2025 (T2025) is the comprehensive, long-range transportation plan for the metropolitan area. T2025 designates streets according to their functional classification or their primary purpose. These functional classifications are shown on Map 2-7. The classification system can be described as a hierarchy from the lowest order, local streets that serve to provide direct access to adjacent property, to collector streets that carry traffic from local streets, to major thoroughfares (arterial streets) that carry traffic across the entire city. Freeways and expressways are the highest order of streets and are designed with limited access to provide the highest degree of mobility to serve large traffic volumes with long trip lengths.

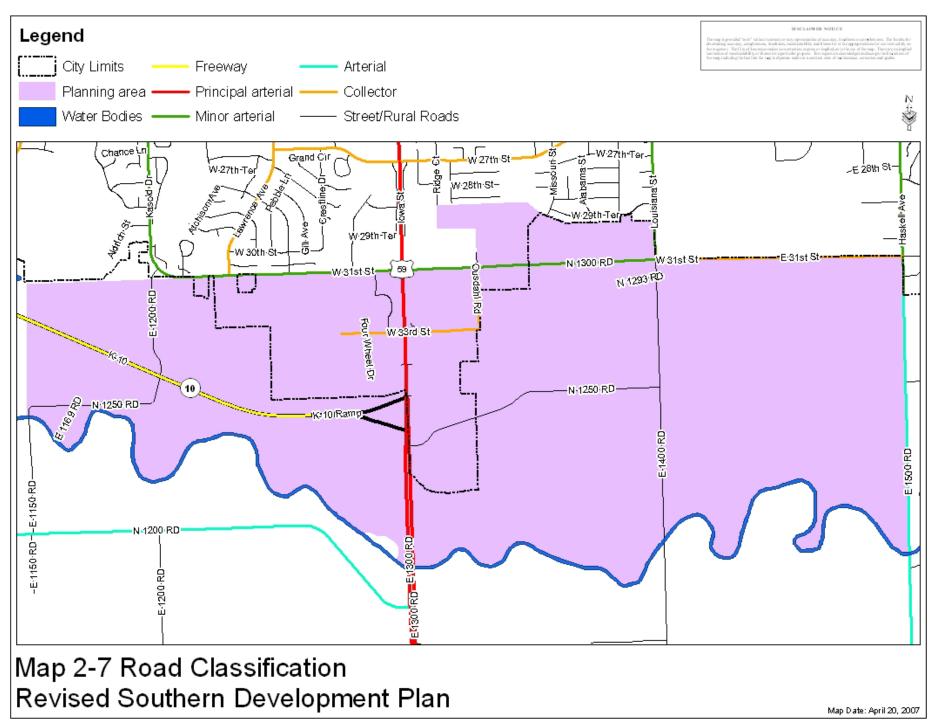
The planning area for the *Revised Southern Development Plan* includes all the *Transportation 2025* identified gateways into Lawrence from the south. S. Iowa Street/Hwy 59 is identified as a major gateway, and Louisiana Street /E. 1400 Road and Haskell Avenue/E. 1500 Road are identified as minor gateways.

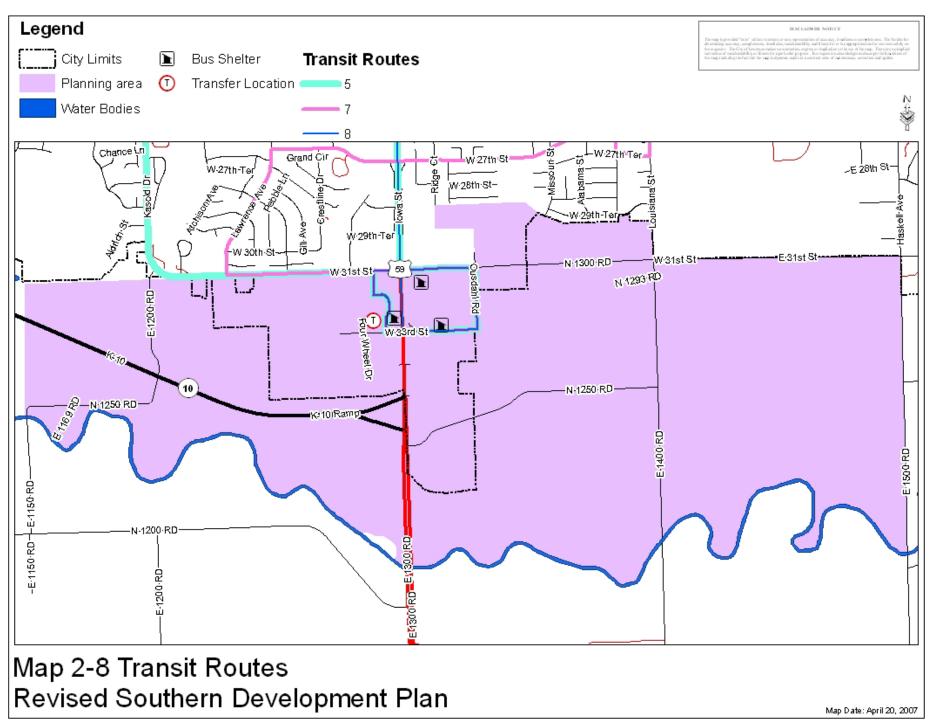
*Transportation 2025* identifies the South Lawrence Traffic Way (SLT/K-10) and S. Iowa Street/Hwy 59 as truck routes.

## Transit

Lawrence has a public transportation system (The "T") which operates throughout the city. This system allows people that do not live within walking distance of a neighborhood to utilize the neighborhood services without relying on an automobile. The city transit system has three routes that travel into the *Revised Southern Development Plan* planning area, which are shown along with shelters and a transfer location, on Map 2-8.

- Route 5, 23rd/Clinton Crosstown Wakarusa/South Iowa/Industrial Park, travels through the planning area along Kasold Drive, W. 31<sup>st</sup> Street, Neider Road, Four Wheel Drive, and S. Iowa Street.
- Route 7, South Iowa/Downtown, travels through the planning area along Lawrence Avenue, W. 31<sup>st</sup> Street, Neider Road, Four Wheel Drive, W. 33<sup>rd</sup> Street, Ousdahl Road, and S. Iowa Street.
- Route 8, KU/South Iowa/Downtown, travels through the planning area along Lawrence Avenue, W. 31<sup>st</sup> Street, Neider Road, Four Wheel Drive, W. 33<sup>rd</sup> Street, Ousdahl Road, and S. Iowa Street.





## RECOMMENDATIONS

Land Use (See Map 3-1 or Map 3-2)

## Low-Density Residential:

The intent of the low-density residential use is to allow for single-dwelling type uses.

Density: 6 or fewer dwelling units per acre

Intensity: Low Applicable Areas:

- Property southwest of the intersection of Kasold Drive and W. 31<sup>st</sup> Street, and west and east of E. 1200 Road.
- Property southwest of the intersection of Four Wheel Drive and W. 33<sup>rd</sup> Street.

Zoning Districts: RS7 (Single-Dwelling Residential), RS5 (Single-Dwelling Residential), RM12 (Multiple-Dwelling Residential), RM12D (Multi-Dwelling Duplex Residential), PD (Planned Development Overlay)

Primary Uses: Single-family dwellings, duplex, attached dwellings, group home, public and civic uses

## Medium-Density Residential:

The intent of the medium-density residential use is to allow for a variety of types of residential options for the area.

Density: 7-15 dwelling units per acre

Intensity: Medium Applicable Areas:

- Property to the south of W. 31<sup>st</sup> Street and west and east of Lawrence Avenue.
- Property to the southwest of the intersection of Four Wheel Drive and W. 31<sup>st</sup> Street.
- Property between Ousdahl Road and Louisiana Street, south of W. 31<sup>st</sup> Street.
- Property to the northeast of the intersection of W. 31<sup>st</sup>
   Street and Ousdahl Road.
- Property to the north and west of the intersection of Louisiana Street and W. 31<sup>st</sup> Street.
- Property to the southwest of N. 1250 Road.

Zoning Districts: RS5 (Single-Dwelling Residential), RS3 (Single-Dwelling Residential), RM12 (Multiple-Dwelling Residential), RM12D (Multi-Dwelling Duplex Residential), RM15 (Multiple-Dwelling Residential), PD (Planned Development Overlay)

Primary Uses: Single-family dwellings, duplex, attached dwellings, multi-dwelling structures, group home, civic and public uses

#### Residential/Office:

The intent of the residential/office use is to allow a mix of office use with low-density residential uses.

Density: 4-15 dwelling units per acre

Intensity: Low-Medium

Applicable Areas:

 Property along the east side of Ousdahl Road, south of W. 31<sup>st</sup> Street.

Zoning Districts: RSO (Single-Dwelling Residential-Office), PD (Planned Development Overlay)

Primary Uses: Single-family dwellings, duplex, group home, civic and public uses, veterinary, offices, personal improvement

#### Office:

The intent of the office use is to allow for general office uses that would be minimally evasive to nearby residential uses.

Intensity: Medium Applicable Areas:

 Property to the south of W. 31<sup>st</sup> Street and west and east of Lawrence Avenue.

Zoning Districts: CO (Commercial Office), PD (Planned Development Overlay)

Primary Uses: Civic and public uses, medical offices, veterinary office and grooming, general office

## <u>Traditional Neighborhood Development (TND)</u>:

The intent of Traditional Neighborhood Development areas are characterized by mixed land uses, grid like street patterns, pedestrian circulation, intensively-used open spaces, architectural character, and a sense of community.

Density: Variable Intensity: Variable Applicable Areas:

- Property between Ousdahl Road and Louisiana Street, south of W. 31<sup>st</sup> Street.
- Property to the southwest of N. 1250 Road

Zoning Districts: T3, T4, T5, T5.5

Primary Uses: Residential, retail, office, civic

#### Commercial:

The intent of the commercial use is to allow for retail and service type uses geared toward the community as a whole and autorelated uses geared toward traffic from Hwy K-10.

Intensity: Medium to High

Applicable Areas:

- Property to the south of W. 31<sup>st</sup> Street and west and east of Iowa Street/Hwy 59 including the northeast corner of W. 31<sup>st</sup> Street and Ousdahl Road. (Regional Commercial Center)
- Property to the southeast and southwest of the intersection of K-10 and Hwy 59. (Auto-Related Commercial Center)

Zoning Districts: CC (Community Commercial Centers District), PD (Planned Development Overlay)

Primary Uses: Civic and public uses, animal services, eating and drinking establishments, general office, retail sales and services, vehicle sales and services

## Open Space:

The intent of the open space use is to protect the FEMA designated floodplain by allowing very minimal development for the public use.

Intensity: Minimal

Applicable Areas:

- Property to the north of the Wakarusa River.
- Property designated by FEMA to be 100 year floodplain or floodway.

Zoning Districts: OS (Open Space), UR (Urban Reserve)

Primary Uses: Passive recreation, nature preserve, agricultural

## Public/ Institutional:

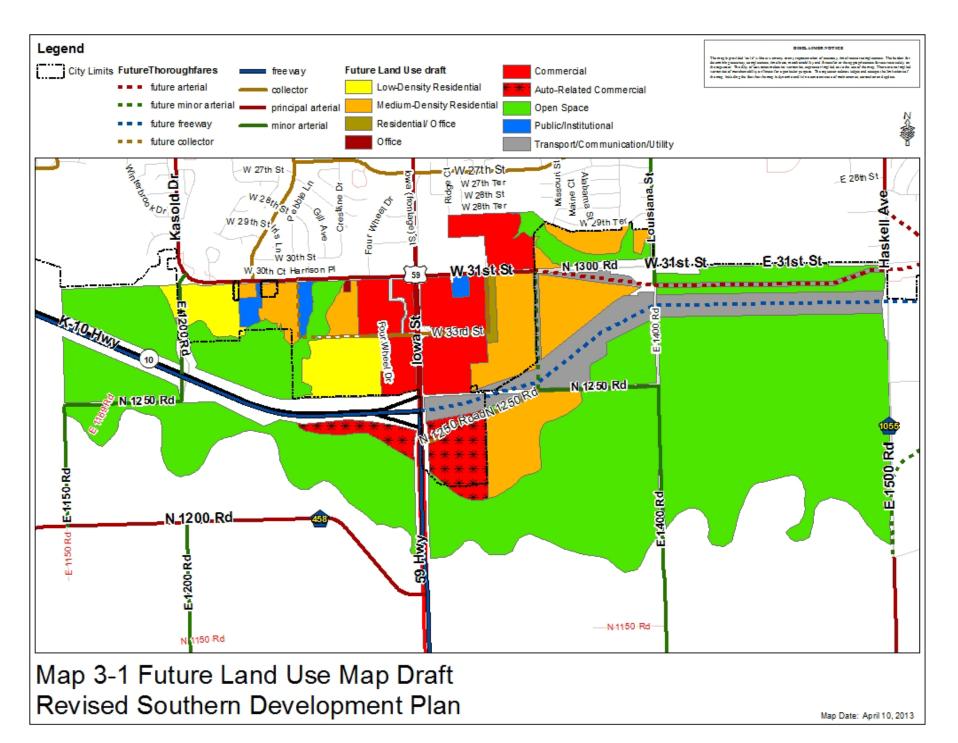
The intent of the public/institutional use is to allow for public and civic uses, recreational facilities, and utility uses.

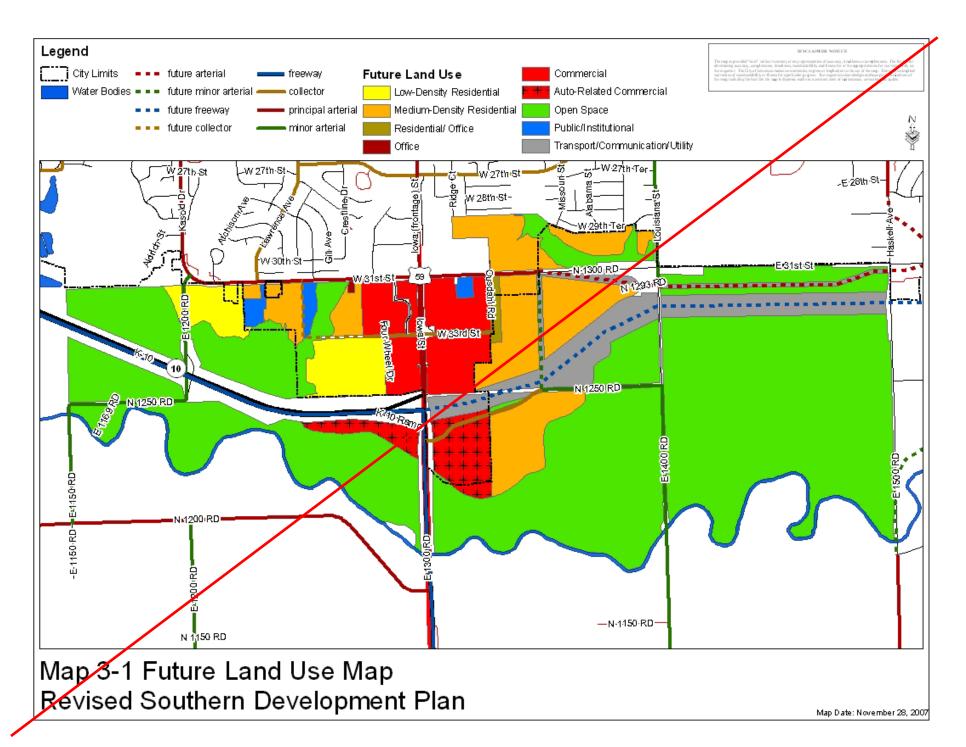
Intensity: Variable Applicable Areas:

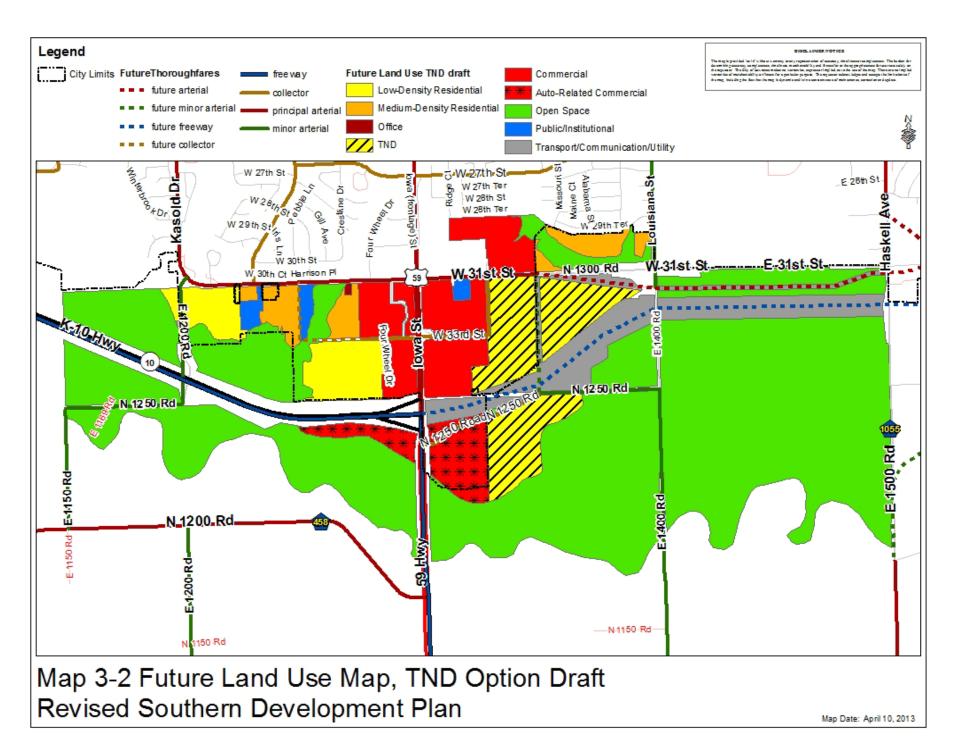
- Residential care facility south of the intersection of W. 31<sup>st</sup> Street and Lawrence Avenue.
- Social service facility south of the intersection of W. 31<sup>st</sup>
   Street and Harrison Avenue.
- Post office west of Ousdahl Road and south of W. 31<sup>st</sup> Street.

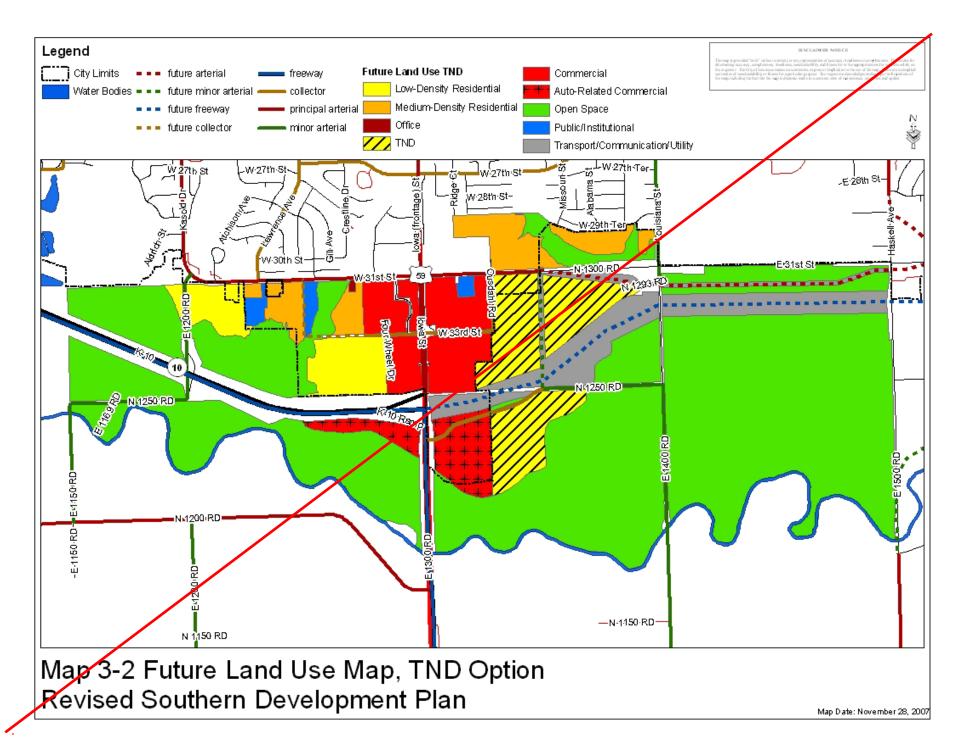
Zoning Districts: GPI (General Public and Institutional)

Primary Uses: Civic and public uses, recreational facilities, utility services









#### **Policies**

#### <u>General</u>

1. Traditional Neighborhood Design (TND) is encouraged where identified.

## <u>Gateways</u>

- 1. Development shall enhance 'Gateways' by creating an aesthetically pleasing view into the city.
- 2. Aesthetically pleasing landscaped entry way along Gateways shall be required. Both public and private property owners are responsible for achieving and maintaining this aesthetically pleasing landscaping.
- 3. Fencing installations shall incorporate continuous landscaping at the base and edges of the fence to integrate the fence with site and landscaping
- 4. High quality, aesthetically pleasing building materials should be used.
- 5. Pedestrian friendly connectivity between properties shall be incorporated.

## Commercial

- Encourage diversity and gradation of uses with access restricted to arterial, frontage road, or collector streets. Commercial curb cuts on major arterials shall be discouraged and frontage roads shall be encouraged.
- 2. Planned Development Overlay zones shall be self-contained with consideration given to: independent traffic networks; land use buffers; and/or a gradation of land uses, as well as, landscaped buffer(s) along the perimeter of the planned commercial development.
- 3. Future commercial development and/or redevelopments of existing commercial areas shall be in the form of Planned Development Overlays.

#### Residential

- 1. Landscaped or open space buffers shall occur between major arterials and residential developments (exclusive of dedicated right-of-way).
- 2. The gradation of residential intensities of land uses is encouraged as this area develops or redevelops. Medium intensity areas shall be used as buffers between more intensive developments and low-density residential areas. Low-density residential developments shall be encouraged to develop on the interior of the neighborhoods units.
- 3. Single-family lots shall be designed to take access only from local streets.
- 4. Planned Residential Developments are encouraged where creative design solutions are warranted.
- 5. Property northwest of the intersection of W. 31<sup>st</sup> and Louisiana Streets, north of the FEMA designated floodplain shall:
  - have a gross density of no more than 8 dwelling units per acre, and
  - develop with similar residential character to the neighborhood to the north including such structures as single-family dwellings, duplexes, triplexes, and rowhouses.

## Open Space/Floodplain

- 1. Encourage recreational uses that do not alter the natural character of the area.
- 2. Encourage preservation of the floodplain or open space through private or public/private partnerships.
- 3. Areas within the regulatory floodplain shall not be counted as *contributing* more than 50% of the open space *used* in the computation of density for Planned Development Overlays e.g., areas designated as open space/floodplain cannot be used to justify increased residential development densities.
- 4. Encourage connection between public lands and bicycle/pedestrian trails along the South Lawrence Trafficway (SLT).
- 5. Encourage acquisition or development of land for neighborhood recreational paths.

#### Landscaping

- 1. Encourage extensive open space and/or berming between different land use categories (e.g., commercial and residential) to provide noise and visual buffers.
- 2. Encourage native/low-maintenance landscape materials on public lands.

## <u>Transportation Network and Corridors</u>

- 1. Proposed development along W. 31<sup>st</sup> Street east of S. Iowa Street should assist in the cost of the interim W. 31<sup>st</sup> Street and Louisiana Street intersection improvements.
- 2. Commercial vehicular circulation patterns shall be primarily selfcontained within the commercially zoned and developed area.
- 3. Limit access points onto arterial streets through the use of frontage roads and encourage reverse frontage road(s) access to be located at mid-points of blocks.
- 4. Sufficient area, outside of the required street rights-of-way, shall be required to provide screening along major transportation corridors. This area shall be restricted in use to providing for: utility needs, berming, and landscaping needs.
- 5. Churches and other community facilities shall be located where access is available from collector or arterial streets.
- 6. *Transportation 2030* or subsequent long-range transportation plans, once adopted, shall supersede any recommendations, actions, or policies referenced in *Transportation 2025*.

## <u>Signage</u>

- 1. Signs shall be restricted to one building face (side).
- 2. Signage on the site (in addition to the building face sign) shall be restricted to monument type signs.
- 3. Allow only interior illuminated (or comparable) signs.

## Utilities

- 1. Future utility transmission lines and existing overhead lines shall be placed underground when installed or replaced.
- 2. Easements for utility lines shall not coincide with easements dedicated for another specific purpose e.g., greenspace, drainage, or to protect environmental or natural characteristics such as wetlands areas.
- 3. All utilities should be provided, whether public or private, before development is allowed to proceed.

## Exterior Lighting

1. Encourage maximum efficiency, low wattage, downward directional exterior lighting. The point source shall be screened from view off-site.

## Kirk McClure, Ph.D. 707 Tennessee Street Lawrence, KS 66044

mcclurefamily@sbcglobal.net

April 18, 2013

Amalia Graham Richard Hird

<u>amalia.graham@gmail.com</u> <u>rhird@pihhlawyers.com</u>

Charles BlaserPennie von Achencblaser@sunflower.comsquampva@aol.com

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Bryan Culver (Vice-Chair) Bruce Liese (Chair)

<u>bculver@bankingunusual.com</u> <u>bruce@kansascitysailing.com</u>

Re: AGENDA FOR PUBLIC & NON-PUBLIC HEARING ITEMS, Meeting APRIL 22, 2013

ITEM NO. 3 SOUTHERN DEVELOPMENT PLAN; REGIONAL COMMERCIAL CENTER (MJL) CPA-13-00067: Consider Comprehensive Plan Amendment to expand the S. lowa Street

commercial corridor east along W. 31 street to include 1900 W 31 Street.

ITEM NO. 4 RM12 TO CR; 41.5 ACRES; 1900 W 31 ST (SLD)

**Z-13-00071**: Consider a request to rezone approximately 41.5 acres from RM12 (Multi-Dwelling

Residential) to CR (Regional Commercial), located at 1900 W 31 Street.

Dear Members of the Lawrence Douglas County Metropolitan Planning Commission,

The proposal to expand the S. Iowa Street commercial corridor east along W. 31 street is an example of predatory development which is not beneficial to our community.

#### Capacity of Lawrence to Absorb a Second Home Improvement Center

The Lawrence area, including all of Douglas County, is only barely large enough to support one home improvement center. Adding a second home improvement center will serve only to force the city's existing home improvement center out of business.

As the table below illustrates, Lawrence has enough population to support one store, but it is actually rather small in terms of the number of homeowners normally needed to support a home improvement center. If a second store is added, there will be too few people, and especially too few homeowners, to support both stores. The result is that one store will probably go out of business. All too often in this type of cutthroat competition, the older store is the one that fails.

The taxpayers of Lawrence are not indifferent to this process. The taxpayers invested heavily, in excess of \$1.5 million, to facilitate the development of the Home Depot store at 31<sup>st</sup> and South Iowa Streets. The taxpayers do not want to see this investment lost. Nor do the taxpayers want to see the Home Depot store become another retail building that becomes vacant and sits for years without a tenant.

# Ratio of Home Improvement Stores to Population and Homeowner Households Kansas City and Lawrence

	Kansas City	Lawrence	Lawrence with
	Metropolitan	Douglas	Added
	Area	County	Center
Total Centers	19	1	2
Population Owner households	1,980,619 538,827	113,569 24,800	
Population:centers ratio Owners:centers ratio	104,243	113,569	56,785
	28,359	24,800	12,400

#### Market Analysis

The market analysis submitted in support of these proposals is flawed in many ways.

#### Rate of Absorption

The retail study begins with the assertion that Lawrence can absorb 129,000 to 236,000 square feet per year by the year 2020. This assertion would assume that Lawrence has a balanced market now. Even the retail market study submitted admits that the stock of retail space has grown by 72 percent since

2000 while retail sales have risen by only 37 percent. Clearly, the City has permitted developers to build space at a pace much faster than the spending can support. The result is an over-built condition leading to underutilization of space and a lack of interest in the maintenance of properties.

#### **Pull Factor**

The retail study goes on to assert that the City's retail pull factor is low. The pull factor measures the amount of spending per capita in the retail market compared to a statewide average. If the pull factor is above 1.0, it indicates that the market pulls in more spending than is available from the local population. Lawrence's pull factor has been above 1.0 for 10 of the last 12 years. It has been rising for the last three years. This is an admirable record for a small city located between two larger cities.

The study suggests that a Mendards will improve the pull factor. It is not credible that the consumers will drive to Lawrence to shop at our home improvement center any more than they do now. The consumers in the Topeka and the Kansas City metropolitan areas have several home improvement centers in close proximity to them. They will not drive Lawrence for this purpose.

#### Population and Income Growth

The retail study does on to suggest that the future growth of Lawrence's population and income will support expansion of the stock of retail space. The ultimate limit on the amount of space that the city can absorb is the spending in the retail market. Income growth in Lawrence continues to lag behind the Kansas City metropolitan area, holding back the growth in the retail spending. It is unwise to let the retail market grow faster than the growth in retail spending.

#### Recommendation

To avoid predatory development that will waste the taxpayers' investment, I recommend against the proposed plan amendment and rezoning at 1900 West 31<sup>st</sup> Street.

To regain strength in the retail market of Lawrence, the Planning Commission needs to exercise extreme caution with any expansion of the stock of retail space until the retail spending levels grow sufficiently to return to the balance found in the past.

Sincerely,

Kirk McClure



April 19, 2013

Kirk McClure 707 Tennessee St Lawrence, KS 66044

Dear Mr. McClure,

Your letter regarding the proposed Menards project was forwarded to me by city staff. I have taken the time to respond to every resident that submits comments to the Planning Commission, city staff, or myself regarding this development. Responses to your concerns are below.

The term "predatory development" implies that Menards is in some way taking advantage of and individual or group of people with no regard for their wellbeing. That is certainly not the case with our Lawrence project. Menards has taken great steps to ensure that not only will our project not harm the city but improve the city as a whole. On April 8<sup>th</sup> I met with homeowners surrounding the project site and the response to our plans was very positive. We have included the residents in the planning process from the very beginning and plan to continue that practice.

I understand your main point to be the competition between Menards and Home Depot and their viability in the future. Your concerns are shared among several residents of Lawrence and often in other communities which we are new to. However no one understands the viability of a business better than the business itself. Menards is in no way trying to put Home Depot out of business here or in any other location. Competition is healthy and what makes the American economy strong. If Menards felt there was a chance their either Menards or Home Depot could not support a store we would not have a desire to build in the first place. For your information I have attached a list of a few of our western Menards stores in communities of similar size with either a Home Depot or Lowes located nearby.

I do not know the history of the taxpayer money that was used in the Home Depot project. However I can say that Menards is asking for nothing from the city of Lawrence financially. All Menards is asking for is the ability to compete on a fair playing field with every other business. Menards has performed studies regarding traffic, flooding, and utilities to ensure that our project will not harm any other property in the process.

Menards has a pull factor that is not ordinarily anticipated by a market study such as this. This is very evident by the number of Lawrence residents that travel to our Topeka store to shop in large numbers. Not only is that Menards store drawing consumers from outside of the Topeka region where there are other home improvement stores nearby. It is taking them from the City of Lawrence and it has a home improvement store. It is a reasonable



assumption that consumers will drive from all across Douglas County to shop at the Menards store just like they do in Shawnee County to the west.

Retail studies are only one element in the review of impacts a retailer would have on a community and they often fail to consider items that make retailers unique. Many communities have done away with these studies and relied more on experience and review of each project individually. Again there will be no investment by the residents of Lawrence to build the store. It is also unlikely that Menards or Home Depot would be put out of business by this project. Menards would be a great fit within the community and draw more consumers into the city that would otherwise be driving else ware to shop. If you have more questions please do not hesitate to contact me.

Sincerely, **Menard, Inc.** 

Tyler Edwards

Real Estate Representative Menard, Inc. – Properties

5101 Menard Drive Eau Claire, WI 54703

P: 715-876-2143 C: 715-579-6699 F: 715-876-5998

tedwards@menard-inc.com

	Menards	Next Door	1/2 Mile	1 Mile	Under 3 Miles
1	Topeka	Lowes		Home Depot	
2	Manhattan				Home Depot
3	Salina			Lowes	
4	Wichita West			Lowes	
5	Wichita East	100 mm			Home Depot
6	Garden City	Home Depot			
	Sedalia	1	Lowes		
					Lowes
8	Lake Ozark			1	Home Depot
	Jeff City				Lowes
THE RESIDENCE OF THE PARTY OF T	Colombia		Home Depot		Lowes
	St Peters		Trome Depot		Home Depot
_	Manchester		Home Depot		Lowes
12	Walleflester		Home Bepot		Home Depot
12	O'Fallon				Lowes
13	O I alloli				Home Depot
14	Lincoln South				Lowes
	Lincoln North	Home Denet			Lowes
	Grand Island	Home Depot		Hama Danet	
	Council Bluffs	Hama Danat		Home Depot	
	Sioux City	Home Depot			Lawas
	Sioux City Sioux Falls West	Usus Danet	1		Lowes
		Home Depot	Lowes		,
	Clive	1		Lowes	
	Altoona	Lowes	III B I		
	De Moines	<u> </u>	Home Depot	-	
	Ankeny	Home Depot			
	Waterloo	Home Depot	Lowes		
	Marion			Home Depot	
	Davenport				Lowes
Name and Address of the Owner, which the	West Burlington			Lowes	
	Rochester			Home Depot	
	Rochester South				Lowes
	Mankato	Home Depot			Lowes
	Coon Rapids	Lowes			
	Blaine				Lowes
	West St Paul		Lowes		
	Stillwater		Lowes		
	Maple Grove		Home Depot		
THE RESERVE OF THE PERSON NAMED IN COLUMN TWO IS NOT THE OWNER, THE PERSON NAMED IN COLUMN TWO IS NOT THE OWNER.	Brooklyn Park				Home Depot
	Fridley				Home Depot
	Richfield		Home Depot		
	Eden Prairie	Home Depot			
40	Hudson	Home Depot			
41	Rapid City				Lowes
42	Fargo	Lowes			
43	Hermantown				Home Depot

44	Cape G		Lowes		
45	Marion IL				Home Depot
46	Evansville				Lowes
47	Bloomington			Lowes	
48	Champaign	Lowes		Home Depot	
49	Danville			Lowes	
50	Normal	Home Depot			
51	Springfield South		Lowes		
52	Springfield North	Lowes			
53	Forsyth		Lowes		
54	Peoria				Home Depot
55	Galesburg			Lowes	
56	Peru	Home Depot			
57	Dubuque			Lowes	
58	Janesville			Home Depot	
59	Racine			Home Depot	
60	Fox lake	Home Depot			
61	Gurnee	Home Depot			Lowes
62	Kenosha		Lowes		
63	Cherry Valley				Lowes
64	Machesney Park	Home Depot		Lowes	
65	Wausau	Home Depot			
66	Plover				Lowes
67	Oshkosh	Lowes			
68	Appleton East		Lowes		
69	Manitowoc		Lowes		
70	Appleton West			Home Depot	
71	West Bend	Home Depot			

From: Burress, David A. [mailto:d-burress@ku.edu]

Sent: Tuesday, April 16, 2013 10:37 AM

To: Denny Ewert

Subject: RE: ITEM NO. 3 SOUTHERN DEVELOPMENT PLAN; REGIONAL COMMERCIAL CENTER and ITEM NO. 4 RM12 TO

CR; 41.5 ACRES; 1900 W 31ST ST

April 16, 2913

To: Dr. Bruce Liese, Chair, and Lawrence/Douglas County Planning Commission

Dear chairman Liese and Planning Commissioners:

Re: ITEM NO. 3 SOUTHERN DEVELOPMENT PLAN; REGIONAL COMMERCIAL CENTER (MJL) ITEM NO. 4 RM12 TO CR; 41.5 ACRES; 1900 W 31<sup>ST</sup> ST (SLD)

The League asks that you not change the Southern Development Plan to expand the existing designated area for a Regional Commercial Center and that you deny the request for a 41.5 acre tract to permit the development of a Menards store. We ask this for the following reasons:

We question whether the current 23<sup>rd</sup> and South Iowa designated Regional Commercial area has the capacity for any additional commercial zoning beyond that already designated and zoned for commercial use. The amount of commercial zoning existing now in this Horizon 2020 designated CR has been listed as 1.3 million square feet and the date on this is April, 2012.

The Revised Southern Development Plan does not recommend that this area be expanded for commercial use and designates it for medium residential use. The commercial zoning to the west of this was intentionally given a buffer of residential zoning so that the commercial area would not expand to the east to create a continuous commercial strip to Louisiana.

If this 41-acre parcel, or even a portion of it is rezoned CR, it will be the only so-zoned property in Lawrence. The CR District is a conventional district and strictly speaking was not intended to be conditioned to limit the uses. The fact that only a portion of the property has been configured to include the Menards store (and parking) creates a major uncertainty on how this property would actually develop. Because this is a CR District request, the potential for high intensity uses located here exists and because it is surrounded by residential uses on three sides makes the potential negative impact even more serious.

For these and many other reasons, we urge that the Planning Commission not change the Southern Development Plan to accommodate the CR District and not grant the current **Z-13-00071** request for CR Zoning.

Thank you for considering our letter.

Sincerely,

**David Burress** 

/s/

President-Elect

League of Women Voters of Lawrence/Douglas County

Cille King

/s/

Land Use Committee

Lawrence-Douglas County Metropolitan Planning Commission

ATTN: Bruce Liese, Chair

City Hall, 6 East 6<sup>th</sup> Street

Lawrence, KS 66044

Re: CPA-13-00067: Horizon 2020, Chapter 6 and Revised Southern Development Plan

Z-13-00071: RM12 to CR: Menards

## Dear Commissioners,

Over the last few years, we made the decision that we would stay in our property until such time that we were no longer physically capable of doing so. However, over the last several months, things began to change. It looks like the extension of the South Lawrence Trafficway is to become a reality. Concerned for the road alignment changes and the impact on traffic around our property, we sought out KDOT, the City, and the County to discuss our concerns. We were then approached by the City regarding the purchase of the eastern end of our property at 31<sup>st</sup> and Louisiana. Shortly thereafter, we were made aware of the pending Menard's project.

Each proposed change has made us re-evaluate our thoughts regarding the ability to stay in our home. Given what is happening around us, it is only prudent for us to become pro-active in what our land might look like going forward. We also believe the happenings present a good opportunity to put to rest many lingering questions about all undeveloped land between Home Depot and Louisiana Street, on the north side of 31<sup>st</sup> Street. It only makes sense to plan this entire area at the same time, instead of in piecemeal fashion. Doing so allows the entire area's land uses to be identified, as well as access points. To that end, we have enclosed a conceptual plan for our entire property for your review. We ask that you take it into consideration, along with the following comments, as you review H2020, the Southern Development Plan, and the Mendard's project proposal.

- We are in general support of the zoning change for Menard's.
- We ask that the changes to H2020 and the Southern Development Plans reflect the uses shown in our conceptual plan. We believe it creates a clear termination to any future 31<sup>st</sup> Street commercial development; preserves the Naismith Creek and Belle Haven Tributary floodways through Open Space zoning; and provides and extension of the Naismith Valley Park and its shared-use bike path.

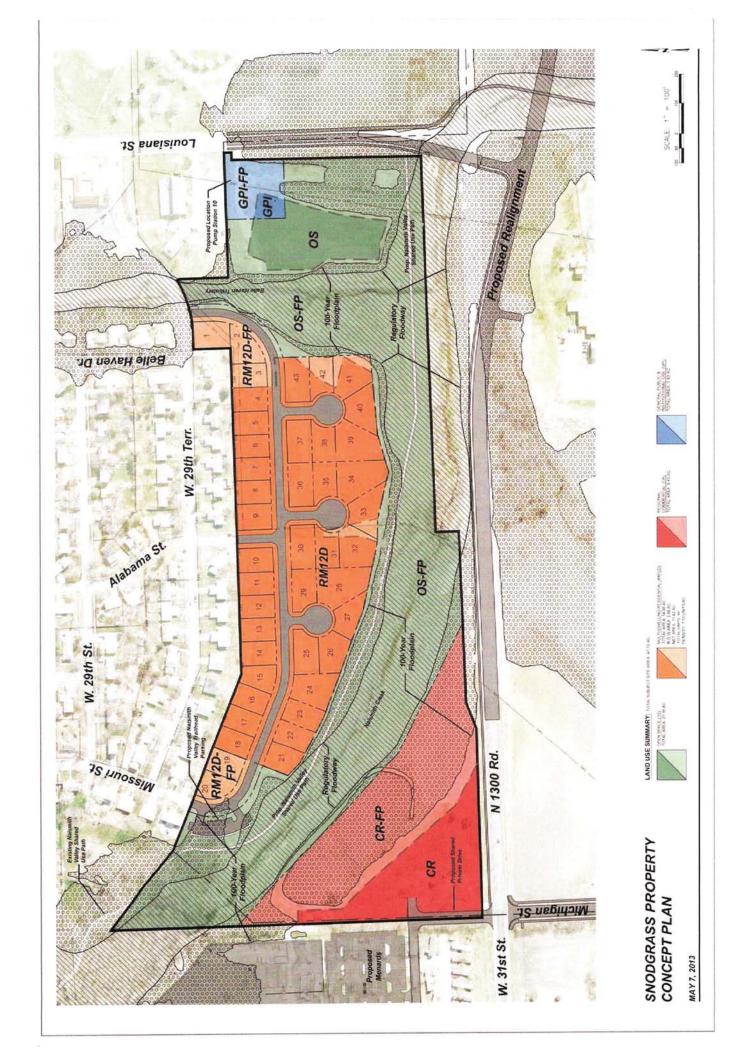
• We believe this is a perfect opportunity to control access onto the remainder of 31<sup>st</sup>

Street east to Louisiana Street. As such, we request that the zoning change requested by Menard's be conditioned upon access points as determined by the City on the final plat. This requirement will allow the City to make sure that curb cuts onto 31<sup>st</sup> Street are minimized and adequately serve the remainder of the property east to Louisiana. It is our belief (expressed by us to the City, County, and KDOT over the last 6 months) that a lighted intersection will ultimately be needed at the intersection of the re-aligned Louisiana (to be named Michigan Street). Eliminating the current eastern access into the Menard's property, and moving that eastern access to align with the new Michigan Street, allows the entire length of undeveloped property east to Louisiana to be serviced with that one curb cut. Failure to do so will create the need for more curb cuts along 31<sup>st</sup> and will only serve to hamper travel on 31<sup>st</sup> Street.

In closing, we understand time changes things. We also understand with change comes opportunity. With the many changes going on, we see an opportunity to work out a plan for a large area of ground in a way that puts to rest many unanswered questions, resulting in a well-planned future. Please let us know if you have any questions.

Sincerely,

Bruce Snodgrass and family





## LEAGUE OF WOMEN VOTERS® OF LAWRENCE/DOUGLAS COUNTY

RECEIVED

MAY 2 0 2013

City County Planning Office Lawrence, Kansas

May 19, 2013

Co-President

**David Burress** 

Co-President Cille King

President-Elect
Cille King

Vice President marci francisco

Secretary
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Scott Criqui

**James Dunn** 

**Ruth Gibbs** 

Midge Grinstead

Marlene Merrill

To: Dr. Bruce Liese, Chair, and Lawrence/Douglas County Planning Commission

RE: ITEMS 4 AND 5: CPA-13-00067: HORIZON 20202 CHAPTER 6 AND REVISED SOUTHERN DEVELOPMENT PLAN AND Z-13-00071: RM12 TO CR: MENARDS

Our previous letter on this issue sent to you in April urged the Planning Commission (PC) to deny changing the Revised Southern Development Plan and to deny the Menards' request for rezoning. We reiterate our position here.

Our reasons, summarized, are as follows:

- a. This rezoning would be contrary to the Comprehensive Plan (CP). It would not be in the proper area. In addition, the amount requested would exceed the amount allotted to the area as a Regional Commercial designation.
- b. Rezoning to commercial here would create a detrimental effect on the adjacent land in two directions: to the east because of the natural configuration of the land and the lack of barriers to prevent continuation of commercial zoning to Louisiana Street; and to the north because of the lack of any buffer to the existing residential uses. It also could have a detrimental effect on the land on the south side of 31<sup>st</sup> Street.
- c. The CR District (Regional Commercial) is too inclusive and is inappropriate for this location. The district will have to be conditioned, but CR is a conventional district and was not intended to be conditioned.
- d. Only a portion will be used for the Menards store. The remainder will be speculative zoning. It would be better to limit the area only to that needed by the Menards store. This would allow buffering on the north. On the east a substantial buffer would prevent continuation of the commercial zoning and also make the area to the east more attractive for residential use.
- e. Please remember that the Menards store could have sought land within other available vacant commercially zoned properties, but they preferred their current choice because of the presence of supporting commercial uses. Because of this, we question whether the additional speculative commercial land is really needed by them for supporting uses.
- f. Also, the fact that only a portion of the subject property has been configured to include the Menards store and needed parking creates a major uncertainty on how this property would actually develop. Because this is a CR District request, the potential for high intensity uses located here exists, and because it is surrounded by residential uses on two sides and potentially a third, makes the potential negative impact even more serious. This is in spite of the proposal to condition the zoning. This leads to the question of why, if the CR zoning is to be allowed, not place it within a PC Overlay District?

### LEAGUE OF WOMEN VOTERS® OF LAWRENCE/DOUGLAS COUNTY Page 2

### Summary:

- 1. We oppose changing the Comprehensive Plan (CP) to allow the rezoning for the Menards store and additional speculative zoning, and especially, we oppose rezoning the property to the CR District (Regional Commercial).
- 2. Therefore, if the CP is to be changed, and a portion of the property is to be rezoned to allow the Menards store, we suggest the following:
  - a. Reduce the area to be rezoned to that which will accommodate only the Menards store and parking. Create a 200-foot, or wider, natural buffer on the north. On the east create a similar additional natural buffer. This would alleviate the negative impact of the additional commercial zoning for Menards and allow that vacant portion of land (the triangle) to the east of Menards to remain available for residential use.
  - b. To guarantee that the Menards property will be properly conditioned, place any commercial zoning district allotted to Menards within a Planned Development Overlay District, and then provide appropriate conditioning.
  - c. Seek another less inclusive and more commercially appropriate district to rezone the Menards property. If necessary, change one of the other CC districts so that it would be appropriate for a Menards commercial district rather than choosing the CR District.

Thank you for considering our letter.

Sincerely yours,

Cille King

Co-President

Alan Black, Chairman Land Use Committee

alas Black

### Kirk McClure, Ph.D. 707 Tennessee Street Lawrence, KS 66044

mcclurefamily@sbcglobal.net

May 16, 2013

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Bryan Culver (Vice-Chair) Bruce Liese (Chair)

<u>bculver@bankingunusual.com</u> <u>bruce@kansascitysailing.com</u>

Re: AGENDA FOR PUBLIC & NON-PUBLIC HEARING ITEMS, Meeting May 20, 2013

ITEM NO. 3 2012 RETAIL MARKET STUDY (AAM)

ITEM NO. 4 HORIZON 2020 CHAPTER 6 AND REVISED SOUTHERN DEVELOPMENT PLAN (MJL)

ITEM NO. 5 RM12 TO CR: 41.5 ACRES: 1900 W 31 ST (SLD)

Dear Members of the Lawrence Douglas County Metropolitan Planning Commission,

As I indicated to you in my letter of April 18, 2012, the proposal to expand the South Iowa Street commercial corridor east along West 31 Street is an example of predatory development which is not beneficial to our community. The recently released 2012 Retail Market Study lends support to this conclusion.

Comparing the Growth of Demand for and the Supply of Retail Space

The 2012 Retail Market Report by the Planning & Development Services staff provides more than ample evidence that Lawrence has not pursued a healthy pace of growth in the supply of retail space.

The growth of retail spending is a good measure of the growth in demand for retail space. The report makes clear that the inflation adjusted growth in retail sales (Table 3-2) grew by 0.93 percent per year

from 1995 through 2005, the boom years. The sales declined by 0.34 percent per year from 2005 through 2012, the bust years. The net growth was 0.40 percent per year.

The supply of retail space grew by various rates over the years. The report does not provide a consistent series of retail space from 1995 through 2012, but Table 2-3 indicates that the pace of growth of retail space has been about 4.4 percent per year.

With a retail stock of 4 million square feet, the growth in demand would suggest that the stock should have grown by about 20,000 square feet per year. Unfortunately, the growth of supply was on the order of 170,000 square feet per year.

When supply grows at a pace much faster than the underlying demand for that space, investment in older space declines. Older downtowns suffer. Had the community exercised foresight in the pace of retail space, it would be confronting fewer problems with the decline and blight found in its older shopping districts. Rather than negotiating subsidies with developers (as it has many times in the past), the City could be negotiating exactions from the developers in exchange for the capacity to build.

### Menard's

Menard's seeks to expand our existing shopping district rather than development within the space already provided. The Retail Market Study makes it clear that more than sufficient space exists in the market for a development of this type.

As I indicated in my prior letter, there is insufficient demand for a second home improvement center in Lawrence, thus there is no argument for making an exception for Menard's. Adding more space will not add to the level of retail spending or retail jobs or the tax base of retail buildings. Specifically, making an exception for Menard's will not fill a need that exists in our community.

### Recommendation

The retail development industry is prone to overbuilding, as we have seen in Lawrence. The Planning Commission should learn from the Retail Market Study that the market has surplus space and that the market should not be expanded further at this time.

The community cannot support a second home improvement center. The Planning Commission should recognize the proposal as predatory development in an already bloated market and deny the Mendard's proposal.

Sincerely,

Kirk McClure

# Memorandum City of Lawrence Planning & Development Services

**TO:** Planning Commission

FROM: Planning Staff

Date: For May 20, 2013 Planning Commission Meeting

RE: CPA-13-00067: Horizon 20202 Chapter 6 and Revised Southern

**Development Plan and** 

Z-13-00071: RM12 to CR: Menards

This memo addresses the various issues related to a request to revise Horizon 2020, the revised Southern Development Plan and rezone property to CR for commercial development. This memo identifies specific development actions/options the Planning Commission could take to support the request as well as provides clarification for items discussed by the Planning Commission during their regular meeting on April 22, 2013.

## Staff Recommended Option if the comprehensive plan amendment and rezoning requests are recommended for approval:

Option 3c: Approve application with the following conditions:

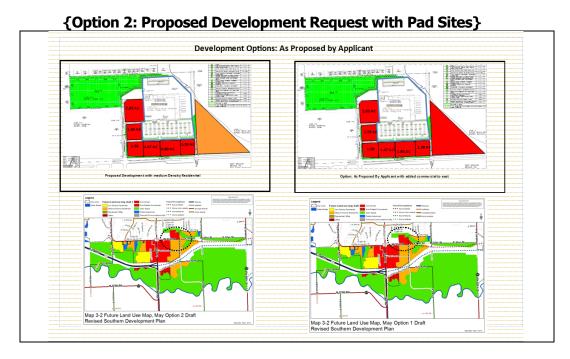
- 1. Condition CR to include 200' buffer along north property line, permitting a reduction in the size of out lots on the Menards site, and designate the adjacent property to the east for future commercial development in the Revised Southern Development Plan.
- 2. Restrict uses to ensure compatibility.

The Planning Commission may take the following actions with regard to the proposed requests:

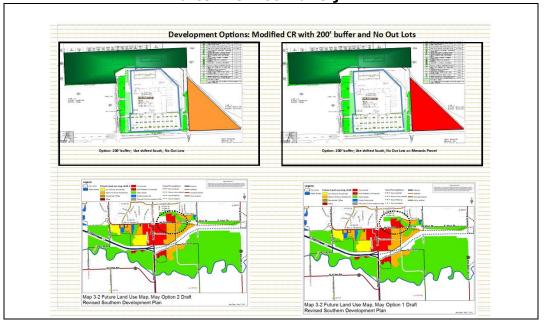
### **Development Options:**

- 1. Deny the applications.
- 2. Approve applications as proposed by applicant.
- 3. Approve applications with conditions:
  - a. Require a 200' buffer along the north property line, limit the development to a single use big box tenant [move building and parking lot forward to frame 31<sup>st</sup> Street] and exclude out lots.
  - b. Require a 200' buffer, single use big box tenant [move building and parking lot forward to frame 31<sup>st</sup> Street], and designate adjacent property to the east for future commercial development.
  - c. Require a 200' buffer, permitting a reduction in the size of out lots on the Menards property, and designate the adjacent property to the east for future commercial development in the Revised Southern Development Plan.

The following graphics depict the Menards project as proposed both with and without the inclusion of commercial land to the east (Snodgrass property). An option for consideration is approving the proposed CR request and amending the Revised Southern Development Plan to extend the commercial area to the east property line of the Menards site and retain medium density residential land use east of the subject property. If approved, the Commission may want to consider expanding the commercial designation to the east incorporating the western portion of the Snodgrass property as shown below. The existing floodplain is designated on the Revised Southern Development Plan as open space. The floodplain/floodway would be a clear terminating feature of commercial use along the north side of W. 31<sup>st</sup> Street.



**{Option 3a and 3b: Proposed Development Request without Pad Sites on Menards Parcel with 200' Buffer}** 



Development Options: Modified CR with 200' buffer and Out Lots

Option: 300' buffer, Pad size storage (togget) Read, Use shifted South

Option: 200' buffer, Pad size storage (togget) Read, Use shifted South

Option: 200' buffer, Pad size storage (togget) Read, Use shifted South

May 3.2 Future Land Use May, May Option 2 Draft
Revised Southern Development Plan.

May 9.2 Future Land Use May, May Option 1 Draft

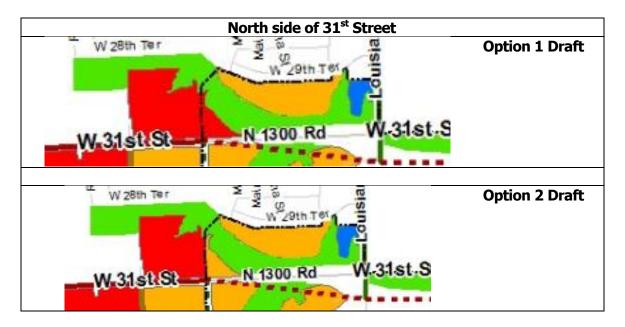
{Option 3c: Proposed Development Request with Pad Sites on Menards Parcel with 200' Buffer}

The submitted concept plan reflects an open area used for stormwater/borrow pit in the northwest portion of the site. It also reflects a 55' wide open space along the remaining north property line. There are a number of ways to provide transitions to less intensive uses, such as berms with dense landscaping, open space, fences, etc. The green space represented in the option above is intended to represent 200' along the north property line. This area abuts existing residential homes. The area also includes an open channel of a tributary to Naismith Creek that is prone to flooding. It is not within the regulatory floodplain. This green space buffer could accommodate passive uses such as stormwater management and multi-modal connection of the bicycle path between 31st Street and Naismith Park.

The remaining portion of this report provides responses and clarification to issues identified at the April PC meeting.

### 1. Land Use Patterns (Refer to attachments Map 3-2 Revised Southern Development Plan Option 1 Draft and Option 2 Draft)

Attached to this memo are revised land use maps for the Revised Southern Development Plan. The regulatory floodplain within the boundary of the Revised Southern Development Plan Area is a significant feature influencing land use patterns, utility extensions, and access.



### a. North Side of 31st Street

The city is actively engaged in acquiring the eastern 5.6 acres of the Snodgrass property for future utility improvements. Utility improvements are typically platted and zoned GPI (General Public and Institutional) District reflecting the public nature of the land use. This known land use will preclude commercial development at the northwest corner of 31<sup>st</sup> Street and Louisiana Street. The attachments show land use along the north side of 31<sup>st</sup> Street updated with a future utility pump station located on the northwest corner of Louisiana Street and 31<sup>st</sup> Street. (Blue Map Area)

The area abutting the Indian Hills neighborhood continues to be reflected as medium density residential in both Option 1 and Option 2. This area is paired with a text discussion in the plan that defines the land use recommendation to not more than 8 dwelling units per acre for density and that building type should be limited to detached, duplex, triplex and rowhouses (Page 24, Revised Southern Development Plan). (Orange Map Area)

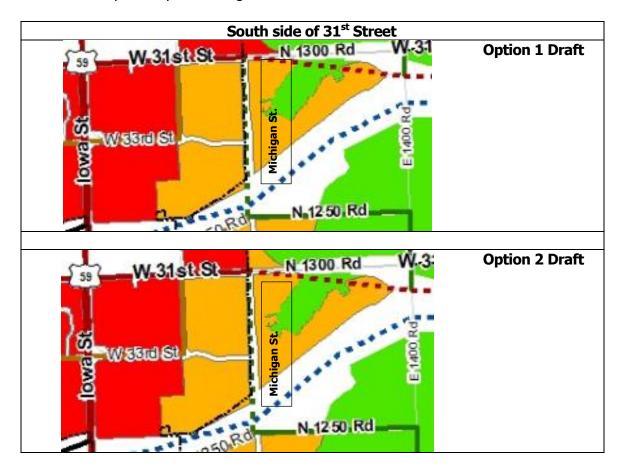
Both options of Map 3-2 show the Menards property as commercial with designated open space along the north property line. The open space shown in this plan reflects the current floodplain boundaries within the study area and recommended open spaces areas as a transitional land use between high intensity and lower intensity land uses. (Green Map Area)

Commercial use is shown for the Menards application as an option noted in the beginning of this memo. The two maps depict that commercial area with and without the addition of the western portion of the Snodgrass property included. (Red Map Area)

### b. South Side of 31st Street

Residential Land Use along the south side of  $31^{st}$  Street east of Ousdahl Road has been set with the existing development. Commercial uses to the west are bound by Ousdahl Road. The area between Ousdahl Road and Michigan Street has been platted, site planned and constructed as a medium density residential use. The Medium Density residential designation allows residential development to be clustered along  $31^{st}$  street and retain a larger connected open space that is needed for stormwater and flood protections.

Development east of Michigan, south of  $31^{\rm st}$  Street is not recommended to change land use in the Revised Southern Development Plan but to continue to be appropriate for medium density residential development. The residential zoning provides a greater protection to the environmentally sensitive floodplain by more rigorous regulatory requirements and by allowing clustered development to offset the wider open space areas. It would mitigate the aesthetic of commercial strip development along  $31^{\rm st}$  Street.



### 2. Land Use transition between commercial and residential uses.

If the Commission finds that the commercial zoning for the Menards project should be supported, then appropriate transition and buffering between the proposed commercial development and the existing residential development should be applied.

### a. Transition and Buffering:

Buffering can be created through the application of multiple techniques including use limitations, setbacks, distance separation, landscaping and screening or a combination of these elements. This application is unique with respect to the proximity to existing development and regulatory floodplain. An appropriately wide buffer will accommodate the needed transition between uses and will provide options to address stormwater along the north property line. Additionally, this area can be used to connect the recreation path between 31st Street and Naismith Park.

### b. Bike Path Connection to be designed

The City's adopted Transportation Plan has for several years shown a future connection between  $31^{\rm st}$  Street and the Naismith Recreation path. Regardless of the type of development this connection is important to the community. This bikeway along the Naismith/Michigan Corridor helps to connect the KU and Haskell campuses, provides a

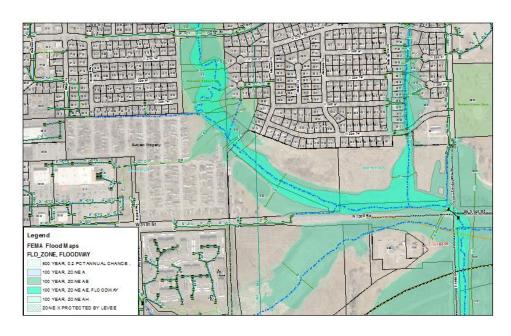
bikeway corridor parallel to Iowa, will help connect the KU campus and neighborhoods south of campus to the SLT pathway, and helps to build the bikeway network so cycling can become more useful for utilitarian trips. This and all the other bikeway segments the MPO shown on approved **Transportation** 2040 Bikeway System Map are planned for transportation purpose first and are designed to be part



of the region's multimodal transportation system.

### c. Floodplain and Stormwater Requirements

This area is encumbered by regulatory floodplain of Naismith Creek. The creek flows to the south east crossing the northeast corner of the subject property and diagonally through the abutting property to the east. A tributary of Naismith Creek is located along the north property line of the subject property. This tributary is not within the regulatory floodplain. The creek depth along the north property line is not large enough to offset additional impervious surface that will result from development. The provision of a wider riparian area (in the form of a dedicated green space area) will provide an opportunity to alleviate existing and potential drainage issues in this area.



As part of the review of this proposed CR zoning request, preliminary review comments were provided to the applicant regarding the conceptual development of the property. It is important to remember that a formal development submission has not been made other than the specific zoning application. Specific comments provided to the applicant included the following from the City's Stormwater Engineer:

- The Hydrologic & Hydraulic Study dated 2-19-2013 meets the specified requirements and is approved. This H&H Study is for the Naismith Creek floodplain determination only and applies to the zoning request. An additional drainage study will be required for the site proper, specifically the channel running along the north side of the property.
- 2. A Letter of Map Revision (LOMR) will need to be filed with FEMA to revise the floodplain.

The applicant has provided concept plans to staff along with very preliminary grading and stormwater information. The specific development project has not been submitted for official floodplain or site plan review at this time. Based on information contained in the concept plan staff has identified several issues with regard to floodplain regulations that are not compliant with the City's Development Code, one being that the floodplain regulations prohibit fill within the setback areas.

The setbacks for the CR district:			
Front Yard:	25'		
Side Yard Setback:	0' interior when adjacent to a non-residential zone 45' when adjacent to a residential zone		
Rear Yard setback:	30'		

For reference, the applicant's revised plan represents a 55' setback from the north property line.

The floodplain regulations also prohibit storage of materials within the floodplain. This will have an impact on the site design that will be considered with the submission of a subdivision plat and site plan for the site. In addition, the applicant will need to submit an Hydrologic & Hydraulic study for review that shows no change in the water surface elevation.

Any development of this property, regardless of use, will be required to address drainage. If approved, and controlled by one entity, staff recommends that an Hydrologic & Hydraulic study be prepared for the combined properties of the Menards request and the western portion of the Snodgrass property so that floodplain management is considered comprehensively in this area.

The developer should be aware that in addition to local floodplain and stormwater requirements other state and federal permits are required for this property including a 404 permit from the Corps of Engineers, a fill permit from the Division of Water Resources, and a Division of Water Resources Stream Obstruction permit.

The conceptual plan includes a large area along the northwest portion of the property to be excavated for fill to raise the site above the base flood elevation and to further elevate the site closer to the existing street grade. To achieve an elevated pad site, fill, borrowed from within the

site, will result in a deep pond area that will not drain and will be subject to anaerobic activity that results in attracting mosquitos and that can be a safety hazard depending on final design.

The depth and configuration of this borrow pit area should be designed to maximize the stormwater improvements needed in the area. By making the area wider and shallower, the capacity for stormwater is increased and the overall drainage system in an area prone to flooding is improved.

### 3. SLT and the Surrounding Street Network (Refer to attached KDOT Map for reference)

Construction of the east leg of the SLT is expected to begin in December 2013 with completion of the project in 2016. The project includes construction of the east leg of the SLT, construction of 31<sup>st</sup> Street on an offset alignment south of the current centerline between Louisiana Street and the eastern revised alignment of Haskell Avenue.

#### a. Louisiana Street.

Louisiana Street will not have access to the SLT. It will be relocated to the west for the portion south of 31<sup>st</sup> Street and intersect 31<sup>st</sup> Street as a "T" intersection from the north. Louisiana Street will be stop controlled allowing traffic to flow free along 31<sup>st</sup> Street. Appropriate turn lanes will be constructed to accommodate intersection movements. Existing Louisiana Street improvements between 31<sup>st</sup> Street and the Wakarusa River will be removed. The existing ROW will be vacated and added to the adjacent wetlands. A new road segment will be constructed to connect Louisiana Street south of the river to 31<sup>st</sup> Street on an alignment of Michigan Street. This ROW will bridge over the SLT. (SLT Map reference 5.)

Louisiana Street as a bypass for regional traffic and truck traffic is not anticipated. Engineers project that traffic will be reduced over time as travel patterns normalize post SLT/31<sup>st</sup> Street construction. This should not be taken to mean that traffic will decrease on Louisiana Street.

### b. Haskell Avenue

Haskell Avenue is designed as a folded diamond interchange with SLT and is intended to be desirable to heavier traffic and through traffic in the community. This intersection is designed to be preferable access over Louisiana Street. (SLT Map reference 13).

#### c. 31st Street

A portion of the existing 31st Street improvements will be removed. A new 31st Street will be constructed parallel to the SLT (SLT Map reference 9). Specific access points will be further evaluated as final development proposals along the 31st Street Corridor are developed and submitted. General expectations for access should be considered as the area is platted and site planned to design within these known parameters.

As the area along 31st Street builds out, Louisiana Street intersection improvements such as a traffic signal may be necessary. Traffic will be evaluated through a traffic study AFTER construction AND after traffic patterns have normalized post construction. If approved, the applicant could be required to participate in a future benefit district for specific intersections. This is accomplished through the execution of an agreement not to protest the formation of a benefit district for specific public improvements. This condition is often a standard requirement of the subdivision process.

Direct access to  $31^{st}$  Street is restricted along segments of the corridor per right-of-way acquisition for the SLT project and through adopted access management policies of the City. As such, access to individual parcels will be shared on common property lines or from intersecting side streets.

If the request for CR is approved, it is likely that a 9-acre parcel along the east property line would also be considered for CR zoning (west portion of the Sndograss property). This parcel is currently accessed via an existing residential driveway to 31<sup>st</sup> Street. Land Use Development of the western portion of the Snodgrass property would presume to have shared/common access to 31<sup>st</sup> Street along the west property line or the Michigan Street alignment extended north. This may be developed as a short street extension similar to Ousdahl Road or may be constructed as a commercial driveway with access extended to either property to the east and west.



### 4. Uses in the CR District

The April Staff Report suggested use restrictions if approved. Certain uses associated with heavy and continuous traffic and noise are not recommended in this specific location because of the proximity to residential uses. If approved, Staff suggests uses be restricted as shown on the attached Table.

### 5. Retail Market Study Update

**Retail Market Study:** The applicant submitted a project specific retail market study in November 2012 that was reviewed, in the staff report for CPA-13-00067, against the latest available data at that time from the 2010 Retail Market Report. Staff has been in the process of updating the city wide report and the Planning Commission requested that project specific retail market analysis for Menards be updated with the new figures when the item was brought back to their May 2013 meeting. Staff has issued the 2012 Retail Market Report<sup>1</sup> and the following serves as an update to the information presented in the CPA-13-00067 staff report, using the 2012 Retail Market Report figures as a base. The market study includes this analysis for the addition of a Home Improvement Store (189,988 sf) to be located in Phase I of the development. The report also indicates that an additional 65,350 sf will be built as part of Phase II, for a total of 255,328 sf.

Horizon 2020, Policy 3.13 (b) states that, "The project shall not be approved if the market study indicates the commercial project or any proposed phase cannot be absorbed into the

http://www.lawrenceks.org/assets/agendas/cc/2013/05-14-13/cm\_report\_retail\_market\_study.pdf

community within three years from the date of its estimated completion, or that it would result in a community-wide retail vacancy rate greater than eight percent." The Development Code uses a vacancy rate threshold of 8% as one factor in order to determine market health, and the most recent citywide market study (2012) figured the city-wide vacancy rate at 7.2% The addition of this project to those figures show that, when completed and entirely vacant, the construction of the 189,988 sf home improvement store will push the city-wide vacancy rate to 9.1%. If the total square footage for both Phase I and II were constructed (255,328), and vacant, the city-wide vacancy rate would rise to 9.7%. If Phase I were considered occupied, but Phase II were considered vacant, the city-wide vacancy rate would be 7.7%. Staff conducted additional analysis to take into consideration other commercial projects that have received approvals, but have not been constructed to date. The below table illustrates the impact that other projects that have been approved will have on the overall vacancy rate:

	Total Square Feet	Total Occupied Square Feet	Total Vacant Square Feet	City-wide Vacancy Rate
Total Current Retail Inventory	9,105,151	8,451,929	653,222	7.2%
Gateway - NW Corner 6 <sup>th</sup> & K-10 Node	155,000	0	155,000	
Mercato - NE Corner 6th & K-10 Node	359,640	0	359,640	
Fairfield Farms	200,000	0	200,000	
North Mass	215,000	0	217,337	
31 <sup>st</sup> & Ousdahl – Phase I (Mendards)	189,988	0	189,988	
31 <sup>st</sup> & Ousdahl – Phase II	65,340	0	65,340	
Total	10,290,11 9	8,451,929	1,840,527	17.9%

If all commercial space that has been approved were to be constructed and assumed vacant, the city-wide vacancy rate would rise to 17.9%.

Demand factors, such as income, employment and population were also updated with the completion of the 2012 Retail Market Report. From 2006-2011, population increased an average of .8% annually. However, during that same time period retail sales tax collections had an average annual decrease of 1.1% and per capita income had an average annual decrease of .9%, adjusting all dollar figures for inflation. On the supply side of the market, retail stock has shown an average annual increase of 4.3% from 2006-2012. What is important to take away from the above number is that demand has not kept pace with supply as shown by the limited income, population, and retail sales growth.

With the 2012 retail Market Report, in Lawrence there are approximately 97 sf of retail space per capita in 2012. With the addition of this project's square footage to the market, there would be approximately 100 sf of retail space per capita. In Section 20-1107 (c)(3)(iv) of the Land Development Code, a maximum threshold of 100 square feet per resident is

established to help maintain market health. However, this analysis does not take into consideration any of the other approved commercial development. The addition of Mercato, Fairfield Farms, north side of  $6^{th}$  and the K-10, and the remainder of the Bauer Farm development that is approved, but not constructed, would result in a ratio of 110 retail square feet per capita.

The staff report presented at the April 2013 Planning Commission meeting included analysis on pull factors. That analysis showed that as of December 2012, the pull factor for Lawrence was 1.07. Those numbers were the most updated figures. The original staff report, using the 2010 Retail Market Report Data showed that if Phase I and II were constructed and entirely vacant upon completion, the city wide vacancy rate would rise to 9.7%. Using the updated 2012 Retail Market Report, the above analysis shows that the city wide vacancy rate would be 9.6% under the same circumstances. These updated numbers show little change to the original retail market analysis included in the CPA-13-00067 staff report.

### 6. Public testimony:

The hearing process has produced testimony from the public that is mixed. Some in the adjacent and nearby neighborhoods support the proposal as a preferred alternative to the potential for student-based housing and others prefer to maintain the potential for residential uses at the subject property. Members of the Indian Hills neighborhood have expressed concern for maintaining the floodplain/floodway crossing the Snodgrass property as a hard boundary if commercial uses are permitted as requested. This memo attempts to demonstrate that commercial uses east of the floodplain would be challenging for several technical reasons, as well as reasons associated with planning for compatible land uses south of the neighborhood.

### **CONCLUSION:**

The Revised Southern Development Plan reflects compatible land uses; however, it may not be the only reasonable pattern given considerations exposed during the hearing process for this request. Items of note since the plan was adopted include:

- 1. The SLT is planned for construction, affecting the local street network within the planning area.
- 2. Approval of a student-based residential development on the subject site has left some in the surrounding neighborhoods considering whether commercial development with a transition buffer would be as, or more, compatible with the residences to the north.
- 3. The city has approved other areas for commercial use, but accommodating big box development remains limited to the market.

If the Planning Commission determines that the request should be supported, staff recommends that a 200' buffer be required along the north portion of the site, but that Menards have the ability to establish out lots on the remainder of the property. In relation to this, staff recommends that the west portion of the Snodgrass property be designated for commercial uses. Staff recommends that the other areas of the Revised Southern Development Plan be maintained as originally adopted.

The Planning Commission could find the following if the majority consensus is to support the request:

- 1. The subject site provides a reasonable alternative to accommodate a large retail use at a time when there is limited opportunity to locate such a use in the city.
- 2. Public testimony has demonstrated that the request is generally viewed as acceptable if certain conditions are placed on the request.
- 3. Modifying the adjacent property to the east for future commercial uses maintains a compatible pattern of land use and transportation relationships within the Revised Southern Development Plan.

### **Mitigation Plans for Baker Wetlands**

KDOT worked with the USACoE, FHWA, Baker University, and the public to develop wetland mitigation plans for this area. The mitigation agreement includes:

- More wetlands will be created. To replace approximately 58 acres of wetlands and habitat impacted, the state will create or restore 317 acres.
- Habitat restored. 37 acres of Upland Prairie and 16 acres of Riparian Habitats will be preserved, restored or created.
- Enhanced educational facilities. A wetland education and research center will be built dedicated to studying the role of wetlands in the environment. The facility will be run by Baker University.
- Enhanced access.
- Hike and bike trails from Iowa Street to Haskell Avenue.
- Camp site for educational use and parking areas within mitigation area.
- Preservation of the Baker Wetlands for future generations. To assist Baker University in its role as steward of the wetlands, the state will provide an endowment to cover the maintenance, operations and administration of wetlands enhancements.

- Provide a single transportation corridor through a sensitive area. 31st Street will be located closer to the South Lawrence Trafficway to reduce noise and light impacts in the Haskell Wetlands.
- Reduce noise and light impacts. Haskell Avenue and Louisiana Avenue will be relocated farther from the original Baker Wetlands.
- Noise walls will be constructed through the wetlands to minimize freeway noise impacts.
- Additional measures include:
  - A narrower median (46' wide) will be used through the wetlands (vs. a typical 60' wide median).
  - Limits on highway lighting through the wetlands.
  - No disturbance of the east-west historic berm (just south of existing 31st Street).
  - No grubbing in the wetlands.
  - Special construction procedures to minimize disturbance of existing soils in the wetlands.
  - All highway runoff will be diverted away from the wetlands.

### **Economic Benefits**

This six-mile, four-lane freeway is projected to have a regional economic benefit of \$3.7 billion, the greatest of any project under the T-WORKS program. KDOT determines economic benefit through use of a computer-modeling tool called TREDIS, which analyzes transportation benefits, including:

Congestion relief

- Safety impacts
- Travel time savings
- Contingent development
- Market access expansion
- New population markets

The completion of the South Lawrence Trafficway represents the "final piece" in an otherwise efficient transportation system serving Douglas, Johnson and Shawnee counties, and an important step toward improving safety, reducing congestion, and supporting regional industry.

### **CONTACT INFORMATION**

Kimberly Qualls NE Kansas KDOT Public Affairs Manager 785.296.3881 kqualls@ksdot.org





## South Lawrence Trafficway

### Kansas Department of Transportation

## moving forward

Fall 2012

BY THE NUMBERS

Location – Complete K-10 from South Junction of US 59/K-10 to East K-10

Cost – \$150 Million Construction Cost Length – 6 Miles • Economic Impact – \$3.7 Billion Benefit to the Kansas Economy

Fall 2013 BeginConstructionFall 2016 Open to Traffic

As part of the 2010 T-WORKS transportation program, the South Lawrence Trafficway (SLT) was identified as the number one priority for the state of Kansas and has the highest economic benefit of all the projects in the T-WORKS program. After years of study, the SLT is moving forward.

K-10 and I-70 are vital links for the state - connecting Manhattan, Topeka, Lawrence and Johnson County. These corridors are paramount in supporting commerce, education and culture.



### **Study Goals**

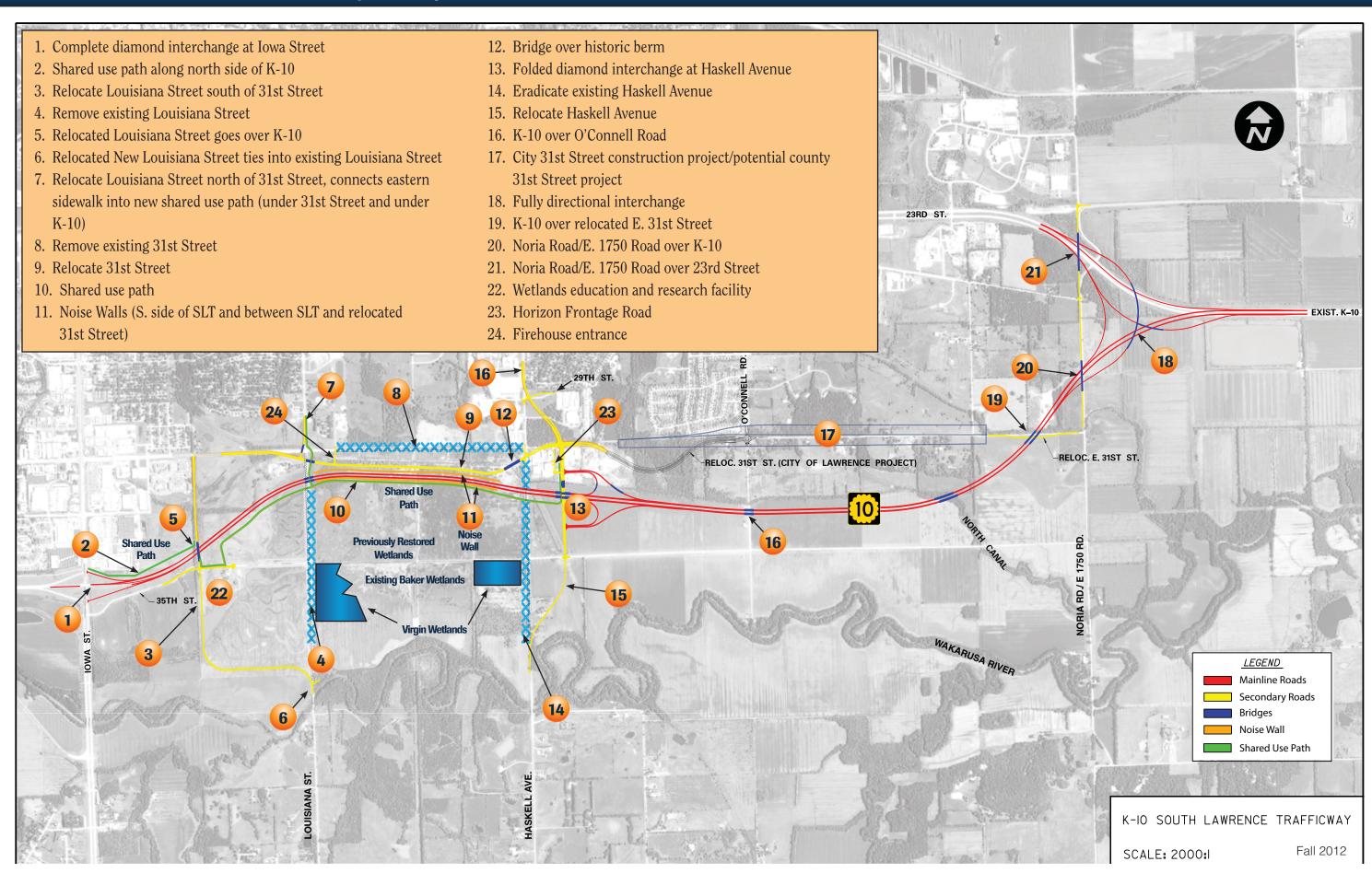
During the years of study, Kansas Department of Transportation (KDOT) examined in detail, twelve different alignment options including the option of doing nothing ("no build"). The detailed reviews evaluated each of the alternatives based on:

- Safety projected crash rates
- Efficiency congestion relief, volume of traffic diverted from city streets, length of alignment
- Environmental impacts farmland impacts, visual and noise impacts, wetland impacts, cultural and historic

- resource impacts (avoidance, minimization, and mitigation for impacts taken into account)
- Cost construction, operation, and maintenance costs ("reasonable expenditure of public funds")

Based on these criteria, two federal agencies, the Federal Highway Administration (FHWA) and the U.S. Army Corps of Engineers (USACoE) approved the preferred "32nd Street" alignment, which is shown above and in greater detail inside this brochure.

## South Lawrence Trafficway Map



### **Use Group Table Use Restrictions**

Business equipment

Use Groups	
RESIDENTIAL USE GROUP	
Household Living	
Group Living	
Not permitted in the CR district with the exception of	
Group Homes approved with a Special Use Permit.	
PUBLIC AND CIVIC USE GROUP	
Community Facilities	
Cemetery	
College/University	
Lodge, Fraternal and Civic Assembly	
Postal and Parcel Service	
Public Safety	
School	
Funeral and Internment	
Temporary Shelter (SUP	
Social Service Agency	
Community Meal Program (SUP)	
Utility Minor (P or SUP)	
Utility Major (SUP)	
Medical Facilities	
Health Care Office/ Clinic	
Outpatient Care Facility	
Recreation Facilities	
Recreational Facilities	
Active Recreation	
Entertainment & Spectator sports, General	
Entertainment & spectator sports, Limited	
Participant Sports & Recreation, Indoor	
Participant Sports & Recreation, Outdoor	
Passive Recreation	
Nature Preserve/Undeveloped	
Religious Assembly	
Campus or community Institution	
Neighborhood Institution	
COMMERCIAL USE GROUP	
Animal Services	
Kennel	
Live Stock Sale (SUP)	
Sales and Grooming	
Veterinary Fatablish as and Brishing Fatablish as a second	
Eating and Drinking Establishments	
Accessory Bar	
Bar or Lounge [Undesirable use in this location because	OI
proximity to residential neighborhood.]	
Brewpub Fast Order Food	
Fast Order Food Fast Order food, Drive-In	
·	
Nightclub  Private Dining Establishments	
Private Dining Establishments  Postaurant Quality	
Restaurant Quality	
Office	
Administrative and Professional	
Financial, insurance & real Estate	
Parking Facilities	
Accossory	

Accessory Commercial

Retail Sales and Service
Building Maintenance

Business equipment
Business support
Construction Sales and Service
Food and Beverage
Mixed Media Store
Personal Convenience
Personal Improvement
Repair Service, Consumer
Retail Sales, General
Retail Establishment, Large
Retail Establishment, Medium
Retail Establishment, Specialty
Sexually Oriented Businesses – [Would not be allowed on
W. 31 <sup>st</sup> Street, but is allowed in the CR District]
Sex Shop
Sexually Oriented Theater
Transient Accommodations
Campground
Hotel, Motel, Extended Stay
Vehicle Sales & Service
Cleaning (Car Wash)
Fleet Storage
Gas and Fuels Sales  Truck Stan [Undergraphe use in this location because of
Truck Stop-[Undesirable use in this location because of proximity to residential neighborhood.]
Heavy Equipment Repair [Undesirable use in this location
because of proximity to residential neighborhood.]
Heavy Equipment Sales/Rental
Inoperable Vehicles Storage [Undesirable use in this
location because of proximity to residential
neighborhood.]
Light Equipment Repair
Light Equipment Sales/Rental
RV and Boats Storage
INDUSTRIAL USE GROUP
Industrial Facilities
Laundry Service [Undesirable use in this location because
of proximity to residential neighborhood.]
Manufacturing & Production, Limited (SUP)
Manufacturing & Production, Technical
Research Service
Wholesale, Storage & Distribution
Exterior Storage (Accessory)
Heavy (SUP)
Light
Mini-Warehouse
Agricultural
Agricultural Sales
Agriculture, Crop
Communications Facilities
Amateur & receive only antennas (Accessory)
Communications Service Establishment
Telecommunication antenna (Accessory)
Telecommunications Tower (SUP)
Satellite Dish (Accessory)
Recycling Facilities
Large collection
Small Collection

**Out Lot Size Comparisons Chart** 

Bauer Farm PCD	
4841 Bauer Farm Dr.	1.6 AC
4801 Bauer Farm Dr.	1 Ac
4741 Bauer Farm Dr.	.88 AC
4721 Bauer Farm Dr.	.69 AC
4701 Bauer Farm Dr.	.89 AC
4671 Bauer Farm Dr.	.71 AC
4661 Bauer Farm Dr.	.55 AC
4651 Bauer Farm Dr.	1 AC
	4841 Bauer Farm Dr. 4801 Bauer Farm Dr. 4741 Bauer Farm Dr. 4721 Bauer Farm Dr. 4701 Bauer Farm Dr. 4671 Bauer Farm Dr. 4661 Bauer Farm Dr.

-	Target PCD	
McDonalds	3241 Iowa St.	1.18 AC
Payless Shoes	3231 Iowa St.	.79 AC
Radio Shack and	3221 Iowa St.	1.57 AC
Pier 1 Imports	3211 Iowa St.	
Petco	3115 Iowa St.	.72 AC
CN Bank	3140 Nieder Rd.	.85 AC
Mass Beverage	3131 Nieder Rd.	1.07 AC
Steak N Shake	3111 Nieder Rd.	1.43 AC



This development does not have a single large commercial anchor.

Managada Buada at

Total Out Lot Acres: 7.32



This development includes a big box tenant. Detention is captured within the Target Lot and not as a separate Tract. Total Out Lot Acres 7.61

	Menaras Project:
Tract	10.73 AC
Menards	20.15 AC
Lot 2	2.65 AC
Lot 3	1.59 AC
Lot 4	1.38 AC
Lot 5	1.47 AC
Lot 6	1.80 AC
Lot 7	1.39 AC

S Hammon &	1400 0 (30)	200000000000000000000000000000000000000	9 (1.60.500)	the splitte		
4	TOMBER OVER			ISIES.	MINOS	
JAPE ZONE POO	A Water	ZONE PRO	Wasan	<del>2 32 12</del> 5	ION DENGTY RESIDENTAL ALER PARK	
RITURE COMMERCIAL EMETING: NETAL		20 47 27 W 4450	No e*			
				Navam	New*	Marin St.

This development proposes a big box tenat with detention on a separate tract.

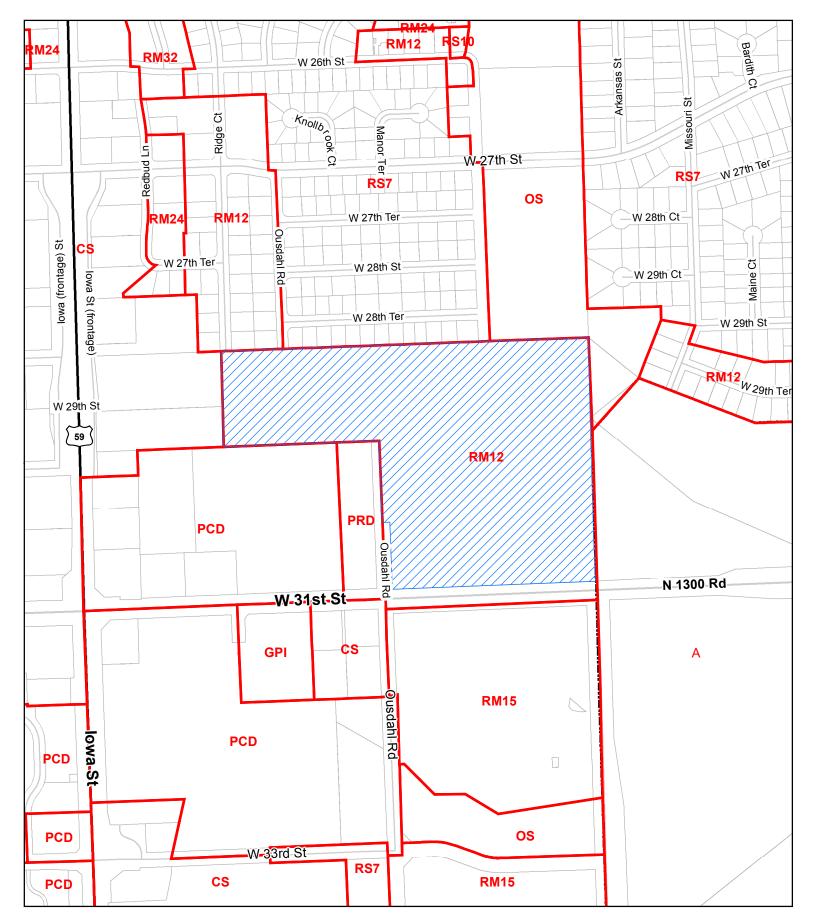
Total ou7t Lot Acresw: 10.28

	Home Depot	
Greenspace		3.1 AC
Home Depot	1910	12.25 AC
Best Buy	2020 W. 31 <sup>st</sup> St.	3.58 AC
Retail	2000 W. 31 <sup>st</sup> St.	1.40 AC
5- Guys	2040 W. 31st St.	1.20 AC
On the Border	3080 Iowa St.	1.39 AC
Longhorn Steak	3050 Iowa St.	1.18 AC
Presto Gas	3020 Iowa St.	.90 AC



This development includes a signle big box tenant, a junior tenant and a separate tract for detention.

Total out Lot Acres: 9.65



Z-13-00071: Rezone 41.5 acres from RM12 to CR 1900 W 31st St



Scale: 1 Inch =500 Feet

From: Travis Alexander [mailto:talexan@gmail.com]

Sent: Tuesday, April 23, 2013 2:13 PM
To: Sandra Day; <a href="mailto:tedwards@menard-inc.com">tedwards@menard-inc.com</a>

Cc: amalia.graham@gmail.com; cblaser@sunflower.com; jonjosserand@gmail.com; laraplancomm@sunflower.com;

bculver@bankingunusual.com; rhird@pihhlawyers.com; squampva@aol.com; clay.britton@yahoo.com;

chadlamer@gmail.com; bruce@kansascitysailing.com

Subject: Menards Rezoning Agenda Item

Please include this on the Agenda item referring to the Menards rezoning proposal.

I would like to put a question out to Tyler Edwards with Menards. Mr. Edwards, I would recommend including a Naismith Valley Trail "hookup" with the site plan. This would be ideal for any future tenant on that site. Connecting the Menards property to the Naismith Valley Trail would be a win win for the community and Menards. This will allow the trail to be used by the adjoining neighborhoods to reach the site under man power (helping Lawrence become more green). The trail would pull in potential customers north all the way up to the University of Kansas Campus. A nice sidewalk/bike path already exists that extends north all the way to 23rd Street, then north of 23rd Street the sidewalk continues along Naismith Drive to the University Campus and even goes by our famous Phog Allen Fieldhouse. Essentially what I am saying is this will provide more customers. This will help in the community by promoting the "neighborhood shopping experience" that you usually only get by living next to downtown. Furthermore, I recommend this directly to Menards, I imagine this could be an avenue to win more public support. Can this be included on your site plan?

Also it would be ideal for the Naismith Valley Trail to connect further south to the new Bike Path located next to the new SLT, which would connect to the future Wetlands Nature Center and all the hiking paths the Wetlands provide. What an added value to our community and would spur more trail use. This would open up many outdoor activities for families and outdoor enthusiasts (walk out the door and hit the trail and enjoy many Lawrence features along the path).

I would support Menards for the location. Count my vote for that. Here are some bullet points to reiterate my view.

- This town has enough low income housing, its saturated. More apartments/duplexes will not help single family property values, especially south of 23rd Street and north of this site.
- The South Iowa retail area could use quality big box stores as anchors to keep the area viable.
- Menards does not want to be located at 6th and SLT, they do not have a far reaching customer base at that site.
- Menards only wants to build at South Iowa, the far reaching customer bases would include Baldwin City, Ottawa, and would be close to the newly built section of the SLT.
- I would advise the city not to chase away another quality big box store. I feel that the Lawrence community regrets that Lowes was "pushed" out of town. I would advise the commission not to strike out with another big box store.
- We need the tax dollars and the jobs, not high end jobs but jobs none the less.
- This would be good for the surrounding neighborhoods. Instead of low income housing we would get a good retailer that will bring stamina to South Lawrence.

Thanks for reading,

Travis Alexander
talexan@gmail.com
Indian Hills Neighborhood Resident
Lawrence Resident 22 years

From: BRUCE [mailto:sales@signdsignlawrence.com]

Sent: Tuesday, April 23, 2013 1:43 PM

To: Rick Hird Subject: Menards

Hello, My name is Bruce Livingston, I would like to talk to you about the Menards store. I am happy you were able to get the vote postponed. I spent the morning doing research about the situation and learned that the reason the planning com. will have to reject the request to locate on 31st is because of the 2020 document. Apparently there is no provision for deviating from this plan. So the way I understand things, We as a City Have only 1 location allowed for a retail home improvement store and this is not acceptable to the store. How do we go about changing things in the near future to allow for exceptions to the plan when a majority of the people would rather have the store anywhere than not having it? 31st has all of the infrastructure in place to handle this store. Would it be possible to speak to you on the Phone?

Regards,



Bruce Livingston Owner

785.749.2886 Fax 785.840.9634

sales@signdsignlawrence.com www.signdsignlawrence.com

2300 W. 31st St, STE C Lawrence, KS 66047 From: Paul Oehlert [mailto:pauloehlert@gmail.com]

Sent: Tuesday, April 23, 2013 5:08 PM

To: schummfoods@gmail.com; mdever@sunflower.com; mikeamyx515@hotmail.com; Scott McCullough;

David L. Corliss; voteyourselfafarmer@gmail.com; riordan346@gmail.com

Subject: Menards

Dear Sirs,

This has never been something that I do - sit down and write a letter, and, to complain. It is my understanding that the recent decision by the planning department to not recommend the Gas Light Village site for Menards was done so by simply following the guide lines set forth by the 20/20 plan. I do believe that it is very important to have goals and guide lines to insure that there is a direction that we are headed. I believe though that it is very unrealistic that these guide lines can be created and not "tweaked" over a 20 year period.

American Eagle, Lowes, Menards, who's next? That is if you assume that this again will not send another clear message that Lawrence does not want new business's to come to Lawrence, or if you come - lets put you over here......REALLY?? Maybe you need to be Thomas Fritzel and offer up something that will have a plaque with your name on it to have the rules "tweaked".

It is my opinion that ENOUGH is ENOUGH. If John Menard wants to put a store on 31st street where there is ample infrastructure to handle it - Let him.

Paul Oehlert 720 E. 23rd Lawrence, KS 785-393-6010 From: Steve Standing [mailto:sestanding@sunflower.com]

Sent: Tuesday, April 23, 2013 10:34 PM

To: City Hall email

**Subject**: Menard's proposal for 31st Street.

Dear Sirs:

This letter is intended for the five sitting Lawrence City Commissioners. I would like to urge you to vote in favor of the Menard's development that is being proposed for the following reasons.

The neighbors are not opposed (exceptional for Lawrence).

It is not the business of the Commission to obstruct free competition between rival businesses. On the contrary, this is how our system is supposed to work. Perhaps the performance of the competitors will be improved. This has been the model for car dealerships nearby.

It is not the City's responsibility to dictate where certain businesses should locate. One does not build a billion dollar business by not knowing where to site the business.

The 20 year plan cannot possibly envision opportunities that come up years after it is formed. It should assume reasonable leadership by later Commissions to allow flexibility.

This is an opportunity to demonstrate that Lawrence does not desire to continue it's reputation for being unfriendly to business formation (Re. jobs)

It is not unreasonable for the Planning Commission to vote this down since they are charged with enforcing the 20 year plan. However it is the role of the City Commission to make changes or set precedents that Planning may not feel is their role. In this way, we may find the flexibility to reasonably adjust the decision making function as opportunities come up many years after the plan is set.

On a personal note, I have made dozens of trips to West Topeka because I find the best service and prices at the Menards store there. I would prefer to spend that money here at home.

Thank you for your consideration.

Steven E. Standing 1809 Learnard Ave. Lawrence, Ks.

785 979 3939

### PLANNING COMMISSION REPORT Regular Agenda — Public Hearing Item

### <u>ITEM NO. 4:</u> RM12 TO CR; 32.75 ACRES; 1900 W. 31<sup>st</sup> STREET (SLD)

**Z-13-00071:** Consider a request to rezone approximately 32.75 acres located at 1900 W. 31<sup>st</sup> Street from RM12 (Multi-Dwelling Residential) District to the City of Lawrence CR (Regional Commercial) District to accommodate a regional commercial facility.

**STAFF RECOMMENDATION:** Staff recommends denial of the rezoning request for approximately 32.75 acres from RM12 (Multi-Dwelling Residential) District to CR (Regional Commercial) District and forwarding it to the City Commission with a recommendation for denial based on the findings of fact found in the body of the staff report.

### **ATTACHMENTS**

- A. Permitted Use List
- B. Letter of Request for Commercial Zoning
- C. Preliminary concept plan
- D. Revised Southern Development Plan Map

### PROPERTY OWNER'S REASON FOR REQUEST

Development of a Menards store in Lawrence. Refer to attached letter.

### **KEY POINTS**

- This is a request to accommodate a Menards home improvement store, as well as additional commercial retail space, at the northeast corner of W. 31<sup>st</sup> St. and Ousdahl Rd.
- Proposed request will extend subject commercial zoning east along W. 31<sup>st</sup> Street.
- Request is inconsistent with land use recommendations for this area.

### **ASSOCIATED CASES/OTHER ACTION REQUIRED**

ASSOCIATED ITEMS BEING CONSIDERED AT THE APRIL 2013 PLANNING COMMISSION MEETING:

• CPA-13-00067: Amendment to Chapter 6 of *Horizon 2020 | Revised Southern Development Plan* 

### OTHER ACTION REQUIRED:

- City Commission approval of rezoning and adoption of ordinance.
- Publication of rezoning ordinance.

### OTHER ACTIONS REQUIRED PRIOR TO DEVELOPMENT

- Platting of the property through the Major Subdivision process.
- Site plan approved prior to release of building permits.

### **PLANS AND STUDIES REQUIRED**

- Traffic Study Submitted for review by staff
- Downstream Sanitary Sewer Analysis Not required at this time
- Drainage Study Not Required at this time.
- Retail Market Study Submitted to staff for review

### **PUBLIC COMMENT**

- Email from resident and applicant response regarding concerns for additional commercial development.
- Request for bicycle connection between W. 31st Street and Naismith Park recreation path.

### **GENERAL INFORMATION**

Current Zoning and Land Use: RM12 (Single-Dwelling Residential) District; former

mobile home park known as Gaslight Village.

Surrounding Zoning and Land Use:

To the North: OS (Open space), RS7 (Single-Dwelling Residential)

District, RM12 (Multi-Dwelling Residential) District and FP (Floodplain Management Regulations Overlay District); developed residential homes and Naismith

Valley Park.

To the West: CS (Commercial Strip) District, PD–[Home Improvement

Center PCD] District, and PD-[Home Improvement Residential] District; Existing commercial uses. The open space to the west is part of the required detention

area for the commercial development.

To the South: RM15 (Multi-Dwelling Residential) District; existing

apartment development.

To the East: A (Agricultural) District and OS (Open Space) District;

existing rural residence and south end of Naismith

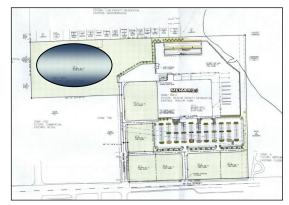
Valley Park.

### **Project Summary**

This property is located on the north side of 31<sup>st</sup> Street. The proposed CR zoning is bounded on the west by Ousdahl Road and by Michigan Street (relocated Louisiana Street south of 31<sup>st</sup> Street) extended on the east. This request is for CR (Community Regional) District Zoning to accommodate a large format retail tenant and pad site development along W. 31<sup>st</sup> Street east of Ousdahl Road. A concept plan has been provided that shows a Menards located in the rear portion of the property and three pad sites located along 31<sup>st</sup> Street and Ousdahl Road. The rear, northwest 8.4 acres would be retained as RM12 zoning and dedicated for detention/open space use. The Menards location would include an area for outdoor lumber storage and a garden center.

The proposed concept plan includes the existing access drive to W. 31<sup>st</sup> Street and interior access drives from Ousdahl Road providing access to individual lots.

The northwest leg of the overall 41-acre site is being considered for detention/retention purposes. Additional design considerations are required to assess how such a feature would function with the existing floodplain in the area.



#### **REVIEW & DECISION-MAKING CRITERIA**

### 1. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Property Owner's Response:

"Menards is currently working through the process required to amend the comprehensive plan to change the future land use from high density residential to planned commercial. The change in the comp plan makes sense with the proximity to the Cities commercial corridor on Iowa Street and the similarities in the retail development that has taken place on 6<sup>th</sup> and 23<sup>rd</sup> Streets."

Iowa Street, between 23<sup>rd</sup> Street and the South Lawrence Trafficway, is an existing commercial area noted in *Horizon 2020*. Commercial Development is discussed in Chapter 6 of *Horizon 2020*. Key strategies of *Horizon 2020* state:

- Establish and maintain a system of commercial development nodes at selected intersections which provide for the anticipated neighborhood, community and regional commercial development needs of the community throughout the planning period. (page 6-1)
- Require commercial development to occur in "nodes", by avoiding continuous lineal and shallow lot depth commercial development the city's street corridors and Douglas County Road.
- Encourage infill development and/or redevelopment of existing commercial areas with an emphasis on Downtown Lawrence and existing commercial gateways.

Nodal development is defined in part as "the antithesis of 'Strip Development" and "requires a clear termination of commercial development within near proximity of an intersection." (Page 6-2). Horizon 2020 identifies methods to establish the termination of a commercial node as:

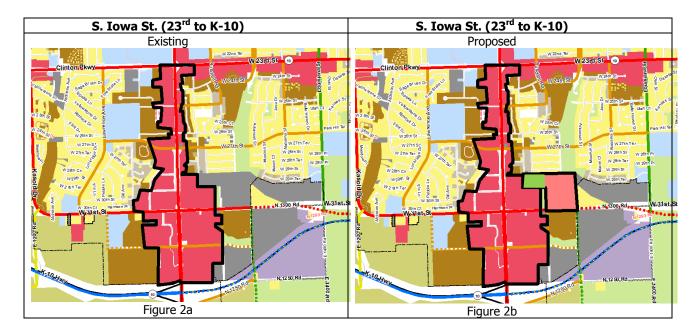
- 1. Placement of transitional uses, such as office and multi-family to buffer the adjoining neighborhood from the commercial area;
- 2. Restricting the extension of new commercial uses past established commercial areas; and
- 3. Defining the boundaries of the development through use of "reverse frontage" roads to contain the commercial development.

These strategies emphasize nodal development and infill development as a primary method to address new commercial uses.

Regional Commercial Centers are also defined in *Horizon 2020* (Page 6-9 and 6-38). The following table summarizes the recommended characteristics and the existing development patterns.

Minimum frontage is 1,400.  Minimum area on any corner is 40 acres	<ul> <li>Existing frontage between Iowa Street and Ousdahl Road is 1,572'. Includes PRD detention area. Request would extend frontage an additional 1,094'.</li> </ul>
Minimum area on any corner is 40 acres	detention area. Request would extend
Minimum area on any corner is 40 acres	
Minimum area on any corner is 40 acres	i trontade an additional i 1194
Minimum area on any corner is 40 acres	
	The northwest, southwest and southeast
	corners include 47 acres, 41 acres, and 41
	acres respectively. The northeast corner includes 32 acres in its current
	configuration.
Shall not exceed 1.5 million GSF of retail	Existing S. Iowa corridor includes 1.996
space.	million GSF of retail space. Request would
opace.	increase this to 2.25 million GSF.
Shall be located at the intersection of two	Existing commercial extends to the east
highways (state or federal) or an	along 31 <sup>st</sup> Street 1,572' and to the west
intersection an arterial and highway (state	along W. 31st Street 1,636', concentrating
or federal).	development at the intersection of a
	highway and an arterial street.
lowa and 31st Street C	Commercial Node
RS10 RS10 RS10 RS10 RS10 RS10 RS10 RS10	Subject Property 32.75 Acres  40.7 Acres  RM15  RM15  RM15
PRD	

The design standards ensure that a new regional center is capable of development with a critical mass of uses including multiple big box buildings, parking, and other physical development considerations. S. Iowa (23<sup>rd</sup> Street to K-10) is an existing commercial center. Map 6-1 of *Horizon 20202* shows the existing and future commercial land use locations. *Horizon 2020* notes commercial uses exist both east and west of S. Iowa along W. 31st Street. "Emphasis shall be given to maintaining this commercial node and requests that extend the commercial corridor for additional retail development shall not be considered."



The comprehensive plan recommends that new commercial development occur in a node. The request represents an extension of the Iowa Street and W. 31st Street node to the east.

Commercial development goals are also identified in Chapter 6 of *Horizon 2020*. Goals for established commercial areas include the retention, redevelopment and expansion of established commercial areas in the community. (Page 6-24)

Other comprehensive plan goals include appropriate land use transition between commercial and residential neighborhood. These goals are applicable to the north and east sides of the proposed request. The commercial zoning boundary extends to the property lines that abut low-density residential development.

Specific recommendations regarding land uses in this area are contained within the *Revised Southern Development Plan* found in Chapter 14, *Horizon 2020*.

### **Revised Southern Development Plan**

 The applicant requested a Comprehensive Plan Amendment concurrently with this zoning application.

The proposed request is located within the boundary of the *Revised Southern Development Plan* on the north side of W. 31st Street. Map 3-1 shows land use for this area as Medium-Density Residential and open space. The open space area coincides with the existing regulatory floodplain boundary.



The recently approved RM12 Multi-Dwelling Residential District was approved consistent with this recommended land use. This district provides a transition between the existing commercial development and the residential neighborhood to the north and east.

**Staff Finding** – The request for CR zoning in this location is not consistent with *Horizon 2020* goals and polices or specific land use recommendations included in the *Revised Southern Development Plan.* If the request to amend the planning documents to include this area as Regional Commercial is approved, then it would be consistent.

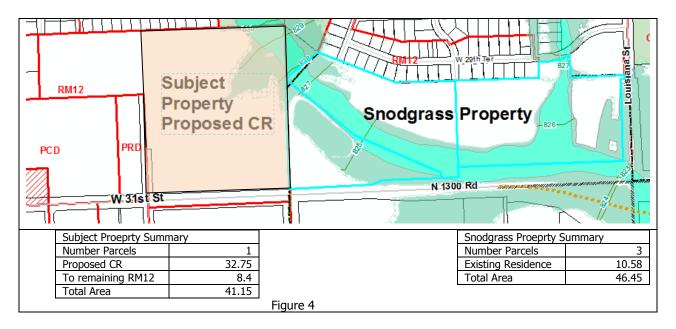
### 2. ZONING AND LAND USES OF NEARBY PROPERTY, INCLUDING OVERLAY ZONING

The predominate use of nearby property to the north, south and east is residential. The area along the north property lines includes RM12 zoning developed with duplexes; RS7 developed with detached residential lots, and OS zoning [Naismith Valley Park]. The development pattern along the north side of the subject property is low-density residential.

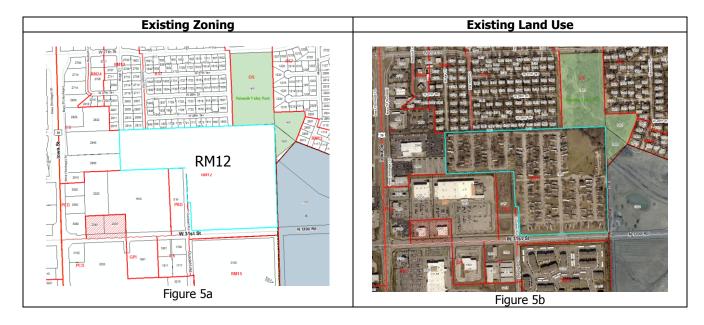
The property to the south includes RM15 Zoning and is developed with an apartment complex (The Connection).

The area to the west along the Iowa Street corridor is zoned and developed for commercial uses. See figure 2a. This commercial zoning and land use currently extends along W. 31<sup>st</sup> Street to the east to Ousdahl Road.

The area to the east, between the east property line of the subject property and Louisiana Street, is not currently located within the incorporated City boundary. It includes approximately 46 acres known as the Snodgrass property. The Snodgrass property is developed with a detached residence on the west end. The central and eastern portions of this property were used as a "fill" site in an effort to raise the base grade for future residential development.



A portion of the subject property in the northeast corner of the site is encumbered by the regulatory floodplain of the Naismith Creek that extends north and east of the subject property. A portion of this floodplain is located within the Naismith Valley Park adjacent to a portion of the north and east property lines of the subject property. See figure 3b.



**Staff Finding** – The existing zoning and land use in this area is a mix of residential uses that include detached housing as well as multi-dwelling housing and commercial development that is concentrated between Iowa Street and Ousdahl Road along W. 31st Street.

### 3. CHARACTER OF THE AREA

Property Owner's Response:

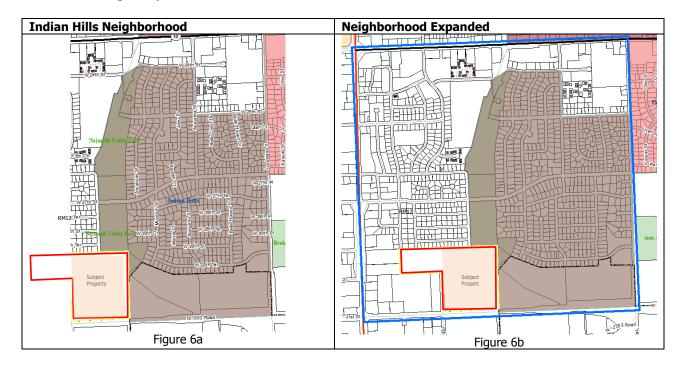
"The property location is on the fringe of several different zoning districts. To the west of the property along Iowa Street is commercial and planned commercial. North of the property is low-

density single family residential. The Residential to the north is surrounded by commercial on the west and north sides, the north side boarders 23<sup>rd</sup> Street commercial corridor. East of the subject property is vacant agricultural land, this land is predominantly floodplain with floodway right through the center making it largely undevelopable.

The property is not located within a designated neighborhood boundary at this time. The property is adjacent to the Indian Hills Neighborhood along the east and northeast sides of the property. The area to the west is part of the South Iowa Street Commercial Corridor. This property is isolated from the adjacent residential uses to the north because of the lack of pedestrian and vehicular connectivity. Ridge Court and Ousdahl Road both dead-end on the north side of the property. A drainage course along the north property line contributes to the disconnected street patterns in this area. W. 31<sup>st</sup> Street, a major arterial street, bounds the south part of the neighborhood.

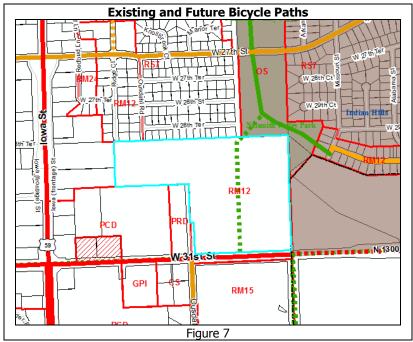
Expanding the definition of neighborhood to encompass the area bounded by Iowa Street to the west, Louisiana Street to the east, W. 31st Street to the south and 23<sup>rd</sup> Street on the north the property is located on the edge of a mixed-use neighborhood. Intensive uses are generally located along the arterial streets and low intensity uses are located interior to the larger neighborhood boundary.

The areas to the north, south, and east are developed residentially. The property to the immediate east along W. 31<sup>st</sup> Street/N 1300 Road is not currently annexed but is developed with a detached residence. Ousdahl Road is the demarcation of the eastern boundary of the Iowa Street Commercial Corridor/Node along W. 31<sup>st</sup> Street. The area south of W. 31<sup>st</sup> Street is a multi-dwelling complex.



Development of this property includes options for connectivity to the abutting residential uses to the north via Ridge Court and Ousdahl Road and through a future bicycle connection between W. 31<sup>st</sup> Street and Naismith Park recreation path. The graphic below shows the future

connection of a bicycle path between the existing recreation path and W. 31st Street. Staff received one comment from the public regarding support of a bicycle/recreation path connection through this property with future development. Refer to communications for public comment.

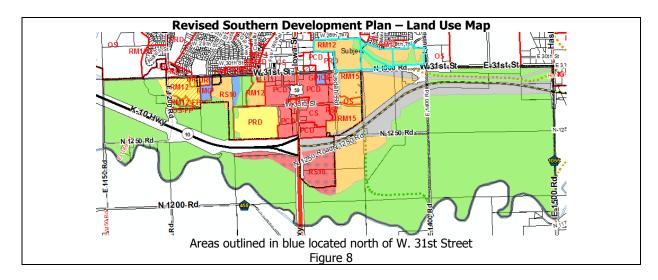


**Staff Finding** – The vicinity surrounding the subject property includes three distinct subneighborhood areas. The area to the north and east is an established low-density traditional neighborhood. The area along Iowa street and along the immediate W. 31st Street intersection is part of the S. Iowa commercial corridor. The area on the south side of W. 31st Street is developing commercially west of Ousdahl Road and residentially east of Ousdahl Road.

## 4. PLANS FOR THE AREA OR NEIGHBORHOOD, AS REFLECTED IN ADOPTED AREA AND/OR SECTOR PLANS INCLUDING THE PROPERTY OR ADJOINING PROPERTY

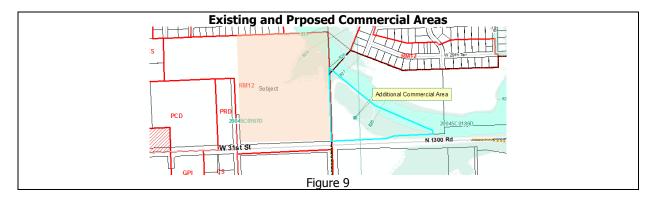
This property is included within the plan boundary of the *Revised Southern Development Plan* adopted in January 2008. This plan identifies the area located to the northeast of W. 31<sup>st</sup> Street and Ousdahl Road as suitable for medium density residential development. This land use could be implemented through the RS5, RS3, RM12, RM12D, RM15 and PD overlay zoning districts. A request for RM12 was approved in February 2012.

The only parcels of land included in the *Revised Southern Development Plan* located north of W. 31st Street are the subject property and area included in the 46.5 acres known as the Snodgrass Property, located between Louisiana Street on the east and the subject property on the west. Within the scope of the Area Plan, both areas, along the north side of W. 31<sup>st</sup> Street, were anticipated to be redeveloped in the future. Both the proposed CR zoning and the Snodgrass properties were specifically added to the area plan in 2008.



Future commercial development within the Area Plan boundary is located along the S. Iowa Street Corridor. An Auto-Related commercial area is identified south of K-10 Highway along the S. Iowa Street Corridor. The Area Plan recommends Community Commercial zoning south of W. 31st Street along Iowa Street (Page 20).

Modifications to the plan regarding commercial land use may have implications for the 46 acres of the Snodgrass property. If the current request is approved, the property owner has recently stated a desire to staff to extend the commercial zoning to the area immediately adjacent to the request. The extended area would include 9 acres at what would be the northeast corner of Louisiana Street (relocated) and W. 31<sup>st</sup> Street.



**Staff Finding** – The proposed rezoning does not conform with land use recommendations in the *Revised Southern Development Plan*.

## 5. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED UNDER THE EXISTING ZONING REGULATIONS

Property Owner's Response:

"The property would only be suitable to multifamily housing if there was enough demand in the city to establish 40 acres worth of apartments or townhomes and a developer with enough financing to make the project work. The property is currently an island of residential property in the cities commercial district. Compared to the cities other land use layouts this property is an outliner with residential abutting an arterial roadway.

The common theme throughout Lawrence is commercial along the major roadways and the residential is on the interior, set behind the commercial buildings. Examples of this land use pattern can be found on Iowa Street, 23<sup>rd</sup> Street, and 6<sup>th</sup> Street."

This property was recently rezoned to RM12 (Multi-Dwelling Residential) District (Z-11-28-11). The planning Commission approved the rezoning on January 25, 2012. The City Commission approved the rezoning on February 14, 2012. This zoning application was made concurrent with a specific development application for multi-dwelling residential land use. A preliminary plat for a single lot and a special use permit for a multi-dwelling development project, known as Aspen Heights, were submitted with the 2011 rezoning application. This project was considered multidwelling because the complex included multiple buildings on a single lot. The residential development included building types that would consist of 2BR and 3BR duplexes and 4 BR detached homes. Buildings were proposed to be accessed via internal driveways with surface parking lots rather than by a public street network. The RM12 zoning district permits detached dwellings only as a special use. This specific project was designed to attract student residents. The design however, could be applicable to other segments of the community. Regardless of the specific development application for student housing, the application of RM12 zoning for this property was considered independent of the Aspen Heights proposal. The medium density proposed for the project complied with the land use recommendations stated in the Revised Southern Development Plan.

The Aspen Heights Development demonstrated that the property is suitable for medium density residential development. The zoning and site plan were approved with little to no public opposition as a development compliant with the *Revised Southern Development Plan*.

**Staff Finding** – The property is suitable for the medium density residential uses to which it is restricted with the current RM12 Zoning, as evidenced by the approved, but not constructed, Aspen Heights Development.

However, if the commercial node is extended along W. 31st Street to encompass this property then specific uses permitted in the CR district should be prohibited, as they are not compatible with the adjacent residential uses. Recommended use restrictions are listed in the attachment to this report.

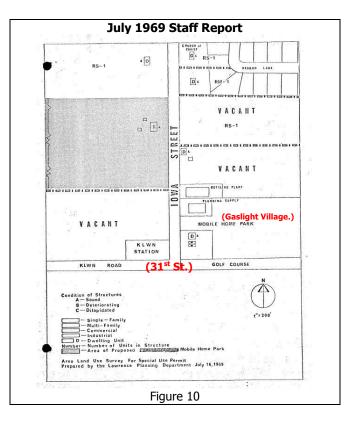
## **6. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED** Property Owner's Response:

"The property has been vacant for approximately 6 months. It was previously occupied by tenants of the Gas Light Village mobile home park but has been vacant since the apartment complex developers started working on the property. With little need for additional residential housing in Lawrence it is unlikely that this property would be developed soon and could remain a vacant lot or could continue as a trailer park."

A July 1969 staff report identified this property as a mobile home park.

This property is not vacant. The property includes a drainage easement between the north end of Ousdahl Road and the northeast corner of the property and a large gas line crosses easement that the property diagonally from Ousdahl Road to the southeast corner of the property. Property improvements include pad sites for mobile homes. Most of these improvements would be demolished or removed as part of a redevelopment of the property.

The east portion of the mobile home park was rezoned in 2000 to accommodate the Home Depot development. The remaining portion of the mobile home park was rezoned in 2012 for a multi-dwelling residential development. The applicant's representative withdrew the preliminary plat and special use permit applications for Aspen Heights Development (previously approved subject to conditions) in March of this year.



**Staff Finding** — The property is a former mobile home park dating back more than 40 years. The site is slowly being prepared for redevelopment through the removal of the mobile homes.

## 7. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTIES

Property Owner's response:

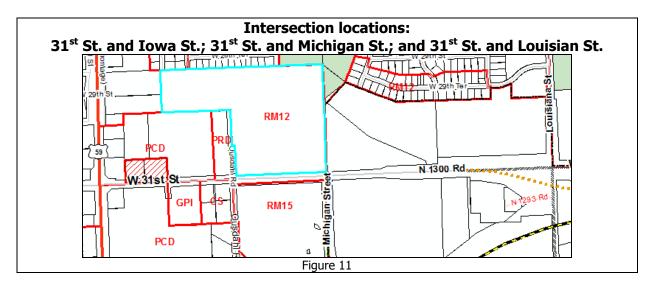
"The rezoning will have a positive effect on the neighboring properties compared to the existing conditions. There is nothing preventing the existing use of the property as a trailer park to continue indefinitely. After the previous contract on the property for residential units was terminated it is unlikely that another residential user will be interested in the property unless a strong demand for housing develops. Because there was no demand for apartments it is logical that the property zoning be amended to allow a user that is in demand to proceed with development so the property is not left vacant as it exists today."

The property, as currently zoned, permits residential development on this site. A variety of residential uses could be developed including multi-dwelling, extended care facilities, duplex and zero lot line development.

The development request does not include any land use transition between the commercial activity and low-density residential development to the north and east, therefor a type 2 buffer yard would be required. Approval of this request will precipitate at least one additional commercial request for an area immediately to the east, based on statements made by that landowner to staff.

Potential detrimental impacts on adjacent and nearby properties include light, truck traffic, commercial noise in the lumberyard area. These elements can be mitigated through fixture placement and shielding of fixtures. Nighttime and early morning activity of a commercial site is generally limited to product delivery and municipal solid waste service. Appropriate screening and building placement can mitigate these impacts.

Both KDOT and City Engineers have identified traffic concerns. Commercial development will be expected to participate in intersection improvements both immediately and in the future for W. 31st Street & Michigan Street (relocated Louisiana Street south of 31<sup>st</sup> Street) and W. 31st Street and Louisiana Street (north of 31<sup>st</sup> Street). The existing access to the property east of Ousdahl Road should not be assumed to remain. Direct site access will be development specific and evaluated in detail for separation and coordination with existing and planned intersections along the corridor.



**Staff Finding** — Approval of the request facilitates redevelopment of the site but will result in a development pattern that conflicts with the planned land uses along the W. 31st Street corridor. Impacts to adjacent residential uses will require substantial screening on the commercial side of the development. If approved, mitigation of the incompatible land uses may require that the development move toward W. 31st Street to accommodate the existing stream and necessary screening required per the Development Code and the Commercial Design Guidelines.

# 8. THE GAIN, IF ANY, TO THE PUBLIC HEALTH, SAFETY AND WELFARE DUE TO THE DENIAL OF THE APPLICATION, AS COMPARED TO THE HARDSHIP IMPOSED UPON THE LANDOWNER, IF ANY, AS A RESULT OF DENIAL OF THE APPLICATION

Property Owner's Response:

"The proposed project would constitute a gain to the health and safety of the community. The condition of the trailer park was in dire need of repair and potentially dangerous, the condition of the roads was hazardous to drivers with large potholes all over. The upkeep of the units was not consistent with the homes in the surrounding area and likely has a negative effect on home values. The proposed Menards store would create over 200 new jobs for local residents and a new multi lot retail development strengthening the local economy. Denial of the application would leave the property owner with a vacant trailer park because a residential developer

determined that Lawrence had no need for additional residential units. This would leave the owner with vacant residentially zoned property that would be unusable until the housing market picked up again. The only option left to the owner would be to reestablish the property as a trailer park.

Evaluation of these criteria includes weighing the benefits to the public versus the benefits of the owner of the subject property. Benefits are measured based on the anticipated impacts of the rezoning request on the public health, safety and welfare.

Staff concurs with the applicant that the existing property is underutilized and should be appropriately redeveloped.

If the rezoning request were denied, the property could remain as a multi-dwelling residential district. This district allows a variety of residential uses including attached housing, detached housing with a special use permit, and multi-dwelling uses.

The RM12 district does not allow a mobile home park. To reestablish the previous manufacturing housing use, the property would need to be rezoned to at least RM15. Redevelopment as a manufactured housing development would require compliance with current design standards.

It the rezoning were approved, the uses allowed change from residential to commercial with a wide variety of commercial uses allowed. Limiting uses would serve to create a more compatible development with the adjacent low-density residential development to the north and east.

Approval of the request will facilitate redevelopment and reinvestment in existing property. However, denial of the request does not preclude a future redevelopment application consistent with the existing zoning and approved land use plans for the area.

Denial of the request would prohibit the ability to redevelop the property as a commercial extension of the existing node at Iowa and W. 31st Street, requiring Menards to pursue other locations in the city; a pursuit that Menards has stated is a hardship given that the other commercially zoned or designated properties in the City do not meet their needs at this time.

**Staff Finding** — Benefits to the community include the investment in property within existing utility, transportation and service districts. Denial of the request prohibits the applicant from redeveloping the property as a commercial use. If approved, staff believes the zoning should be restricted with conditional zoning.

#### PROFESSIONAL STAFF RECOMMENDATION

The focus of this report is the specific land use request for CR zoning. This application was made with a concept plan for a specific end user. This application reflects a trend in the review process whereby applicants are seeking zoning a specific end user versus speculative zoning applications. If approved, the concept plan for development of this site should not be considered as the ultimate development of the site. Several physical concerns of the proposed development will need revisions and additional consideration.

- 1. A portion of this property is encumbered by the regulatory floodplain. Development of property requires elevation 1-2 feet above the base flood elevation.
- 2. The conceptual grading plan provided shows an open borrow pit of 25' with no drainage. As designed in the conceptual plan, there are no improvements provided to accommodate the existing flooding challenges along the north side of the property.
- 3. Direct access to the arterial street (W. 31<sup>st</sup> Street) is not recommended. The existing drive access east of Ousdahl Road is not recommended.
- 4. Extension of right-of-way or a shared driveway along the Michigan Street alignment (east side of subject property) would be recommended if approved for commercial development.
- 5. Utility improvements including relocation of sanitary sewer across the site is required to remove a sewer line under an existing residence to the north regardless of the zoning or land use approved for this site.

The property was developed as a mobile home park in the late 1960's. This area of the community was in the unincorporated portion of Douglas County at that time and the mobile home park was a type of urban fringe development. Upon annexation, the property was assigned a low-density residential zoning designation. The 1966 Code permitted a mobile home park subject to the approval of a Special Use Permit in the RS districts. The adoption of the Development Code in 2006 created the non-conformity. A portion of the original mobile home park was removed for the Home Depot development. As part of the Home Depot approval, the boundary of the commercial node was established as the east side of Ousdahl Road and a requirement that a green space buffer be developed. This greenpsace buffer is the portion zoned PRD and provides detention for the existing development.

The *Revised Southern Development Plan* anticipated that this property would be redeveloped with a higher intensity use as depicted in the land use map. The property was rezoned to RM12 in anticipation of redevelopment of the site consistent with the land use recommendation.

Staff recommends denial of the rezoning request based on the land use recommendations in Chapter 6 and 14 of *Horizon 2020* and the findings of fact listed in this staff report subject.

#### **CONCLUSION**

This existing RM12 zoning is appropriate for this location. Denial of the request does not preclude future redevelopment of the site. The proposed zoning is inconsistent with recommended land uses for the area.

If the Commission recommends approval the CR zoning, revised findings of fact will be required. Further, approval of the CR district should include use restrictions, conditional zoning, as discussed in the body of this report.

Recomn	nended Uses
Residential	Retail Sales and Services
Not permitted in the CR district with the exception of Group	Building Maintenance
Homes approved with a Special Use Permit.	Business Equipment
Community Facilities	Business Support
Community Facilities College/University	Construction Sales and Service Food and Beverage
Cultural Center/Library	Mixed Media
Day Care Center	Personal Convenience
Lodge, Fraternal and Civic Assembly  Postal and Parcel Service	Personal Improvement  Retail Sales, General (65,000 sq ft limit)
Public Safety	Retail Establishment, Large
Social Service Agency	Retail Establishment, specialty
Utility Minor (P or SUP)	Sexually Oriented Business – [would not be allowed on
, , ,	W. 31st Street] but is allowed in the CR District]
Utility Major (SUP)	<del>Sex Shop</del>
Medical Facilities	Sexually Oriented Theater
Health Care Office/Clinic	Transient Accommodations
Outpatient Care Facility	Campground
Recreational Facilities	Hotel Motel, Extended Stay
Active Recreation	Vehicle Sales & Service
Entertainment and Spectator Sports (General and Limited)	Cleaning (car wash)
Participant Sports and Recreation (Indoor and Outdoor)	Fleet Storage
Passive Recreation	Gas and Fuel Sales
Nature Preserve / Undeveloped	Truck Stop-[undesirable use in this location because of proximity to residential neighborhood]
Private Recreation	Heavy Equipment Repair—[undesirable use in this location because of proximity to residential neighborhood]
Religious Assembly	Heavy Equipment Sales/ Rental
Religious Institution (Community or Neighborhood)	Inoperable Vehicles Storage-[undesirable use in this location because of proximity to residential neighborhood]
Animal Services	Light Equipment Repair
Kennel	Light Equipment Sales/Rental
Livestock Sales-[Use not recommended]	RV and Boats Storage
Sales and Grooming	Industrial Facilities
Veterinary	Laundry Service [undesirable use in this location because of proximity to residential neighborhood]
Eating and Drinking Establishments	Manufacturing and Production Ltd (SUP)
Accessory Bar	Manufacturing and Production Tech
Bar or Lounge	Research Service
Brewpub	Wholesale Storage and Distribution
Fast Order Food	Heavy (SUP)
Fast Order Food with Drive-In	Light
Private Dining Establishments	Mini Warehouse
Quality Restaurant	Agriculture
Offices	Agricultural Sales
Administrative and Professional	Crop Agriculture
Financial, Insurance and Real Estate	Communications Facilities

Other	Amateur and Receive Only (accessory)
Parking	Communications Service Establishment
Accessory	Telecommunication Antennae (accessory)
Commercial	Telecommunication Tower (SUP)
	Satellite Dish (accessory)
	Recycling
	Large Collection
	Small Collection



February 1, 2013

Menards Lawrence KS Rezoning Request

Menard, Inc. has been working diligently for the last two years to secure a location in Lawrence that is large enough for our store and connected to the cities exiting commercial nodes. Several locations were identified as viable options and perused with no positive outcome for reasons such as small size, high price, or poor location. In the fall of 2011 Menards was presented the Gas Light Village mobile home park and began contract negations with the owners. For business reasons the park owner elected to move forward with another user proposing to build student housing. Over the last year Menards remained interested in that site while pursuing other locations in the city. During the residential deal the majority of tenants elected to vacate the park when they learned the park would be sold. When that deal was ended the park was left very empty with a few holdout residents and a number of vacant trailers. The owner had the choice of restoring the park to its former use, sitting on the vacant property until another residential user pursue the property, or moving forward with Menards. Menards is a motivated purchaser with a strong desire to establish a store in Lawrence and this is the premier location to do so.

The trailer park property is currently zoned RM-12, a multi-family zoning with a density of 12 units per acre. The site is bordered by Agricultural land to the east, RS-7 and designated Open Space to the north, Commercial and Planned Commercial to the west, and RM-15 to the south. This zoning configuration leaves the property on the edge of the commercial district as an island of residential. It is very typical for commercial zoning to line major roadways and residential to sit between the commercial areas. Along with 31st St similar situations have occurred in Lawrence along 23rd street and 6th street. The commercial areas provide a nice buffer from the sights, sounds, and smells associated with a well traveled roadway. The traffic counts along 23rd St range from 1710-4950 during the AM peak and 1526-3000 during the PM peak. The 6<sup>th</sup> St counts are similar with 1178-2495 during the AM peak and 1178-3159 during the PM peak. The proposed Menards site on 31st St has an AM peak of 1800-2156 and 2138-3344 during the PM peak. The provided traffic counts show almost identical conditions along all three corridors. All three corridors are also designated as principal arterial streets, one of the largest road classifications in the city. Just as it makes sense for like businesses to be located next to each other it makes perfect sense that like zonings are located next to each other for the same reasons. Shoppers can make multiple visits during shared trips, saving on gas and pollution. Increasing visits to multiple commercial areas at once increases the economic impacts as they are likely to spend more when retail is nearby.

The proposed rezoning for the Menards project will not conform with the future land use laid out in Horizon 2020. We are working on an amendment to the comprehensive plan based on the same justification explained in this letter.

Rezoning from RM-12 to Planned Commercial will not detriment the neighboring properties as commercial zoning is present adjacent to the project area. The redevelopment from a dated and mostly abandoned trailer park to a new multi lot

commercial development will increase the aesthetics of the property and the view from neighboring properties. According to the Lawrence Police Department interactive map there have been a high number of police calls to the property each year. If the rezoning was not granted there is nothing preventing the property owners from reestablishing the property as a trailer park and the previous conditions could continue. The Menards project would prevent that use from continuing and would assure the neighboring residents that the activities that took place at the property in the past would be eliminated. The proposed Menards project would also prevent the property from remaining a vacant eyesore to the neighborhood.

The character of the neighborhood is solid commercial to the west, made up of similar big box uses with Home Depot, and Best Buy directly west on 31<sup>st</sup> St and Target, Wal-Mart, and Kohl's to the south on Iowa St. East of the property the zoning designation is Agricultural but is predominantly the floodway for the same river that runs through Naismith Valley Park, this land is undevelopable due to the floodway. South of the property is a newer multifamily apartment complex. This apartment complex stands alone with no adjacent residential development, however the future land use plan places more residential to the south of the apartments and agricultural to the east. North of the site is the Indian Hills neighborhood made up of single family homes, and open space. The residents to the north would be the most impacted by the new Menards development however with the proper screening and considering the existing conditions the new project will fit well within the context of the neighborhood and will increase the value and quality of life for the residents.

The property has remained vacant for several months, a few tenants remained in the park until late fall but have since vacated leaving the park 100% vacant. Under the existing zoning the project would not be able to move forward and the property would remain vacant until a residential user purchased it or the owners could start over with a new trailer park.

The gains to the public health, safety, and welfare have been presented throughout the above letter. The former operations at a trailer park were hazardous to the safety and health of the public, many of the above mentioned police calls were dangerous and potentially harmful to nearby residents or pedestrians. These types of activities negatively impact surrounding neighborhoods. A Menards store and development would benefit the community with a new aesthetically pleasing store with a large investment into the community. The new store would bring 200 new jobs to Lawrence and promote economic growth through sales generated by the Menards store and outlots. Menards is a regional destination and attracts shoppers from a large distance and will bring in consumers that normally do not shop in Lawrence. The nearest Menards store is in Topeka 40 miles away and while we are planning on several Kansas City locations there are not any sites selected on the west side of the city. The property owner began vacating the park as part of the previous purchasers approval process was underway, when that user backed out the owner was left with a mostly empty trailer park. Based on existing conditions in the city it makes sense that this property is converted to a commercial zoning, it is adjacent to similar retail and is along a well-traveled roadway, both are characteristics of a commercial node.

Granting the variance would allow Menards to continue its approval process with city staff and proceed with detailed design of the store. The new store would be an asset

to the community and fit well within the South Iowa Street commercial node. If there are any questions please do not hesitate to contact me at 715-876-2143.

Answers to the application questions are below.

- 1. How does the request conform with the Comprehensive Plan, Horizon 2020?
  - a. Menards is currently working through the process required to amend the comprehensive plan to change the future land use from high density residential to planned commercial. The change in the comp plan makes sense with the proximity to the cities commercial corridor on Iowa Street and the similarities in the retail development that has taken place on 6<sup>th</sup> and 23<sup>rd</sup> streets.
- 2. To what extent will approving the rezoning detrimentally affect the nearby properties?
  - a. The rezoning will have a positive effect on the neighboring properties compared to the existing conditions. There is nothing preventing the existing use of the property as a trailer park to continue indefinitely. After the previous contract on the property for residential units was terminated it is unlikely that another residential user will be interested in the property unless a strong demand for housing develops. Because there was no demand for apartments it is logical that the property zoning be amended to allow a user that is in demand to proceed with development so the property is not left vacant as it exists today.
- 3. Describe the character of the neighborhood.
  - a. The property location is on the fringe of several different zoning districts. To the west of the property along Iowa Street is commercial and planned commercial. North of the property is low density single family residential. The residential to the north is surrounded by commercial on the west and north sides, the north side boarders the 23<sup>rd</sup> street commercial corridor. East of the subject property is vacant agricultural land, this land is predominantly floodplain with floodway right through the center making it largely undevelopable.
- 4. What is the suitability of the subject property for the uses to which it has been restricted under the existing zoning regulations?
  - a. The property would only be suitable to multifamily housing if there was enough demand in the city to establish 40 acres worth of apartments or townhomes and a developer with enough financing to make the project work. The property is currently an island of residential property in the cities commercial district. Compared to the cities other land use layouts this property is an outlier with residential abutting an arterial roadway.

The common theme throughout Lawrence is commercial along the major roadways and the residential is on the interior, set behind the commercial buildings. Examples of this land use pattern can be found on Iowa Street,  $23^{\rm rd}$  Street, and  $6^{\rm th}$  Street.

- 5. What is the length of time the subject property has remained vacant as zoned?
  - a. The property has been vacant for approximately 6 months. It was previously occupied by the tenants of the Gas Light Village mobile home park but has been vacant since the apartment complex developers started working on the property. With little need for additional residential housing in Lawrence it is unlikely that this property would be developed soon and could remain a vacant lot or could continue as a trailer park.
- 6. What is the gain, if any to the public health, safety, and welfare if this application were approved as compared to the hardship imposed upon the landowner, if any, as a result of denial of the application?
  - a. The proposed project would constitute a gain to the health and safety of the community. The condition of the trailer park was in dire need of repair and potentially dangerous, the condition of the roads was hazardous to drivers with large potholes all over. The upkeep of the units was not consistent with the homes in the surrounding area and likely had a negative effect on home values. The proposed Menards store would create over 200 new jobs for local residents and a new multi lot retail development strengthening the local economy. Denial of the application would leave the property owner with a vacant trailer park because a residential developer determined that Lawrence had no need for additional residential units. This would leave the owner with vacant residentially zoned property that would be unusable until the housing market picked up again. The only option left to the owner would be to reestablish the property as a trailer park.

Sincerely, **Menard, Inc.** 

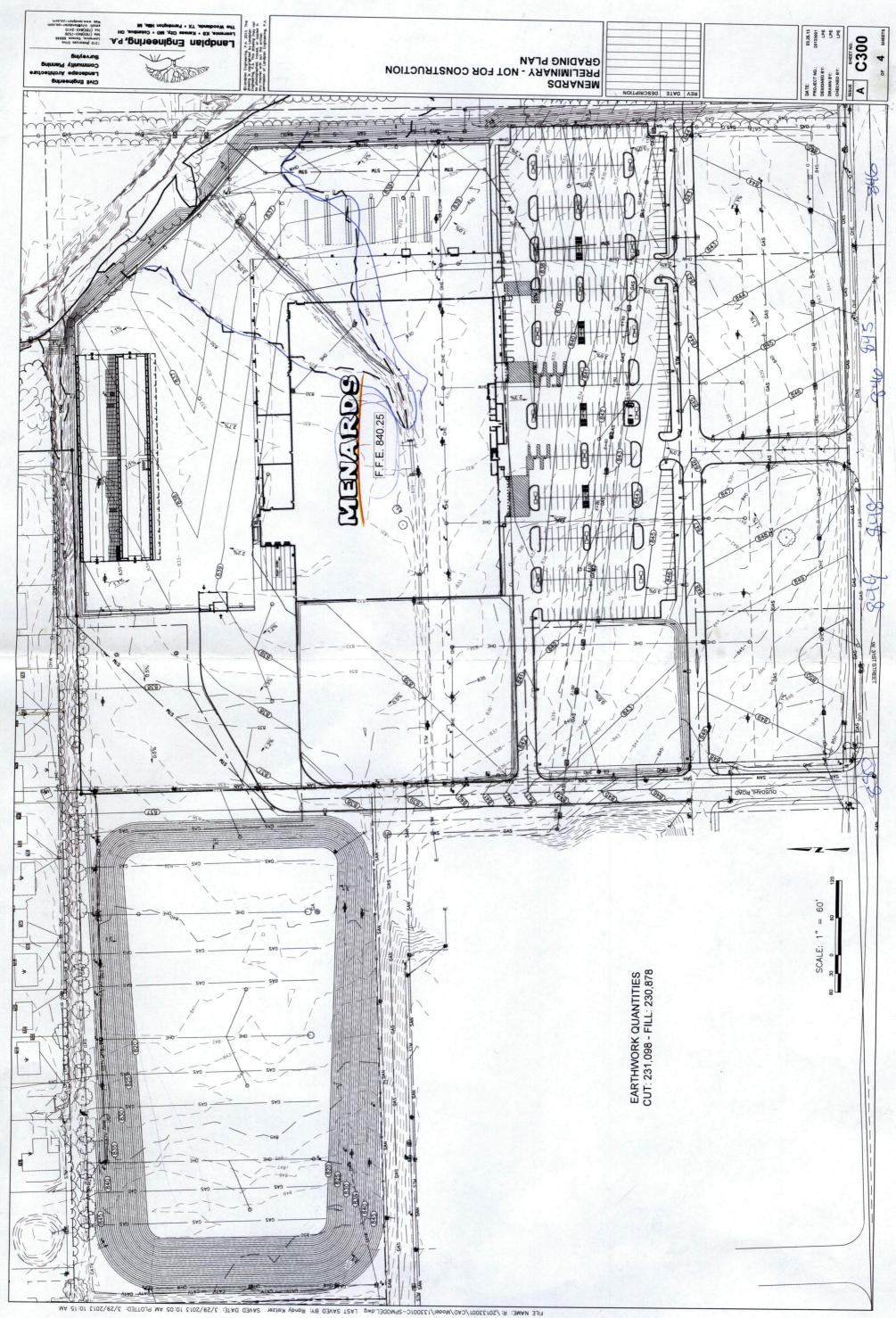
Tyler Edwards

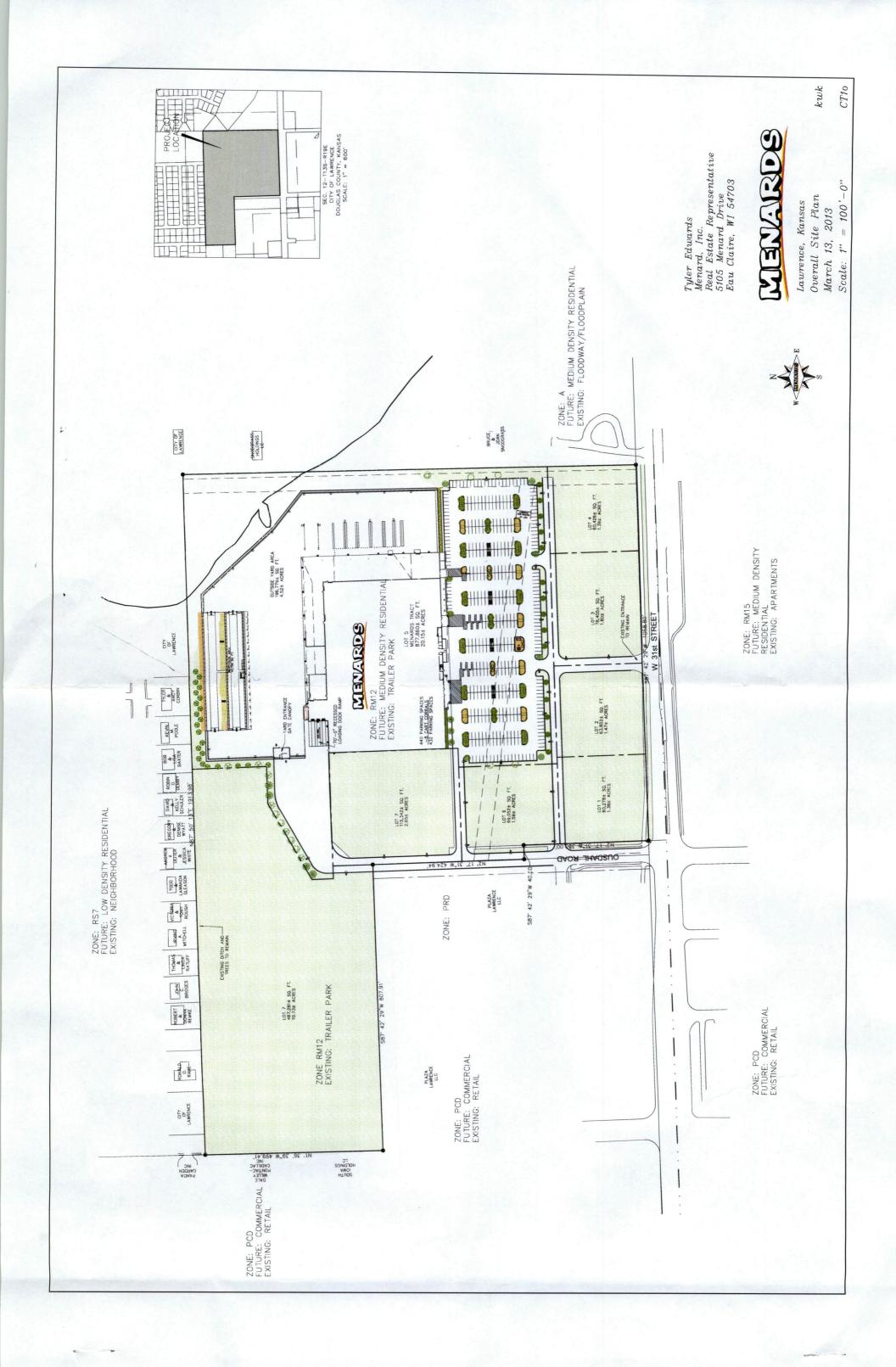
Real Estate Representative Menard, Inc. – Properties 5101 Menard Drive

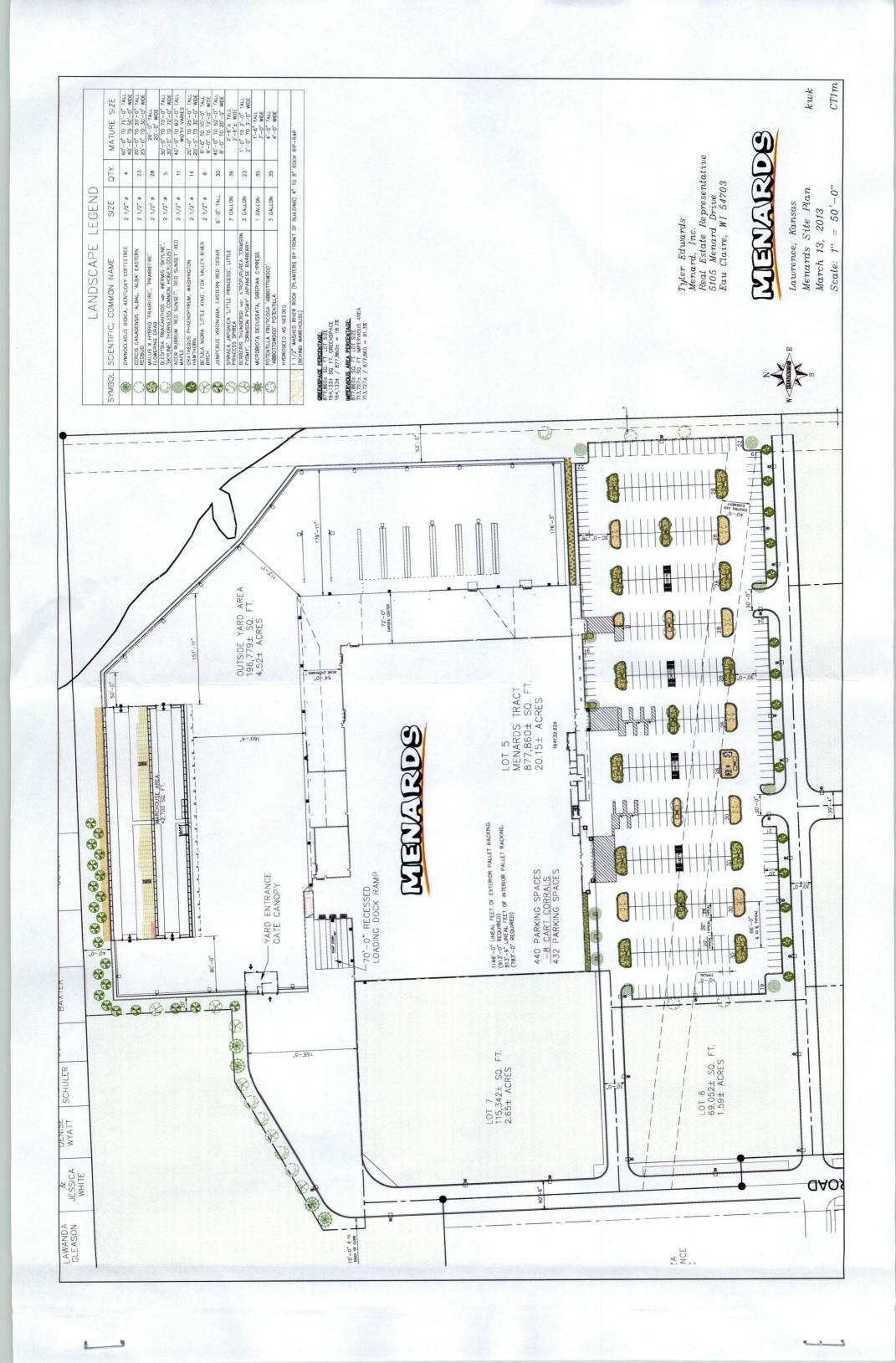
Eau Claire, WI, 54703 P: 715-876-2143

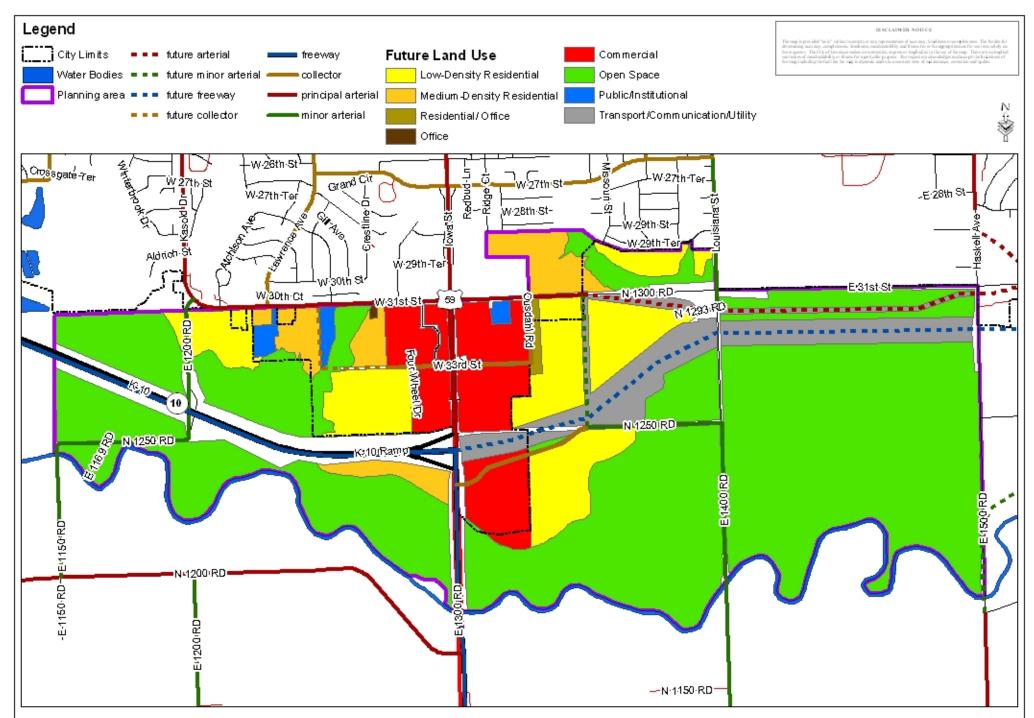
C: 715-579-6699 F: 715-876-5998

tedwards@menard-inc.com









Map 3-1 Future Land Use Map Revised Southern Development Plan

From: Gaziyeh@aol.com
To: Sandra Day

Subject: Fwd: Item Z-13-00071 Rezoning request 1900 W 31st

Date: Monday, April 08, 2013 11:09:04 AM

#### Hi Sandy

Interestingly, you were in my AOL address database. Here is the email I sent. Feel free to call or return message for follow up.

Thanks Jo Anne 785.842.3010

From: Gaziyeh@aol.com

To: amalia.graham@gmail.com, cblaser@sunflower.com, jonjosserand@gmail.com, laraplancomm@sunflower.com, bculver@bankingunusual.com, rhird@pihhlawyers.com, squampva@aol.com, clay.britton@yahoo.com, chadlamer@gmail.com,

bruce@kansascitysailing.com

CC: gaziyeh@aol.com

Sent: 4/7/2013 2:48:18 P.M. Central Daylight Time Subj: Item Z-13-00071 Rezoning request 1900 W 31st

#### Ladies and Gentlemen

I work on Monday nights and might not get to the April 22 meeting before this agenda item is opened for discussion. I have been the homeowner at 1618 W 28th Terrace for 25 years.

Considering that Menard, Inc. already owns the property in question, it would seem that this is a "done deal". Nonetheless, here's my "say".

- 1: I don't believe Lawrence is big enough to support this venture. If a Menard's store is built next to Home Depot it is likely that in 3-5 years one of them will go out of business. If that happens, how long will the building sit empty? If the Home Depot is abandoned, will the Best Buy fail? What will happen to the small struggling and yet empty storefronts in the shopping area surrounding the Home Depot and Best Buy if shopping traffic to the area is reduced?
- 2. In the 1980's there were commission and planning meetings with hand wringing about the "cornfield mall" that would draw business away from downtown. Is this patchwork of pseudomalls and second string chain and fast food restaurants the alternative Lawrence needed for managed growth? Certainly no threat to downtown, but definitely a downgrade to the value of adjacent residential properties.
- 3. Consider: within a few years of the closing of the Indian Springs Mall in KCK, neighborhood home values plummeted, many home owners moved and rented their properties, and State Avenue became an urban blight of deserted strip malls. There is much unused and underused commercial real estate in the South lowa St corridor. The commissions seem to be planning toward the northwest side of the city with no care for other neighborhoods or the opposite end of town based on ...what???. Is there any direction for the southern part of town or is it just willy-nilly andall about dollars in the tax base?
- 4. My neighbors across the street whose property abuts the proposed site think there is some agreement that will provide improvement for the "creek" (ditch), including privacy and noise barriers. Is there a plan of record to support their assumption? They are not opposing this because of that supposed provision.
- 5. The stub street of Ousdahl (south from 27th) feeds our neighborhood. Will it remain a dead

end or will it be opened through to the new development? If so, is there a plan to widen the road or to keep cars from parking on it? It is often impassable due to duplex tenants parking along the west side of the street, across from the intersections, etc. In addition, when traveling north on Ousdahl, there is a driveway directly across from the intersection. Scares me to think a vehicle will miss the stop sign and crash into that garage...

I would love to talk to anyone about this project to determine what it will do to the value of my home and the quality of my neighborhood. I can be reached at this email address, or at 785.842.3010.

I do hope to see you at the April 22 meeting to discuss further..

Jo Anne Zingo

From: <u>Tyler Edwards</u>
To: <u>Gaziyeh@aol.com</u>

Cc: Sandra Day; Scott McCullough

Subject: RE: Item Z-13-00071 Rezoning request 1900 W 31st

**Date:** Wednesday, April 10, 2013 8:54:16 AM

#### Ms. Zingo,

I have responded to your questions below and I have included the city staff on the email to they can forward the responses to the appropriate parties. If you have more questions please feel free to send them over or give me a call. I prefer email so the city planners and planning commission has a record that you received a response and that response can be forwarded to the planning commission.

- 1: I don't believe Lawrence is big enough to support this venture. If a Menard's store is built next to Home Depot it is likely that in 3-5 years one of them will go out of business. If that happens, how long will the building sit empty? If the Home Depot is abandoned, will the Best Buy fail? What will happen to the small struggling and yet empty storefronts in the shopping area surrounding the Home Depot and Best Buy if shopping traffic to the area is reduced?
- Menards does not select sites hoping to put someone out of business, if we thought either the Menards or Home Depot would fail we would not spend the 10+ million dollar investment on a new store location. Just as car dealerships and restaurants draw more business by locating near each other we feel the same way about home improvement. Sure Home Depot might lose some customers here and there but Menards does a great business by drawing consumers from 50+ miles away. This is evident by the number of people that travel from Lawrence to the Topeka store.

Traffic to this portion of 31<sup>st</sup> street will not be reduced by Menards at all but increased as the shoppers could now shop Menards, Best Buy, and stop at a restaurant in one trip. Lawrence is definitely large enough to support such a venture. There are cities across the Midwest that are home to a Menards and Home Depot or Lowes or both within a half mile of each other and they all function just fine.

- 2. In the 1980's there were commission and planning meetings with hand wringing about the "cornfield mall" that would draw business away from downtown. Is this patchwork of pseudo-malls and second string chain and fast food restaurants the alternative Lawrence needed for managed growth? Certainly no threat to downtown, but definitely a downgrade to the value of adjacent residential properties. I would argue just the opposite. Property adjacent to a rundown trailer park would have a much lower property value as opposed to having a new commercial building and green space next door. Additionally the peace of mind knowing that the store is only open from 7-10 and all the activities will have quite a bit of screening to prevent any sounds or light from reaching the residential properties. Many of the residents that attended Monday nights neighborhood meeting preferred the commercial use to a student housing complex or trailer park because they knew there would be no noise or damage or police after the store closed. It is very difficult to relate the planning of Lawrence today to plans from the 1980's because so much has changed in the retail world and economically. Consider how many changes have been made to the comprehensive plan and zoning code since then and how many will need to be made in the future to adapt to the ever changing world of community and regional planning.
- 3. Consider: within a few years of the closing of the Indian Springs Mall in KCK, neighborhood home

values plummeted, many home owners moved and rented their properties, and State Avenue became an urban blight of deserted strip malls. There is much unused and underused commercial real estate in the South Iowa St corridor. The commissions seem to be planning toward the northwest side of the city with no care for other neighborhoods or the opposite end of town based on ...what???. Is there any direction for the southern part of town or is it just willy-nilly andall about dollars in the tax base? This question seems more suited for the Planning Commission or city planning staff. I can tell you as the applicant for the rezoning and comp plan amendment there is an extensive amount of published planning and guidance in place regarding the southern part of town and it is no way "willy-nilly". We understand that the city has invested a lot into the NW side of the city because it is the flashy new area in town. However it is not up to the city to decide where businesses should locate or restrict them based on location that's why we have the public process and businesses have the option to make a case to change the zoning regulations or request variances. Not many planning or code documents are designed to be static documents, they recognize that conditions can change even the day after they are published. That's why planning documents are used as a tool to guide development.

4. My neighbors across the street whose property abuts the proposed site think there is some agreement that will provide improvement for the "creek" (ditch), including privacy and noise barriers. Is there a plan of record to support their assumption? They are not opposing this because of that supposed provision.

Your neighbors are correct. From the very first meeting I had with the city engineers they made it clear that that drainage ditch needed to be addressed and upgraded as part of the property development. We are currently working through those plans with our engineers. Many of the neighbors in attendance at Monday night's neighborhood meeting not only supported the project for that reason but even went as far as saying they feel this is the best place for the store in town. It is hard to argue this will hurt the neighborhood if the people closest to the store strongly support it. I would suggest talking with your neighbors in the next two weeks, maybe it will help ease some concerns.

5. The stub street of Ousdahl (south from 27th) feeds our neighborhood. Will it remain a dead end or will it be opened through to the new development? If so, is there a plan to widen the road or to keep cars from parking on it? It is often impassable due to duplex tenants parking along the west side of the street, across from the intersections, etc. In addition, when traveling north on Ousdahl, there is a driveway directly across from the intersection. Scares me to think a vehicle will miss the stop sign and crash into that garage...

We have no intention of connecting the proposed commercial development to the neighborhood to the north. Menards designs its parking lots to accommodate its guests at the busiest of times and they should be no need to park anywhere but on the street.

#### Tyler Edwards

Real Estate Representative Menard, Inc. – Properties 5101 Menard Drive Eau Claire, WI 54703 715-876-2143 - Direct 715-579-6699 - Cell 715-876-5998 - Fax

#### tedwards@menard-inc.com www.menardsrealestate.com

From: Gaziveh@aol.com [mailto:Gaziveh@aol.com]

Sent: Monday, April 08, 2013 11:19 AM

To: Tyler Edwards

Subject: Fwd: Item Z-13-00071 Rezoning request 1900 W 31st

email as discussed

From: Gaziyeh@aol.com

To: amalia.graham@gmail.com, cblaser@sunflower.com, jonjosserand@gmail.com, laraplancomm@sunflower.com, bculver@bankingunusual.com, rhird@pihhlawyers.com, squampva@aol.com, clav.britton@vahoo.com, chadlamer@gmail.com,

bruce@kansascitysailing.com

CC: <a href="mailto:gaziyeh@aol.com">gaziyeh@aol.com</a>

Sent: 4/7/2013 2:48:17 P.M. Central Daylight Time Subj: Item Z-13-00071 Rezoning request 1900 W 31st

Ladies and Gentlemen

I work on Monday nights and might not get to the April 22 meeting before this agenda item is opened for discussion. I have been the homeowner at 1618 W 28th Terrace for 25 years.

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- 3. Consider: within a few years of the closing of the Indian Springs Mall in KCK, neighborhood home values plummeted, many home owners moved and rented their properties, and State Avenue became an urban blight of deserted strip malls. There is much unused and underused commercial real estate in the South Iowa St corridor. The commissions seem to be planning toward the northwest side of the city with no care for other neighborhoods or the opposite end of town based on ...what???. Is there any direction for the southern part of town or is it just willy-nilly andall about dollars in the tax base?
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I do hope to see you at the April 22 meeting to discuss further..

Jo Anne Zingo

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 From:
 Sheila Stogsdill

 To:
 "Clark Coan"

 Cc:
 Sandra Day

Subject: RE: Menards Site Plan

Date: Monday, April 08, 2013 12:11:58 PM

#### Clark -

Not a problem. Sandra Day is the lead planner on this project in case you have other comments or questions.

Sheila M. Stogsdill, Assistant Director - sstogsdill@lawrenceks.org
Planning & Development Services Department |www.lawrenceks.org/pds
City Hall, 6 E. 6th Street
P.O. Box 708, Lawrence, KS 66044-0708
office (785) 832-3157 | fax (785) 832-3160

"Your opinion counts! Customer feedback helps us serve you better. Please tell us how we're doing by completing this short online Customer Satisfaction Survey: http://lawrenceks.org/pds/survey/satisfaction."

**From:** Clark Coan [mailto:clarkcoan@yahoo.com]

Sent: Monday, April 08, 2013 11:51 AM

To: Sheila Stogsdill

Subject: Menards Site Plan

Ms. Stogsdill:

Could you please forward this to the planner who is doing the site plan for the Menards store on 31st Street? Thank you.

-----

#### Hello!

As you recall, the previous developers of the site on 31st St. agreed to extend the Naismith Path to 31st. Street. I hope you will recommend that the developers of Menards also extend the path to 31st St. which will be near the new SLT Hike and Bike Path. As you know, connectivity increases trails use and multiplies the values of trails.

Thank you for paying attention to my comments.

Clark Coan, MUP

Public Information Specialist Sunflower Rail-Trails Conservancy From: Burress, David A. [mailto:d-burress@ku.edu]

Sent: Tuesday, April 16, 2013 10:37 AM

To: Denny Ewert

Subject: RE: ITEM NO. 3 SOUTHERN DEVELOPMENT PLAN; REGIONAL COMMERCIAL CENTER and ITEM NO. 4 RM12 TO

CR; 41.5 ACRES; 1900 W 31ST ST

April 16, 2913

To: Dr. Bruce Liese, Chair, and Lawrence/Douglas County Planning Commission

Dear chairman Liese and Planning Commissioners:

Re: ITEM NO. 3 SOUTHERN DEVELOPMENT PLAN; REGIONAL COMMERCIAL CENTER (MJL) ITEM NO. 4 RM12 TO CR; 41.5 ACRES; 1900 W 31<sup>ST</sup> ST (SLD)

The League asks that you not change the Southern Development Plan to expand the existing designated area for a Regional Commercial Center and that you deny the request for a 41.5 acre tract to permit the development of a Menards store. We ask this for the following reasons:

We question whether the current 23<sup>rd</sup> and South Iowa designated Regional Commercial area has the capacity for any additional commercial zoning beyond that already designated and zoned for commercial use. The amount of commercial zoning existing now in this Horizon 2020 designated CR has been listed as 1.3 million square feet and the date on this is April, 2012.

The Revised Southern Development Plan does not recommend that this area be expanded for commercial use and designates it for medium residential use. The commercial zoning to the west of this was intentionally given a buffer of residential zoning so that the commercial area would not expand to the east to create a continuous commercial strip to Louisiana.

If this 41-acre parcel, or even a portion of it is rezoned CR, it will be the only so-zoned property in Lawrence. The CR District is a conventional district and strictly speaking was not intended to be conditioned to limit the uses. The fact that only a portion of the property has been configured to include the Menards store (and parking) creates a major uncertainty on how this property would actually develop. Because this is a CR District request, the potential for high intensity uses located here exists and because it is surrounded by residential uses on three sides makes the potential negative impact even more serious.

For these and many other reasons, we urge that the Planning Commission not change the Southern Development Plan to accommodate the CR District and not grant the current **Z-13-00071** request for CR Zoning.

Thank you for considering our letter.

Sincerely,

**David Burress** 

/s/

President-Elect

League of Women Voters of Lawrence/Douglas County

Cille King

/s/

Land Use Committee



CHEVROLET

BUICK

GMC

Cadillac

April 18, 2013

To:

Lawrence City Commissioners

√ Mike Dever, Mayor

Mike Amyx, Vice Mayor

Bob Schumm

Jeremy Farmer

Dr. Terry Riordon

Subject:

Proposal for Menard, Inc. Business Location

Gentlemen:

My business partner, Greg Maurer, and I had the pleasure of attending an informational meeting last Monday, April 8<sup>th</sup>, at Broken Arrow Middle School hosted by Mr. Tyler Edwards, Real Estate Representative for Menard, Inc. The invitees were the individuals and a few businesses that were living and/or located near the proposed property on 31<sup>st</sup> street, next to Home Depot.

The neighborhood people were most receptive to the Menard's proposed plan as they felt it would *not* be an intrusion to their neighborhood when compared to the previously approved student housing project that failed to materialize. They also expressed their concerns for how Menard's will be handling the water run-off/drainage from their properties with Mr. Edwards explaining Menard's plan for the drainage to their satisfaction. For our dealership and mini-storage properties being adjacent to the west property line of the proposed Menard development, we are satisfied with and pleased for the Menard development.

Selfishly, I believe a commercial occupation of this property will generate more real estate, sales and personal property taxes than a student housing venture, and for that I am excited. Our community desperately needs to broaden its tax base and this company will certainly do that as well as adding employment.

I ask for your favorable vote to approve the Menard addition to the Lawrence business community on 31<sup>st</sup> street. It is definitely adding value to our community's tax base and employment.

Sincerely,

Dale Willey

Automotive Excellence Since 1970

### Kirk McClure, Ph.D. 707 Tennessee Street Lawrence, KS 66044

mcclurefamily@sbcglobal.net

April 18, 2013

Amalia Graham Richard Hird

<u>amalia.graham@gmail.com</u> <u>rhird@pihhlawyers.com</u>

Charles BlaserPennie von Achencblaser@sunflower.comsquampva@aol.com

Jon Josserand Clay Britton

jonjosserand@gmail.com <u>clay.britton@yahoo.com</u>

Lara Adams Burger Chad Lamer

<u>laraplancomm@sunflower.com</u> <u>chadlamer@gmail.com</u>

Bryan Culver (Vice-Chair) Bruce Liese (Chair)

<u>bculver@bankingunusual.com</u> <u>bruce@kansascitysailing.com</u>

Re: AGENDA FOR PUBLIC & NON-PUBLIC HEARING ITEMS, Meeting APRIL 22, 2013

TEM NO. 3 SOUTHERN DEVELOPMENT PLAN; REGIONAL COMMERCIAL CENTER (MJL) CPA-13-00067: Consider Comprehensive Plan Amendment to expand the S. lowa Street

commercial corridor east along W. 31 street to include 1900 W 31 Street.

ITEM NO. 4 RM12 TO CR; 41.5 ACRES; 1900 W 31 ST (SLD)

**Z-13-00071**: Consider a request to rezone approximately 41.5 acres from RM12 (Multi-Dwelling Residential) to CR (Regional Commercial), located at 1900 W 31 street.

Dear Members of the Lawrence Douglas County Metropolitan Planning Commission,

The proposal to expand the S. Iowa Street commercial corridor east along W. 31 street is an example of predatory development which is not beneficial to our community.

#### Capacity of Lawrence to Absorb a Second Home Improvement Center

The Lawrence area, including all of Douglas County, is only barely large enough to support one home improvement center. Adding a second home improvement center will serve only to force the city's existing home improvement center out of business.

As the table below illustrates, Lawrence has enough population to support one store, but it is actually rather small in terms of the number of homeowners normally needed to support a home improvement center. If a second store is added, there will be too few people, and especially too few homeowners, to support both stores. The result is that one store will probably go out of business. All too often in this type of cutthroat competition, the older store is the one that fails.

The taxpayers of Lawrence are not indifferent to this process. The taxpayers invested heavily, in excess of \$1.5 million, to facilitate the development of the Home Depot store at 31<sup>st</sup> and South Iowa Streets. The taxpayers do not want to see this investment lost. Nor do the taxpayers want to see the Home Depot store become another retail building that becomes vacant and sits for years without a tenant.

## Ratio of Home Improvement Stores to Population and Homeowner Households Kansas City and Lawrence

	Kansas City Metropolitan Area	Lawrence Douglas County	Lawrence with Added Center	
Total Centers	19	1	2	
Population Owner households	1,980,619 538,827	113,569 24,800		
Population:centers ratio Owners:centers ratio	104,243 28,359	113,569 24,800	56,785 12,400	

#### Market Analysis

The market analysis submitted in support of these proposals is flawed in many ways.

#### Rate of Absorption

The retail study begins with the assertion that Lawrence can absorb 129,000 to 236,000 square feet per year by the year 2020. This assertion would assume that Lawrence has a balanced market now. Even the retail market study submitted admits that the stock of retail space has grown by 72 percent since

2000 while retail sales have risen by only 37 percent. Clearly, the City has permitted developers to build space at a pace much faster than the spending can support. The result is an over-built condition leading to underutilization of space and a lack of interest in the maintenance of properties.

#### **Pull Factor**

The retail study goes on to assert that the City's retail pull factor is low. The pull factor measures the amount of spending per capita in the retail market compared to a statewide average. If the pull factor is above 1.0, it indicates that the market pulls in more spending than is available from the local population. Lawrence's pull factor has been above 1.0 for 10 of the last 12 years. It has been rising for the last three years. This is an admirable record for a small city located between two larger cities.

The study suggests that a Mendards will improve the pull factor. It is not credible that the consumers will drive to Lawrence to shop at our home improvement center any more than they do now. The consumers in the Topeka and the Kansas City metropolitan areas have several home improvement centers in close proximity to them. They will not drive Lawrence for this purpose.

#### Population and Income Growth

The retail study does on to suggest that the future growth of Lawrence's population and income will support expansion of the stock of retail space. The ultimate limit on the amount of space that the city can absorb is the spending in the retail market. Income growth in Lawrence continues to lag behind the Kansas City metropolitan area, holding back the growth in the retail spending. It is unwise to let the retail market grow faster than the growth in retail spending.

#### Recommendation

To avoid predatory development that will waste the taxpayers' investment, I recommend against the proposed plan amendment and rezoning at 1900 West 31<sup>st</sup> Street.

To regain strength in the retail market of Lawrence, the Planning Commission needs to exercise extreme caution with any expansion of the stock of retail space until the retail spending levels grow sufficiently to return to the balance found in the past.

Sincerely,

Kirk McClure



April 19, 2013

Kirk McClure 707 Tennessee St Lawrence, KS 66044

Dear Mr. McClure,

Your letter regarding the proposed Menards project was forwarded to me by city staff. I have taken the time to respond to every resident that submits comments to the Planning Commission, city staff, or myself regarding this development. Responses to your concerns are below.

The term "predatory development" implies that Menards is in some way taking advantage of and individual or group of people with no regard for their wellbeing. That is certainly not the case with our Lawrence project. Menards has taken great steps to ensure that not only will our project not harm the city but improve the city as a whole. On April 8<sup>th</sup> I met with homeowners surrounding the project site and the response to our plans was very positive. We have included the residents in the planning process from the very beginning and plan to continue that practice.

I understand your main point to be the competition between Menards and Home Depot and their viability in the future. Your concerns are shared among several residents of Lawrence and often in other communities which we are new to. However no one understands the viability of a business better than the business itself. Menards is in no way trying to put Home Depot out of business here or in any other location. Competition is healthy and what makes the American economy strong. If Menards felt there was a chance their either Menards or Home Depot could not support a store we would not have a desire to build in the first place. For your information I have attached a list of a few of our western Menards stores in communities of similar size with either a Home Depot or Lowes located nearby.

I do not know the history of the taxpayer money that was used in the Home Depot project. However I can say that Menards is asking for nothing from the city of Lawrence financially. All Menards is asking for is the ability to compete on a fair playing field with every other business. Menards has performed studies regarding traffic, flooding, and utilities to ensure that our project will not harm any other property in the process.

Menards has a pull factor that is not ordinarily anticipated by a market study such as this. This is very evident by the number of Lawrence residents that travel to our Topeka store to shop in large numbers. Not only is that Menards store drawing consumers from outside of the Topeka region where there are other home improvement stores nearby. It is taking them from the City of Lawrence and it has a home improvement store. It is a reasonable



assumption that consumers will drive from all across Douglas County to shop at the Menards store just like they do in Shawnee County to the west.

Retail studies are only one element in the review of impacts a retailer would have on a community and they often fail to consider items that make retailers unique. Many communities have done away with these studies and relied more on experience and review of each project individually. Again there will be no investment by the residents of Lawrence to build the store. It is also unlikely that Menards or Home Depot would be put out of business by this project. Menards would be a great fit within the community and draw more consumers into the city that would otherwise be driving else ware to shop. If you have more questions please do not hesitate to contact me.

Sincerely, **Menard, Inc.** 

Tyler Edwards

Real Estate Representative Menard, Inc. – Properties

5101 Menard Drive Eau Claire, WI 54703

P: 715-876-2143 C: 715-579-6699 F: 715-876-5998

tedwards@menard-inc.com

	Menards	Next Door	1/2 Mile	1 Mile	Under 3 Miles
1	Topeka	Lowes		Home Depot	
2	Manhattan				Home Depot
3	Salina			Lowes	
4	Wichita West			Lowes	
5	Wichita East	100 mm			Home Depot
6	Garden City	Home Depot			
	Sedalia	1	Lowes		
					Lowes
8	Lake Ozark				Home Depot
	Jeff City				Lowes
THE RESIDENCE OF THE PARTY OF T	Colombia		Home Depot		Lowes
	St Peters		Trome Depot		Home Depot
_	Manchester		Home Depot		Lowes
12	Walleflester		Home Bepot		Home Depot
12	O'Fallon				Lowes
13	O I alloli				Home Depot
14	Lincoln South				Lowes
	Lincoln North	Home Denet			Lowes
	Grand Island	Home Depot		Hama Danet	
	Council Bluffs	Hama Danat		Home Depot	
	Sioux City	Home Depot			Lawas
	Sioux City Sioux Falls West	Usus Danet	1	-	Lowes
		Home Depot	Lowes		,
	Clive	1		Lowes	
	Altoona	Lowes	III B I		
	De Moines	<u> </u>	Home Depot	-	
	Ankeny	Home Depot			
	Waterloo	Home Depot	Lowes		
	Marion			Home Depot	
	Davenport				Lowes
Name and Address of the Owner, which the	West Burlington			Lowes	
	Rochester			Home Depot	
	Rochester South				Lowes
	Mankato	Home Depot			Lowes
	Coon Rapids	Lowes			
	Blaine				Lowes
	West St Paul		Lowes		
	Stillwater		Lowes		
	Maple Grove		Home Depot		
THE RESERVE OF THE PERSON NAMED IN COLUMN TWO IS NOT THE OWNER, THE PERSON NAMED IN COLUMN TWO IS NOT THE OWNER.	Brooklyn Park				Home Depot
	Fridley				Home Depot
	Richfield		Home Depot		
	Eden Prairie	Home Depot			
40	Hudson	Home Depot			
41	Rapid City				Lowes
42	Fargo	Lowes			
43	Hermantown				Home Depot

44	Cape G		Lowes		
45	Marion IL				Home Depot
46	Evansville				Lowes
47	Bloomington			Lowes	
48	Champaign	Lowes		Home Depot	
49	Danville			Lowes	
50	Normal	Home Depot			
51	Springfield South		Lowes		
52	Springfield North	Lowes			
53	Forsyth		Lowes		
54	Peoria				Home Depot
55	Galesburg			Lowes	
56	Peru	Home Depot			
57	Dubuque			Lowes	
58	Janesville			Home Depot	
59	Racine			Home Depot	
60	Fox lake	Home Depot			
61	Gurnee	Home Depot			Lowes
62	Kenosha		Lowes		
63	Cherry Valley				Lowes
64	Machesney Park	Home Depot		Lowes	
65	Wausau	Home Depot			
66	Plover				Lowes
67	Oshkosh	Lowes			
68	Appleton East		Lowes		
69	Manitowoc		Lowes		
70	Appleton West			Home Depot	
71	West Bend	Home Depot			

Lawrence-Douglas County Metropolitan Planning Commission

ATTN: Bruce Liese, Chair

City Hall, 6 East 6<sup>th</sup> Street

Lawrence, KS 66044

Re: CPA-13-00067: Horizon 2020, Chapter 6 and Revised Southern Development Plan

Z-13-00071: RM12 to CR: Menards

#### Dear Commissioners,

Over the last few years, we made the decision that we would stay in our property until such time that we were no longer physically capable of doing so. However, over the last several months, things began to change. It looks like the extension of the South Lawrence Trafficway is to become a reality. Concerned for the road alignment changes and the impact on traffic around our property, we sought out KDOT, the City, and the County to discuss our concerns. We were then approached by the City regarding the purchase of the eastern end of our property at 31<sup>st</sup> and Louisiana. Shortly thereafter, we were made aware of the pending Menard's project.

Each proposed change has made us re-evaluate our thoughts regarding the ability to stay in our home. Given what is happening around us, it is only prudent for us to become pro-active in what our land might look like going forward. We also believe the happenings present a good opportunity to put to rest many lingering questions about all undeveloped land between Home Depot and Louisiana Street, on the north side of 31<sup>st</sup> Street. It only makes sense to plan this entire area at the same time, instead of in piecemeal fashion. Doing so allows the entire area's land uses to be identified, as well as access points. To that end, we have enclosed a conceptual plan for our entire property for your review. We ask that you take it into consideration, along with the following comments, as you review H2020, the Southern Development Plan, and the Mendard's project proposal.

- We are in general support of the zoning change for Menard's.
- We ask that the changes to H2020 and the Southern Development Plans reflect the uses shown in our conceptual plan. We believe it creates a clear termination to any future 31<sup>st</sup> Street commercial development; preserves the Naismith Creek and Belle Haven Tributary floodways through Open Space zoning; and provides and extension of the Naismith Valley Park and its shared-use bike path.

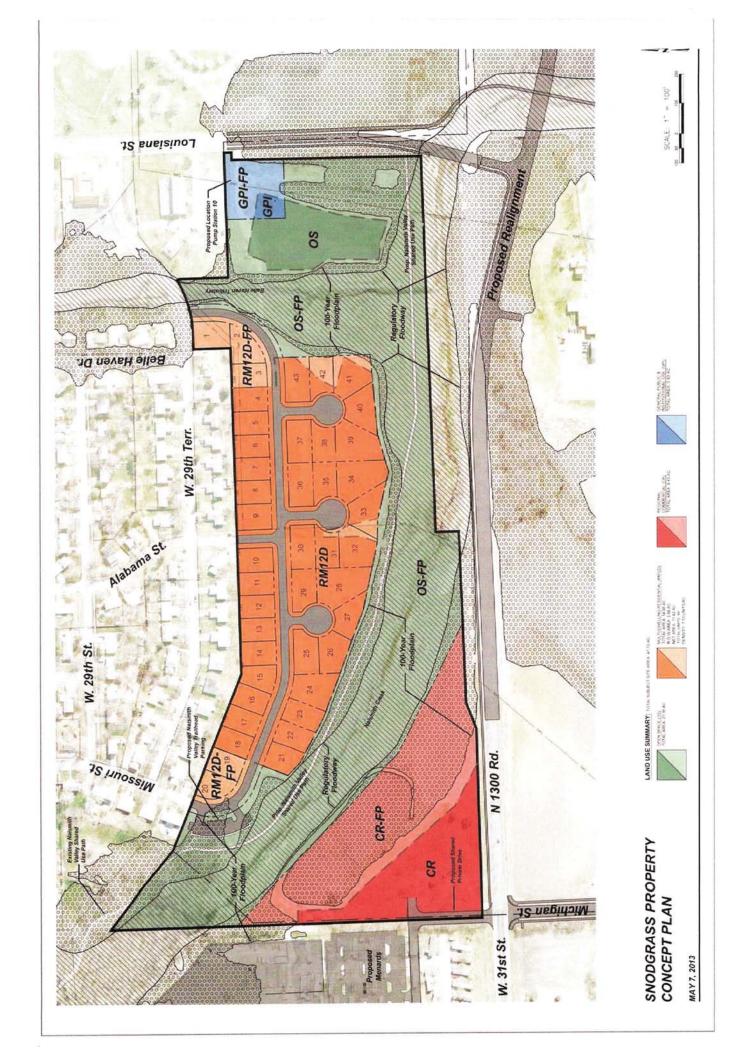
• We believe this is a perfect opportunity to control access onto the remainder of 31<sup>st</sup>

Street east to Louisiana Street. As such, we request that the zoning change requested by Menard's be conditioned upon access points as determined by the City on the final plat. This requirement will allow the City to make sure that curb cuts onto 31<sup>st</sup> Street are minimized and adequately serve the remainder of the property east to Louisiana. It is our belief (expressed by us to the City, County, and KDOT over the last 6 months) that a lighted intersection will ultimately be needed at the intersection of the re-aligned Louisiana (to be named Michigan Street). Eliminating the current eastern access into the Menard's property, and moving that eastern access to align with the new Michigan Street, allows the entire length of undeveloped property east to Louisiana to be serviced with that one curb cut. Failure to do so will create the need for more curb cuts along 31<sup>st</sup> and will only serve to hamper travel on 31<sup>st</sup> Street.

In closing, we understand time changes things. We also understand with change comes opportunity. With the many changes going on, we see an opportunity to work out a plan for a large area of ground in a way that puts to rest many unanswered questions, resulting in a well-planned future. Please let us know if you have any questions.

Sincerely,

Bruce Snodgrass and family





# LEAGUE OF WOMEN VOTERS® OF LAWRENCE/DOUGLAS COUNTY

RECEIVED

MAY 2 0 2013

City County Planning Office Lawrence, Kansas

May 19, 2013

Co-President David Burress

> Co-President Cille King

President-Elect
Cille King

Vice President marci francisco

Secretary
Caleb Morse

Treasurer
Marjorie Cole

Directors

**Margaret Arnold** 

Caroljean Brune

Scott Criqui

**James Dunn** 

**Ruth Gibbs** 

Midge Grinstead

Marlene Merrill

To: Dr. Bruce Liese, Chair, and Lawrence/Douglas County Planning Commission

RE: ITEMS 4 AND 5: CPA-13-00067: HORIZON 20202 CHAPTER 6 AND REVISED SOUTHERN DEVELOPMENT PLAN AND Z-13-00071: RM12 TO CR: MENARDS

Our previous letter on this issue sent to you in April urged the Planning Commission (PC) to deny changing the Revised Southern Development Plan and to deny the Menards' request for rezoning. We reiterate our position here.

Our reasons, summarized, are as follows:

- a. This rezoning would be contrary to the Comprehensive Plan (CP). It would not be in the proper area. In addition, the amount requested would exceed the amount allotted to the area as a Regional Commercial designation.
- b. Rezoning to commercial here would create a detrimental effect on the adjacent land in two directions: to the east because of the natural configuration of the land and the lack of barriers to prevent continuation of commercial zoning to Louisiana Street; and to the north because of the lack of any buffer to the existing residential uses. It also could have a detrimental effect on the land on the south side of 31<sup>st</sup> Street.
- c. The CR District (Regional Commercial) is too inclusive and is inappropriate for this location. The district will have to be conditioned, but CR is a conventional district and was not intended to be conditioned.
- d. Only a portion will be used for the Menards store. The remainder will be speculative zoning. It would be better to limit the area only to that needed by the Menards store. This would allow buffering on the north. On the east a substantial buffer would prevent continuation of the commercial zoning and also make the area to the east more attractive for residential use.
- e. Please remember that the Menards store could have sought land within other available vacant commercially zoned properties, but they preferred their current choice because of the presence of supporting commercial uses. Because of this, we question whether the additional speculative commercial land is really needed by them for supporting uses.
- f. Also, the fact that only a portion of the subject property has been configured to include the Menards store and needed parking creates a major uncertainty on how this property would actually develop. Because this is a CR District request, the potential for high intensity uses located here exists, and because it is surrounded by residential uses on two sides and potentially a third, makes the potential negative impact even more serious. This is in spite of the proposal to condition the zoning. This leads to the question of why, if the CR zoning is to be allowed, not place it within a PC Overlay District?

#### LEAGUE OF WOMEN VOTERS® OF LAWRENCE/DOUGLAS COUNTY Page 2

#### Summary:

- 1. We oppose changing the Comprehensive Plan (CP) to allow the rezoning for the Menards store and additional speculative zoning, and especially, we oppose rezoning the property to the CR District (Regional Commercial).
- 2. Therefore, if the CP is to be changed, and a portion of the property is to be rezoned to allow the Menards store, we suggest the following:
  - a. Reduce the area to be rezoned to that which will accommodate only the Menards store and parking. Create a 200-foot, or wider, natural buffer on the north. On the east create a similar additional natural buffer. This would alleviate the negative impact of the additional commercial zoning for Menards and allow that vacant portion of land (the triangle) to the east of Menards to remain available for residential use.
  - b. To guarantee that the Menards property will be properly conditioned, place any commercial zoning district allotted to Menards within a Planned Development Overlay District, and then provide appropriate conditioning.
  - c. Seek another less inclusive and more commercially appropriate district to rezone the Menards property. If necessary, change one of the other CC districts so that it would be appropriate for a Menards commercial district rather than choosing the CR District.

Thank you for considering our letter.

Sincerely yours,

Cille King

Co-President

Alan Black, Chairman Land Use Committee

alas Black

### Kirk McClure, Ph.D. 707 Tennessee Street Lawrence, KS 66044

mcclurefamily@sbcglobal.net

May 16, 2013

Amalia Graham Richard Hird

<u>amalia.graham@gmail.com</u> <u>rhird@pihhlawyers.com</u>

Charles BlaserPennie von Achencblaser@sunflower.comsquampva@aol.com

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Bryan Culver (Vice-Chair) Bruce Liese (Chair)

<u>bculver@bankingunusual.com</u> <u>bruce@kansascitysailing.com</u>

Re: AGENDA FOR PUBLIC & NON-PUBLIC HEARING ITEMS, Meeting May 20, 2013

ITEM NO. 3 2012 RETAIL MARKET STUDY (AAM)

ITEM NO. 4 HORIZON 2020 CHAPTER 6 AND REVISED SOUTHERN DEVELOPMENT PLAN (MJL)

ITEM NO. 5 RM12 TO CR: 41.5 ACRES: 1900 W 31 ST (SLD)

Dear Members of the Lawrence Douglas County Metropolitan Planning Commission,

As I indicated to you in my letter of April 18, 2012, the proposal to expand the South Iowa Street commercial corridor east along West 31 Street is an example of predatory development which is not beneficial to our community. The recently released 2012 Retail Market Study lends support to this conclusion.

Comparing the Growth of Demand for and the Supply of Retail Space

The 2012 Retail Market Report by the Planning & Development Services staff provides more than ample evidence that Lawrence has not pursued a healthy pace of growth in the supply of retail space.

The growth of retail spending is a good measure of the growth in demand for retail space. The report makes clear that the inflation adjusted growth in retail sales (Table 3-2) grew by 0.93 percent per year

from 1995 through 2005, the boom years. The sales declined by 0.34 percent per year from 2005 through 2012, the bust years. The net growth was 0.40 percent per year.

The supply of retail space grew by various rates over the years. The report does not provide a consistent series of retail space from 1995 through 2012, but Table 2-3 indicates that the pace of growth of retail space has been about 4.4 percent per year.

With a retail stock of 4 million square feet, the growth in demand would suggest that the stock should have grown by about 20,000 square feet per year. Unfortunately, the growth of supply was on the order of 170,000 square feet per year.

When supply grows at a pace much faster than the underlying demand for that space, investment in older space declines. Older downtowns suffer. Had the community exercised foresight in the pace of retail space, it would be confronting fewer problems with the decline and blight found in its older shopping districts. Rather than negotiating subsidies with developers (as it has many times in the past), the City could be negotiating exactions from the developers in exchange for the capacity to build.

#### Menard's

Menard's seeks to expand our existing shopping district rather than development within the space already provided. The Retail Market Study makes it clear that more than sufficient space exists in the market for a development of this type.

As I indicated in my prior letter, there is insufficient demand for a second home improvement center in Lawrence, thus there is no argument for making an exception for Menard's. Adding more space will not add to the level of retail spending or retail jobs or the tax base of retail buildings. Specifically, making an exception for Menard's will not fill a need that exists in our community.

#### Recommendation

The retail development industry is prone to overbuilding, as we have seen in Lawrence. The Planning Commission should learn from the Retail Market Study that the market has surplus space and that the market should not be expanded further at this time.

The community cannot support a second home improvement center. The Planning Commission should recognize the proposal as predatory development in an already bloated market and deny the Mendard's proposal.

Sincerely,

Kirk McClure

## RECEIVED

MAY 2 0 2013

Commissioners,

City County Planning Office Lawrence, Kansas

I am writing to oppose the Menards project on 31st street for multiple reasons. The traffic on Louisiana Street is not addressed. A cursory traffic study has been done, but its usefulness is questionable when by page 4 the author does not even get the number of schools correct. Broken Arrow is a grade school, South is the junior high, and the high school is correct. How much difference would eliminating one school make on traffic numbers? Would Louisiana Street cease to be a problem for the people who use and live in the area if one school was told it did not exist? Should our tax bills be adjusted? My experience in the automotive repair business is the the wrong information at the start of a repair can lead to costly mistakes and attempting to fix the symptom does nothing to fix the problem.

Another problem is the excessive number of pad sites and their locations. The immediate neighbors like the idea of a blank screen as opposed to a trash trailer court. I question what will go in at the other sites. Will they be the nice neighbor that Menards claims to be or will they be anybody with the business plan and backing to buy the property. A downside to the student housing market is need for entertainment and stores that close by 10 PM do not supply a lot of late night options (music and alcohol).

Only the immediate neighbors were contacted. Nobody in Indian Hills was told about this project by Menards. No officers on the contact list reports any previous contact from them.

Horizon 2020 has proven to be a resilient document, but how far can it be stretched and modified before it becomes legally indefensible? This site was picked, among other reasons, because it is a third the price of equivalent sized properties that are zoned for commercial. That appears to be the only way the economics works for Menards to come to Lawrence. At that price point there should be no taxpayer infrastructure costs and all improvements should be to the maximum and on the developer and future problems( traffic, flooding, etc.) should be rectified by Menards. The phrase is Life, Liberty, and Pursuit of Happiness, not Pursuit of Maximum Profit.

Thank you for your time,

Javid Lyon

David Geyer 2647 Arkansas

#### NORTH LAWRENCE IMPROVEMENT ASSOCIATION

LAWRENCE, KANSAS

RECEIVED

MAY 2 0 2013

City County Planning Office Lawrence, Kansas

May 15, 2013

Douglas County Metropolitan Planning Commission

To Whom It Concerns:

The North Lawrence Improvement Association would like the property on 31<sup>st</sup> Street East of Home Depot rezoned to allow Menards to build in this location and other businesses to locate there as well. It is seldom the neighborhoods agree on this type of project. Menards will bring employment, tax dollars and street and storm drainage improvements.

This is a good project for Lawrence and the NLIA hopes you will approve the requested zoning changes so Menards doesn't look to another city and provide them with additional jobs and income.

Sincerely,

Ted Boyle, President

Ted Both

North Lawrence Improvement Association

310 Elm Street

Lawrence KS 66044

785-842-7232



May 16, 2013

Douglas County Planning Commission City Hall, 6 East 6th Street Lawrence, KS 66044

Re: Menards' application

Dear Chairman Liese and Planning Commissioners:

We have watched with interest, consideration of Menards' application. Our group owns the **Fairfield development**, zoned CC-200, at the **intersection of 23<sup>rd</sup> St. and O'Connell Rd.** 

There appears to be a prevalent thought that a Menards store would be a positive for Lawrence, and that the proposed 31<sup>st</sup> St. site is the *only* viable alternative for its location. The Staff memo for the 5/20/13 agenda refers in its conclusion to a "limited opportunity to locate such use in the city".

We believe that the Fairfield site represents a very viable alternative. We think that having such a viable alternative should be part of the planning commissioners' consideration relative to the 31<sup>st</sup> Street site agenda item.

The Fairfield site has many attributes which make it viable, including the following: (1) rooftops near the site with more to come in the immediate proximity to the west and south of the site, (2) traffic counts of nearly 30,000 cars/day in front of the site, (3) major new public investment around the site, including the traffic signal at 23<sup>rd</sup> & O'Connell Rd. *and* the 31<sup>st</sup> St. extension to O'Connell Rd., (4) 26.3-acre net tract is easily large enough to accommodate a store of this size, (5) the site is shovel-ready.

While a CC-200 zoning does not allow for a store size consistent with Menards' application, we feel that the site's existing designation as a commercial node and public infrastructure to the intersection, coupled with the neighborhood's strong desire for groceries at the location, would be a reasonable scenario for an approval of Menards' store size at our site.

We thought this to be meaningful information in your consideration of the current application.

Sincerely,

William R. Newsome

Ce: Sandy Day/Scott McCullough Dave Corliss

Dave Corliss
Doug Compton



May 17, 2013

William R. Newsome Southland Capital LLC 601 N Iowa Street Lawrence, KS 66044

Dear Mr. Newsome:

As I have responded to all the correspondence the city has received regarding our development project, your response is included in the letter below.

I want to start by saying that I agree with you, there are several other sites in the city of Lawrence that are large enough to accommodate the store project. However size alone is not enough and there is only one site that Menards considers a viable location. You and I may not have had direct contact but Menards has reviewed your groups property described in your letter and found it to be too far removed from existing commercial property, specifically big box retail. Menards is working on its current location in an effort to become part of the commercial synergy of South Iowa Street. The proposed location on 31<sup>st</sup> St will allow Menards to work with the existing business on South Iowa and draw shoppers in rather than work against them and draw shoppers out of the commercial district.

We appreciate your letter and your desire to work with Menards on your property. However based on the reasons mentioned above we plan on continuing or efforts on the 31<sup>st</sup> St property. If you have any further questions feel free to contact me directly. Thank you.

Sincerely,

Menard, Inc.

Tyler Edwards

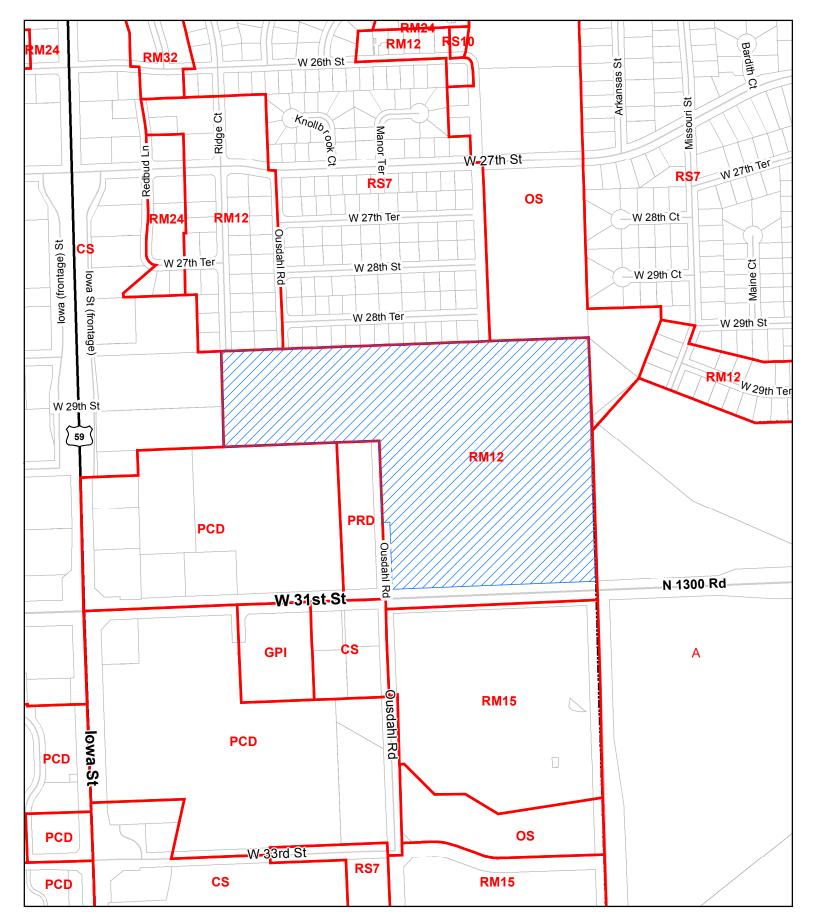
Real Estate Representative Menard, Inc. – Properties

5101 Menard Drive

Eau Claire, WI 54703

P: 715-876-2143 C: 715-579-6699 F: 715-876-5998

tedwards@menard-inc.com



Z-13-00071: Rezone 41.5 acres from RM12 to CR 1900 W 31st St



Scale: 1 Inch =500 Feet

#### PLANNING COMMISSION REPORT Regular Agenda – Public Hearing Item

PC Staff Report 05/20/13

ITEM NO. 6: AMENDED CONDITIONAL USE PERMIT FOR BIG SPRINGS QUARRY; 2 N 1700 RD (MKM)

**CUP-13-00126:** Consider an amended Conditional Use Permit for a revised phasing schedule for Big Springs Quarry, located at 2 N 1700 Rd. Submitted by Mid-States Ventures, LLC, for Bonnie M. Nichols, Trustee, and Mid-States Materials, LLC, property owners of record. *Big Springs Quarry was approved with Conditional Use Permit CUP-7-2-90.* 

#### STAFF RECOMMENDATION:

Staff provides the following list of options for the Planning Commission's recommendation to the Board of County Commissioners based on the findings presented in the staff report:

- Approve the revised phasing to allow the operator to coordinate quarrying activities between the portions of the quarry on each side of the Douglas County / Shawnee County line.
- 2) Deny the revised phasing to maintain the predictability as to the sequencing of the quarrying operations for the benefit of surrounding property owners.

#### Attachments:

Attachment A – Applicant's February 4 letter outlining reason for revision.

Attachment B -- Staff Memo and Minutes of March 6, 2013 County Commission meeting.

Attachment C -- All Restrictions of Use and Conditions of Approval to this point.

Attachment D - Communications.

#### Reason for Request:

Applicant's response: "Mid-States materials, LLC ('Mid-States') is requesting that the Planning Commission and County Commission recognize a revision to the order in which Mid-States intends to quarry in the six phases outlined in the CUP. (See CUP 7-2-90). Mid-States' February 4, 2012 (sic) correspondence, attached hereto as Exhibit 'A', and Planning Staff's March 6, 2013 memorandum, attached as Exhibit 'B', specify in greater detail the nature and reasons for the request.

Quarrying is complete in Phases I, IA and II. Quarrying is ongoing in Phase III. Mid-States' development plan calls for quarrying in Phase VI next leaving Phases IV and V for later development. Nothing in the present CUP requires that these phases be developed in any particular order."

#### **KEY POINTS**

- The Board of County Commissioners considered the request for a revised phasing schedule at their March 6, 2013 meeting and voted to return it to the Planning Commission as they felt the change was significant enough to require Planning Commission's recommendation. The minutes of this meeting are attached with this memo.
- The CUP is regulated by the 22 restrictions of use which were applied to the original permit and subsequent conditions or restrictions which were established with each revision or

- amendment to the original CUP. All conditions and restrictions of use which apply to this CUP are included in Attachment C.
- A request that an amendment be initiated to the CUP to revise the setbacks provided for Phase 4 was provided by the attorney representing Lone Oak, LLC, the owners of the Lone Oak hunting facility. This request is included in the communications in Attachment D.

#### **ASSOCIATED CASES/OTHER ACTION REQUIRED**

#### ASSOCIATED CASES

- Conditional Use Permit (CUP-7-2-90) approved by Board of County Commissioners on Dec. 19, 1990 for Martin Marietta Aggregates to operate a 720 acre limestone quarry.
- Conditional Use Permit (CUP-6-6-92) approved by the Board of County Commissioners on Sept. 16, 1992 to include an additional 80 acre tract (Phase I-A) in the overall quarry operation.
- Revision to the CUP (CUP-7-2-90) was approved by the Board of County Commissioners on March 17, 1993 to allow the addition of a shop maintenance facility on the site.
- Conditional Use Permit (CUP-12-09-06) approved by the Board of County Commissioners on July 16, 2007 amended the CUP to allow the transfer of operator to Mid-States Materials and a revision to the landscaping plan.
- Conditional Use Permit (CUP-05-02-08) submitted to amend the CUP. Through the review of the CUP application, possible compliance issues were identified. The CUP was withdrawn and a Consent Decree was executed by the quarry operator and the County Commission on May 27, 2009 to resolve these possible issues. On March 11, 2011 the County Commission received a staff memo noting that the quarry operator had complied with the actions required by the Consent Decree within the specified deadlines.

#### OTHER ACTION REQUIRED

 Consideration of the CUP amendment request and decision by the Board of County Commissioners.

#### PUBLIC COMMENT RECEIVED PRIOR TO PRINTING

- 2 communications from Dave Buffo, counsel to Lone Oak, LLC to the County Commission prior to their consideration of the revised phasing request, included in attachment D.
- Several communications from Dave Buffo to the Planning Commission regarding the amended CUP, included in attachment D.
- Communication from Mossy Oak Properties, realtor for Lone Oak LLC, included in attachment D.
- Staff met with Lone Oak, LLC and Dave Buffo on April 26, 2013 to discuss their concerns with the proposed revised phasing.
- Discussion and emails with Bill and Michele Best regarding their concerns with the pre-blast survey to occur before Phase 6 is quarried, notification of blasting and the drainage and reclamation plans for Phase 6.

#### SUMMARY OF REQUEST

Mid-States Materials has an approved CUP to operate the Big Springs Quarry in western Douglas County. The amendment before the Commission is a revised phasing schedule for the quarry operations. The quarry has moved into Phase 3 and the request has been made to move to the property to the west, Phase 6, when Phase 3 is complete so that quarrying can

occur concurrently with quarrying on the Shawnee County portion of the quarry. With the completion of Phase 6, quarrying would then move into Phase 4 and then Phase 5. (Figure 1)

This report reviews the request with the approval criteria noted in Section 12-319-1.02 and staff provides options for the Planning Commission's recommendation.



Figure 1. Phases 1-6

#### GENERAL INFORMATION

Current Zoning and Land Use:

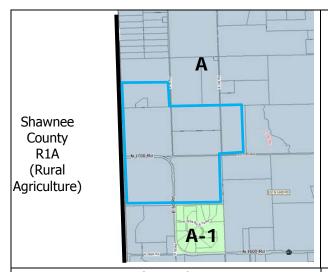
Surrounding Zoning and Land Use:

A (County-Agricultural); Limestone quarry permitted with a Conditional Use Permit and agricultural uses on portions not being quarried.

To the west: Land to the west lies within Shawnee County and is zoned RA1 (Rural Agriculture). Limestone Quarry permitted with a Conditional Use Permit, agricultural uses and scattered rural residences.

To the north and east: A (County-Agricultural) District; agricultural uses and scattered rural residences. A hunting/shooting facility is located to the east.

To the south: A (County-Agricultural) and A-1 (County-Suburban Home) Districts; agricultural uses and scattered rural residences. (Figure 2)



**Figure 2a**. Zoning of Area. (Quarry property outlined in blue.) Bold line is the Shawnee/Douglas County border.



**Figure 2b.** Land Use of Area. (Quarry property outlined in blue.)



**Figure 2c**. This aerial photograph from Google Earth is a more current representation of the quarry and surrounding land uses than is available on our GIS maps. As parcel boundaries are not shown on these maps, the approximate quarry boundary is outlined. (Bold line marks the Douglas/Shawnee County boundary.)

#### I. ZONING AND USES OF PROPERTY NEARBY

The majority of the property in the vicinity of the quarry is zoned A (Agricultural) and agriculture is the principal land use. A hunting/shooting facility is located east of the quarry property. A hunting/shooting facility is considered an agricultural activity per decision of the Court of Appeals of Kansas in Corbet v Board of Shawnee County Commissioners and therefore, does not require a CUP. Approximately 156 acres adjacent to the southern border of the quarry is zoned A-1 and contains an 11 lot, residential subdivision which has not yet been developed. The quarry extends across the west Douglas County line into Shawnee County. Land within Shawnee County is zoned RA1 (Rural Agriculture) per the Shawnee County Planning Office and the principal land uses in the area are also agriculture, rural residential, and mining/excavation. (Figure 1)

**Staff Finding** – Nearby property is zoned A (Agricultural) and is used predominately for agricultural purposes. Other uses in the area include scattered farm/rural residences; a platted subdivision which has not yet been developed, zoned A-1 (Suburban Home); and a hunting/shooting facility to the east, permitted as an agricultural use. The quarry extends into Shawnee County to the west which has similar zonings and land uses. (Figure 1) The quarry is an existing use which is compatible with the development in the area with the conditions and restrictions of use applied to the CUP.

#### II. CHARACTER OF THE AREA

**Staff Finding** – The quarry is located in a rural area with predominately agricultural land uses and scattered farm/rural residences. A hunting/shooting facility is located nearby; however, the predominate land use is agricultural grassland and row crops. Hwy 40 and Interstate 70 traverse east/west through the area approximately a mile north of the quarry site. The quarry is an existing use which is compatible with the development in the area with the conditions and restrictions of use applied to the CUP. The proposed revised phasing would not alter the quarry's nature so it would remain compatible with the character of the area.

# III. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

Applicant's response:

"The subject property has been a limestone quarry since 1990 and has proven to be a reliable source of quality limestone aggregate."

**Staff Finding** – A Conditional Use Permit (CUP) does not change the base, underlying zoning. A quarry is a permitted use in the A District when approved through the Conditional Use Permit process. The property is suitable for use as a quarry due to the fact that limestone reserves are present. The request to revise the phasing schedule does not alter the suitability of the property for uses permitted in the A (Agricultural) Zoning District.

#### IV. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

**Staff Finding** – County Zoning Regulations were adopted in 1966; this property has been zoned "A (Agricultural)" since that adoption. The Conditional Use Permit for the quarry was approved in 1990. The property is currently being quarried, and has been developed with a rock crushing plant and a shop.

## V. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

Applicant's Response:

"Mid-States is not requesting the removal of any restrictions."

Section 12-319 of the County Zoning Regulations states that "*Recognizing that certain uses may* be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district, certain conditional uses listed in Section 12-319-4 below, when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited." Mining and excavation is listed as Use No. 5 in Section 12-319-4 Conditional Uses Enumerated, of the *Douglas County Zoning Regulations*.

The proposed amendment is a request to revise the phasing schedule of the quarry. The phasing was included in the original submittal application and, while not specifically discussed with the approval of the CUP, is incorporated in the CUP conditions with Condition No. XIX: Incorporation By Reference: "All of the terms, conditions, plans and restrictions contained in the applicant's bound application submittal and the Planning staff August 22, 1990 report to the Planning Commission, entitled 'Reclamation: The Process and the Plan,' are hereby incorporated by reference as a condition and restriction on this Conditional Use Permit. In any instance in

which there is a conflict between the terms of these restrictions and the bound submittal or Planning staff report, these restrictions shall control."

The only condition involved with this amended CUP is the revised phasing schedule. No other changes are being proposed by the applicant at this time. The original bound application submittal explained that the quarrying operations would occur in phases and set out the phasing sequence. As this was a self-imposed condition, staff took the requested revised phasing schedule to the County Commission for consideration.

A Conditional Use Permit is often taken directly to the County Commission with requests for revisions when the request does not include conditions which were specifically required or discussed by the Planning Commission with the consideration of the CUP. Letters were mailed to property owners within 1000 ft of the quarry notifying them of the placement of the revised phasing request on the County Commission's agenda so they would be aware of the proposed change and would have the opportunity to provide input. Staff was contacted by the property owner adjacent to Phase 5, who had no opposition to the revised phasing. Staff recommended approval of the request to revise the phasing schedule as no negative impacts had been identified. Two neighboring property owners expressed concerns with the proposed phasing change at the County Commission meeting and the commission returned the request to the Planning Commission for consideration and a public hearing so they could receive a recommendation from the Planning Commission.

The requested change is a timing rather than a physical change and will not detrimentally affect nearby property, as there will be no change in the quarrying activities. Communications from Dave Buffo, representing Lone Oak LLC who owns property adjacent to Phase 4 to the east, indicate that the revised phasing schedule may have an impact on their plans to sell the property. This will be discussed in the following section of this report.

**Staff Finding** – The revised phasing schedule should have no negative impact on nearby properties as there are no physical changes being proposed to the quarrying activity.

# VI. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE PETITIONER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS

#### Applicant's Response:

"The gain to Mid-States will be realized through more efficient development of the quarry. Mid-States intends to build one haul road to serve the entire southern portion of the quarry (Phase VI) in Douglas County and the adjacent property in Shawnee County. (See Exhibit 'A'). This will allow the quarry to operate more efficiently by reducing the amount of resources used to build haul roads and by reducing the distance traveled within the quarry by the trucks transporting the raw aggregate to the crushing plant. This obviously reduces wear and tear on equipment and reduces fuel use.

This should not cause any additional hardship to the surrounding neighbors as no additional area will be quarried as a result of this request. All conditions and restrictions will remain in place. Only the order in which the Phases are quarried will change. Nothing about the process of quarrying will change."

Evaluation of the relative gain weighs the benefits to the community-at-large which would be achieved through the denial of the application vs. the hardship this would cause to the property owners.

#### **PUBLIC**

Denial of the proposed amendment would require the quarrying activity to continue in the same order as noted in the original application. This predictability regarding the progress of the quarry may benefit the welfare of nearby landowners. It would provide a means for a property owner to estimate when quarrying would occur near their property as phases were completed; however, it would not provide a timeline for any phase of the quarry as timing is dependent upon the resources and market demand.

The use and enjoyment of one's property can be affected as operations move between phases due to increased noise, dust, vibrations, traffic from the quarrying activity. Additionally, timing of property development and sale may also be affected as neighbors may use the phasing as a factor in such decisions.

Lone Oak, LLC provided a letter from their realtor, Mossy Oak Properties, discussing the impact of the quarry on land prices. (Attachment D) The impact of the quarry, in and of itself, is not a factor in this situation as the quarry had an approved CUP and was in operation prior to Lone Oak, LLC purchasing the adjacent property.

#### APPLICANT

Denial of the request would require the applicant to move quarrying activities to the east side of the Douglas County portion of the quarry while quarrying is occurring on the west side of the Shawnee County line adjacent to Phase 6. This may result in a less efficient quarrying process. Approval of the request would allow the operator to combine operations on the south part of the quarry and operate more efficiently.

A quarry has a long time frame with the length of a typical CUP being 30 years. An extension may be requested at the end of that time frame, if necessary to complete operations. Given the long time frame, flexibility in the phasing and other operational characteristics is often necessary to respond to changing conditions.

**Staff Finding** — The denial of the request would maintain the original expectation that surrounding land owners may have planned for relative to the use and enjoyment of their own property. The denial of the request would require the operator to proceed in the phasing sequence established with the original application and would prohibit them from coordinating quarrying activities on both sides of the county line. Approval of the request would result in a more efficient means of operation for the southern portion of the quarry. The comparison is between the loss of efficiency for the quarry operator with denial of the request and the loss of predictability for property owners with approval of the request.

#### VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

The Resource Management Section of Chapter 16, Environment of *Horizon 2020* states: "This section encourages the responsible use of marketable natural resources within Douglas County, through proper extraction and reclamation methods. They are essential to sustainable development activity, primarily in the form of low cost raw materials, such as sand, gravel, timber, oil, gas, and stone, etc." The CUP has a list of conditions and restrictions of use to

ensure the responsible use of a marketable natural resource. The change being proposed will not alter the responsible use of these resources.

#### Staff Finding.

The conditions and restrictions of use associated with the CUP permitting this quarry ensures the responsible use of a marketable natural resource. The change being proposed will not alter the extraction and reclamation methods and is in conformance with the Comprehensive Plan.

#### STAFF REVIEW

Two property owners expressed concern with the proposed revised phasing schedule at the County Commission meeting. Lone Oak, LLC expressed concern with the proposed phasing change and these concerns were discussed earlier in the report. A couple who had purchased a home south of the quarry were concerned that quarrying would continue in the area. They requested general information which was relayed on to the quarry operator; however, as of the time this report was printed they have not provided any comment regarding the impact of the proposed phasing change on their property.

#### Conclusion

Quarrying is permitted in Phases 4, 5, and 6 and is expected to occur. Quarrying occurs over a long time frame and some flexibility should be afforded to allow operators to react to changing conditions; however, maintaining the current phasing would maintain the predictability of the quarrying operations for surrounding property owners. There are two options available:

- 1) Approve the revised phasing to allow the quarry to coordinate quarrying activities between the portions of the quarrying on each side of the Douglas County / Shawnee County line.
- 2) Deny the revised phasing to maintain the predictability as to the sequencing of the quarrying operations for the benefit of surrounding property owners.

#### **AMENDMENT REQUESTED**

Dave Buffo, attorney for Lone Oak LLC, provided an email dated April 19, 2013 in which he expressed their opposition to the proposed phasing change. The email also included a request for an amendment to the CUP that would revise the setbacks for Phase 4 adjacent to the Lone Oak property. Lone Oak is adjacent to Phase 4 on the east and north sides. The approved CUP requires the following setbacks on these sides:

- East side of Phase 4 --- 100 ft mining and 150 ft blasting setbacks.
- North side of Phase 4 --- 200 ft mining and 500 ft blasting setbacks.

The amendment requests the setback on the east side of Phase 4 be increased to at least 300 ft for mining and 500 ft for blasting.

Per Section 12-319-3, the County Commission has the authority to amend an approved Conditional Use Permit. Upon the Commission's own initiative or through a recommendation of County Staff or the Planning Commission, a public hearing date may be established for the consideration of the proposed amendment.

The Planning Commission may recommend that the County Commission initiate an amendment or take no action on the request to amend the setbacks.



# MID-STATES MATERIALS LIC

February 4th, 2012

Mary K. Miller, AICP City/County Planner Planning & Development Services P.O. Box 708 Lawrence, Kansas 66044

Re:

Big Springs Quarry Development Sequence

Mary:

We continue to quarry phase three at the Big Springs Quarry and are currently preparing to move into phase six. Simultaneously with quarry development of phase six in Douglas County we also intend to open and develop quarry activities on adjacent property in Shawnee County, Kansas. Both of these new tracts of property are south of N1700 road and will be served by the same haul road and elevated grade (bridge) crossing. From a development and operational standpoint it is our preference to build one haul road to serve both tracts of property in Shawnee and Douglas County rather than building two haul roads at the same time; one to serve our Shawnee County property south of N1700 road and a second haul road, running east north of N1700 road, to serve phase four in Douglas County.

Our plan is to develop and quarry phase six next in Douglas County and then move to phase four and phase five in Douglas County to continue our limestone quarry operation. Transition time between phases will be governed solely by demand for our products and economic conditions. Please forward notice to surrounding landowners informing them of our continued plans at the Big Springs Quarry.

Please advise me when this case is set to be heard by the Board of County Commissioners and as always contact me if you have any additional questions or comments.

Regards,

MID-STATES MATERIALS, LLC

EXHIBIT

# Memorandum City of Lawrence – Douglas County Planning & Development Services

TO: Board of County Commissioners

FROM: Planning Staff

Date: For March 6, 2013 County Commission Meeting

RE: Request to revise the phasing schedule for Big Spring Quarry, located at

2 North 1700 Road, Lecompton.

Attachment: Request for revised phasing schedule.

Eric Bettis, owner/operator of Mid-States Materials, submitted the attached request for a revised phasing schedule for Big Springs Quarry to the Planning Office. The phasing was not required as part of the CUP; however, notice was mailed to property owners within 1000 ft so they would be aware of the proposed change.

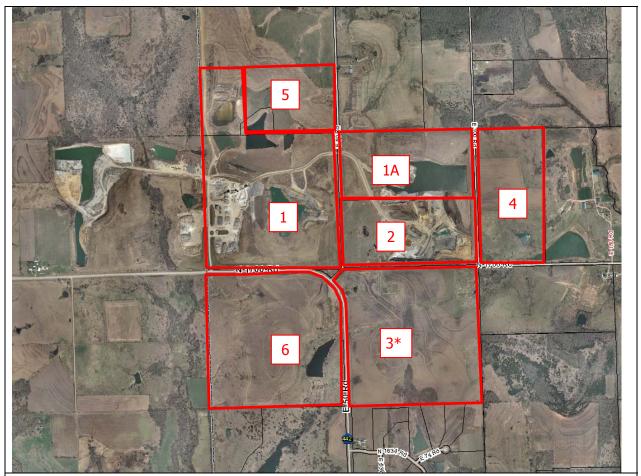
As the request notes, they are currently quarrying in Phase 3 on the southern portion of the quarry and are requesting a revision to the phasing schedule to allow them to quarry Phase 6 before moving into Phases 4 and 5. The phases are shown in Figure 1.

Mid-States Materials quarries the adjacent land to the west of Phase 6 which is in Shawnee County. Quarrying the 2 properties concurrently would allow them to utilize the same haul road and bridge. This would allow them to operate more efficiently. The change being proposed to the phasing schedule would be that Phase 6 would be moved between Phases 3 and 4. The remaining phase schedule would be  $3\rightarrow 6\rightarrow 4\rightarrow 5$ .

Phasing was provided on the original CUP plan to illustrate how the quarrying operations would occur. Staff does not recommend changing the phase numbers on the plan as many of the conditions are written specific to a particular phase. No negative impacts from the requested change have been identified. The revised phasing schedule will allow quarrying on the south side of the property to be completed before quarrying moves on to the east and then the north sides, rather than quarrying on the south for Phase 3 and then returning years later with Phase 6.

#### STAFF RECOMMENDATION

Staff recommends approval of the revised Phasing Schedule to allow Mid-States Materials to quarry Phase 6 following Phase 3 and then move on to Phases 4 and 5.



**Figure 1**. Big Spring Quarry Phases. Phase 1 will be reclaimed last, as it contains the scale house and processing equipment. Phase 3 is the phase which is actively being quarried at this time.

#### March 6, 2013

Gaughan called the regular meeting to order at 6:35 p.m. on Wednesday, March 6, 2013 with all members present.

#### PROCLAMATION 03-06-13

Gaughan read and moved to approve a proclamation declaring March 10-17, 2013 as "Ninth Street Missionary Baptist Church Anniversary Celebration Week." Motion was seconded by Thellman and carried 3-0. Pastor Delmar A. White, gave a brief presentation on their upcoming celebration.

#### **CONSENT AGENDA 03-06-13**

Gaughan moved approval of the following Consent Agenda:

- Commission Order Nos.13-010 and 13-011 (on file in the office of the Clerk); and
- ➤ 2012 Township Annual Reports as required per K.S.A 80-410 and K.S.A. 80-304;
- Systems Upgrade Agreement with the University of Kansas as part of the P25 800MHz Radio Project;
- ➤ Site Lease Agreement with TFM Comm Inc. for use of tower and facilities located at the Flair Tower site, 1167 N 1100 Road, Lawrence;
- ▶ Vehicle purchase of six (6) Ford Police Interceptor utility vehicles and one (1) 2013 Ford Expedition in the total amount of \$183,036 utilizing the MACPP joint vehicles bid using Shawnee Mission Ford.

Motion was seconded by Thellman and carried 3-0.

#### **PLANNING 03-06-13**

The item **CUP-12-00099** to consider a revised phasing schedule for the Big Springs Quarry, CUP-12-09-06, located at 2 North 1700 Road, Lecompton was tabled and will be heard on March 27, 2013 at 6:35 p.m. in the County Commission chamber of the Douglas County courthouse.

#### **ACCOUNTS PAYABLE 03-06-13**

Gaughan moved to approve accounts payable in the amounts of \$104,627.60 to be paid on 03/07/13. Motion was seconded by Flory and carried 3-0.

carried 3-0.	
Mike Gaughan, Chair	Nancy Thellman, Vice-Chair
ATTEST:	
Jamie Shew, County Clerk	Jim Flory, Member

# CUP-7-2-90 RESTRICTIONS OF USE (As Amended 9-16-92 by County Commission)

#### SETBACKS

Operations setbacks vary around perimeter of the site based on the Exhibit prepared by Brian Kubota for Martin Marietta [and amended in Exhibit "B", as orally revised on 8/26/92, reflects revised language added in approval of CUP-6-6-92]. The setbacks shown are and shall be:

- \* 50' blasting/mining setback along the west perimeter of Phases I and V; & along the north perimeter of Phases I, I-A and V;
- 400' blasting/mining setback along the west and south perimeters of Phase VI;
- 160' mining and
   260' blasting setbacks along County Road #442;
- 100' mining/blasting setback along Township Roads 050E, 1700N & 100E;
- 100' mining and
   150' blasting setbacks along the east side of Phase IV;
- \* 200' mining and 500' blasting setbacks along the east side of Phase III, the north & south sides of Phase IV, and along a portion of the east side of Phase V near the NE corner across from the Wulfkuhle residence;
- \* 700' blasting/mining setback along the south perimeter of Phase III; and the area southeast of a line which is 100' northeast of and parallel to the pipeline in Phase III and all of the area to the southeast of the pipeline;
- \* a triangular area in the southeast corner of Phase VI, a corner of which is 1,800' north of the south property line of Phase VI along the setback line of County Road #442 and another corner of which is 1,100' west of the right-of-way of County Road #442 along the south setback line of Phase VI; and
- in the northeast corner of Phase I-A, a rectangular tract the south side of which is 500' south of the north property line of Phase I-A and the west side of which is 500' west of the right-of-way of County Road 100E.

#### II. OPERATIONS RESTRICTIONS

Methods shall be adopted to minimize dust in staging area as well as along the haul roads.

Quarry operations shall be restricted to:

- a) sale and removal of rock: 6AM 5:30PM, Monday Friday;
- b) production and extraction: 6AM 10PM, Monday Thursday; 6AM 5:30PM, Friday;
- c) blasting: 1PM 5PM, Monday Friday;
- d) provided, however, that no quarry operations shall take place on the following holidays or the days on which such holidays are observed by Kansas state

government: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; the day immediately following Thanksgiving Day; and Christmas Day.

#### III. FENCING

The entire site shall be fenced. All existing fencing shall be maintained by the applicant in at least its existing condition and in compliance with the fence laws of Kansas. Where additional fencing is installed by the applicant in compliance with this restriction, it shall consist of a five-strand barbed wire fence and thereafter shall be maintained in compliance with the fence laws of Kansas. Within sixty (60) days after the approval of this conditional use permit, the applicant shall enter into an agreement in which it agrees to maintain all partition fences along adjoining tracts and to indemnify and hold harmless the owners and occupants of said tracts of land from any liability arising from the failure to maintain said fencing as required herein and by the fence laws of Kansas. In the event any livestock is determined to be on the quarry site, the applicant's representatives shall assist the owner thereof or the owner's representative in retrieving the livestock and the applicant shall shut down any operations as necessary to complete the retrieval process.

A security gate and fence shall be placed at the entrance to the quarrying site across the main haul road.

The fence shall be signed periodically along each perimeter stating:

- a) the operator's name, business address and phone number;
- b) Conditional Use Permit Number; and
- c) NO TRESPASSING.

#### IV. BLASTING

Blasting shall be set only in sequential delays; no single delay to be over 150 lbs. of explosives. All fly-rock shall be removed from adjacent property immediately after a blast. Prior to each blast the applicant shall contact adjoining neighbors who request individual notice of each blast. Further, a signaling system shall be used to alert people in the neighboring vicinity before each blast takes place. Finally, the applicant shall observe the blasting safety precautions described in the paragraph on page 17 of the August 22, 1990 minutes of the Lawrence-Douglas County Metropolitan Planning Commission, beginning with the sentence: "Security is of the utmost importance to the mining operator."

#### V. AIR QUALITY

The quarry operator shall adhere to air quality standards of KDHE, not to exceed 20% of opacity more than  $\underline{1}$  time in a one year period as observed by KDHE observers over a 5 minute period.

#### VI. OTHER REGULATORY RESTRICTIONS

All applicable regulations of EPA, KDHE, Ks. State Bd. of Agriculture - DWR, and other applicable agencies hall be adhered to and subsequent revisions to these regulations shall apply.

#### VII. PERFORMANCE BOND FOR RECLAMATION

- (a) A performance bond in the amount of \$100,000.00 with sufficient sureties shall be secured to cover reclamation activities for the plant site as designated on Phase I and shall be filed with the Douglas County Clerk's Office prior to the commencing of any site preparation activities or any other work being done pursuant to the CUP. This performance bond shall remain in place for the entire life of the permit and shall not be subject to release until the plant site has been fully reclaimed and certification thereof shall have been made by the Douglas County Commission.
- (b) In addition to the bond required under paragraph (a) above, a performance bond in the amount of \$400,000.00 with sufficient sureties shall be secured for the first site excavated for extraction purposes in Phase I other than at the plant site and shall be filed with the Douglas County Clerk's Office prior to the commencing of any excavation (including the stripping of top soil) other than at the designated plant site. This bond shall be for an excavation area no larger than 10 acres open at one time and shall remain in place until certified by the Douglas County Commission that reclamation has been completed at the site for which it was obtained.
- (c) For each additional 10 acre site excavated for extraction purposes in any Phase of the quarry operations during the term of the CUP, a performance bond in the amount of \$400,000.00 with sufficient sureties for additional excavation for extraction purposes shall be secured and shall be filed with the Douglas County Clerk's Office prior to the commencing of any such additional excavation (including the stripping of top soil). These bonds shall each be for areas no larger than 10 acres open at one time per excavation and shall remain in place until certified by the Douglas County Commission that reclamation has been completed at each site.
- (d) No more than 30 acres may be open, mined and extracted from at any one time on the quarry site, exclusive of the plant site. No more than 10 acres shall be open, mined and extracted from in a subsequent phase until reclamation is complete on the previous phase. Each of the bonds described above also shall carry provisions which provide additional coverage for any other quarry operations that are carried on at the quarry site during the pendency of the bond until release of the bonds.

#### VIII. RECLAMATION AND REVIEW

The first year of operation, and every 5 years thereafter, the applicants shall submit a detailed report and plan of quarrying operations to the Planning Office and to the Douglas County Public Works Director indicating the phases of quarry operation; location of stockpile area; estimated volume of material being extracted; and a detailed monitoring and management plan for the areas undergoing reclamation. The Monitoring and Management Plan for the Reclamation Process shall include:

Detailed reclamation plans shall be submitted for each phase of the reclamation process for review and recommendation by the Planning staff and approval by the County Commission. The Phase I plan shall be submitted prior to opening of quarrying activities in Phase II, and each subsequent reclamation plan be submitted prior to the opening of the following phase of quarrying activity. The property shall be reclaimed to a state similar to the existing state (or better) with reference to general topography, percent

slope, and plant and animal life supported by the established ecosystem. [Refer to PC minutes, 9/26/90, pp. 3 & 4.]

#### IX. PRE-BLAST SURVEY AND HYDROLOGIC STUDY

A pre-blast survey (by an independent seismology firm approved by the applicant and the owners of existing structures within one-half mile of the quarry site) shall be conducted, if the property owners request it, for existing structures within one-half mile of the quarry site to document existing conditions and determine the quantity/quality of water in the wells. The cost of such survey shall be paid by the applicant. Both the property owners and Martin Marietta shall be provided copies of the survey performed to retain for their records.

A hydrologic study of the site shall be completed at the applicant's expense prior to any quarrying operation:

(a) to provide an inventory of area residential and stock wells and determine their capacities and current volumes/levels of operation; and,

(b) to determine the impact of quarrying, per phase, based on the depth of mining proposed on the existing water tables which serve these wells.

#### X. DRAINAGE STUDY

Prior to work progressing in each phase of the quarrying operation, a detailed grading plan showing site runoff and its relationship to the adjoining properties shall be submitted to the Planning Office for review and approval prior to work progressing in <u>each</u> phase.

#### XI. SITE ACCESS AND ROAD RESTRICTIONS

(a) Except for vehicles traveling to and from the site on 45th Street in Shawnee County, the principal access to the site for transport truck traffic and hauling of rock shall be restricted to the use of U.S. Highway 40 from a direct route north of the proposed quarry. The northern access to U.S. Highway 40 shall be accomplished by either a purely private road connecting the site with U.S. Highway 40 or by the extension of Woodring Road to the site and the improvement of Woodring Road and 29th Street in accordance with AASHTO and MUTCD standards. The U.S. 40 intersection improvement for either alternative shall be in accordance with KDOT requirements. The Douglas County Commission prefers the private road alternative, and nothing herein shall be construed as a commitment by the Commission to exercise its powers of eminent domain to extend and improve Woodring Road and 29th Street.

If the applicant chooses the Woodring Road/29th Street alternative, the applicant may be required to acquire all rights-of-way deemed necessary for the project by the Director of Public Works/County Engineer and convey such property interests to Douglas County and Shawnee County without cost to the counties. The cost of all public improvements to Woodring Road and 29th Street, including, but not limited to, engineering services, utility relocation, and construction, shall be paid by the applicant. Douglas County, at its option, may provide construction engineering services and such other services deemed appropriate by the County Commission in connection with the project, and the total direct and indirect cost of such services shall be paid by the applicant. Further, the applicant shall enter into a maintenance agreement with Douglas County to properly maintain the improved public roadway in a manner acceptable to the Director of Public Works/County Engineer.

The northern access to U.S. 40 shall be constructed and available for use no later than twelve (12) months from the date rock crushing activity begins on the proposed CUP site. The County Commission may extend this deadline for a fixed period of time upon a documented showing by the applicant of an unreasonable delay caused by either Douglas County or the Kansas Department of Transportation.

If the composition of the private road alternative described above includes an aggregate surface, "year round" dust control along the roadway shall be maintained by the applicant. If a public road is constructed by the applicant for gaining access to U.S. 40, it shall contain a hard surface of either concrete or bituminous asphalt in accordance with AASHTO standards.

(b) Improvements to Douglas County Route 442 and the on-going maintenance of such improvements shall include the construction or overlay at the quarry entrance on Route 442 and 45th Street (where necessary) of through lanes, acceleration/deceleration lanes (on the north side) and a left turn lane (for traffic approaching from the west in Shawnee County) with shouldering, all in accordance with AASHTO and MUTCD standards. The work shall be planned, permitted and completed within one year of the date on which the CUP is approved. The applicant shall be financially responsible for the cost of such improvements, including, but not limited to, right-of-way acquisition, engineering, and construction. Douglas County, at its option, may provide construction engineering services in connection with such improvement project, and the total direct and indirect cost thereof shall be paid by the applicant.

Except for local deliveries of rock from the quarry site, Route 442 shall not be used by transport trucks to travel to and from the east. The applicant shall post signs and adopt appropriate restrictions on the quarry site, including restrictions on sale of rock where necessary, to ensure strict compliance with this restriction by all transport trucks. In the event the Board of County Commissioners determines, after due notice and hearing, that such restrictions have proven ineffective in prohibiting transport trucks which originate from or travel to the quarry site from using Route 442 east of the quarry entrance in violation of this restriction, the Board may order such improvements to Route 442 as it deems necessary, including, but not limited to, appropriate shouldering, surfacing and signing, and assess such costs to the applicant which shall be paid in a timely manner. In the alternative, the Board may order the applicant to cease operation or order such steps as the Board deems necessary under Section XVII, Inspection/Violation/Revocation.

- (c) No township roads shall be used as access to the quarry.
- (d) Restrictions which shall be posted at the entrance to the plant, regarding vehicles hauling from the site, are to include:
  - no flat bed trucks without sides or tailgates;
  - tailgates in place and upright position; and
  - all trucks leaving the site must be covered by a tied-down tarp.
- (e) Martin Marietta shall be responsible for spillage and clean up of aggregate within one mile of the plant site. This includes the intersection of access road to the north and U.S. Highway 40. The failure by the applicant to clean up spilled aggregate of such roads within a reasonable period of time shall be grounds for action under Section XVII, Inspection/Violation/Revocation.
- (f) Weight limitations shall be posted on appropriate roads adjacent to the quarry,
- (g) Access points across township roads between phases of operation require prior review and authorization from the Douglas County Public Works Director. Access is restricted to one point of crossing per phase as shown on the applicant's submittal. Access crossings between the phases of the site shall be maintained by applicant at all times.

·(h) During the term of this Conditional Use Permit, the applicant shall not request the vacation of any township roads in the vicinity of the site.

#### XII. NOISE AND LIGHT POLLUTION

Vehicles used in plant operation (extraction & production) after 6PM shall be equipped with a strobe light in addition to the back-up (audible) signal alarm. During hours when it is permissible to use only a strobe light, the audible signal shall be turned off.

Permanent outdoor lighting at the plant area, mining area, and haul roads shall be shielded and directed down with a solid screen to prevent light pollution beyond the site boundaries. Lighting is restricted to low pressure, sodium.

#### XIII. PERIMETER SETBACK EXCEPTIONS

The perimeter setback along the west shall be eliminated at the time adjoining property in Shawnee County is actively quarried and if the operation is under the same operator. The perimeter setback adjoining any neighboring property shall be modified to a lesser distance than set forth in I, above, down to a minimum of 50' mining/blasting setback, upon filing with the Douglas County Commission of a duly notarized statement by the beneficial owner of such neighboring property evidencing said owner's agreement to modification of the setback; provided that no such modification shall be permitted along the northern boundary of Phase IV or Phase I-A, unless such a statement is filed by all landowners owning property north of and within 1,300' of the northern boundary of Phase IV and the East 1,000' of the northern boundary of Phase I-A. [language revised as approved September 16, 1992]

#### XIV. DEVELOPER'S TRACK RECORD

Because the developer's track record is an important consideration, a change in the quarry operator shall require the Conditional Use Permit to come back to the Planning Commission for review and to the County Commission for reapproval.

#### XV. FUTURE USE OF THE SITE

The property shall not be used or requested for use as a sanitary landfill within the life of this Conditional Use Permit.

#### XVI. MONITORING BLASTS

Martin Marietta shall contract with an independent seismology firm to monitor blasts at the commencement of quarrying operations at each residence within 1/2 mile of the blast site to assure that the blast design will not be harmful to any structures or wells and that all associated vibrations are below currently recognized safety levels. A report on the monitoring of initial blasting shall be made available to owners of the residences and such report shall include a full frequency analysis of vibrations.

After the initial blasting, Martin Marietta shall contract for a continuous monitoring program commencing with the start of continuous regular blasting by an independent seismology firm

at stations chosen by the seismology firm. A monthly report which analyzes the impacts of daily blasting will be available at Martin Marietta's offices for inspection. Residents may request positioning of the seismograph to measure the impact at their property; provided, however, the applicant shall not be required to conduct tests in excess of those it determines, based on the professional advice of its independent seismology firm, will provide adequate seismic readings at residents' properties. Any resident desiring to appeal the decision of the applicant concerning this condition may appeal it to the County Commission which may order seismic tests at such locations as it deems appropriate under the circumstances at the expense of Martin Marietta.

#### XVII. INSPECTION/VIOLATION/REVOCATION

The Douglas County Commission, or the appointed representative(s) thereof, shall have the right, without advance notice, to enter the premises and inspect any aspect of the quarry operation for compliance with the conditions of this permit. Upon entering the premises, the County shall first request an escort by the applicant's representatives. If no escort is available, the inspection may proceed immediately.

Further, the Douglas County Commission, or the appointed representative(s) thereof, shall be authorized to:

- (a) Order the stoppage of any operation occurring without a permit or in violation of the terms of this permit.
- (b) Order the applicant or its agents and employees to adopt such remedial measures as are necessary to comply with the terms of this permit. In such cases, the applicant shall be given no more than ninety (90) days to rectify any condition of noncompliance.
- (c) Order the immediate suspension of operations if, after due notice and an opportunity to be heard before the County Commission, it is determined by the Board of County Commissioners that the permitted operation is causing, or can reasonably be expected to cause, a significant, imminent danger or threat to the health, safety or welfare of the public or to the environmental quality of the surrounding area.
- (d) In cases such as those described in paragraph (c) that do not pose an imminent threat to the public health, safety and welfare, the applicant shall be given no more than (90) days to rectify the condition. If the condition has not been rectified, the County Commission, after due notice and hearing, may order the suspension of operations and suspend or revoke part or all of the Conditional Use Permit.
- (e) If the applicant, or the agents or employees thereof, fail to comply with a lawful order under this section, or violate any of the restrictions of use enumerated for this permit, the County Commission, after due notice and an opportunity for a hearing, may suspend or revoke part or all of the Conditional Use Permit.

#### XVIII. BOND TO COVER DAMAGES TO PERSONAL PROPERTY.

The applicant shall post with the Douglas County Clerk a cash bond in the amount of \$10,000 to defray the cost of any damages to the personal property of the occupants of residences within one (1) mile of the quarry site perimeter which the Board of County Commissioners, after due notice and hearing, in its judgement determines are due to the activities of the

applicant, its agents or employees. Such cash bond shall be maintained at the \$10,000 level by the applicant during the term of this CUP, and the bond amount shall be refunded to the applicant without interest upon the completion of the 30 year CUP term. Any award or denial of award by the County Commission shall be subject to appeal to the district court.

#### XIX. INCORPORATION BY REFERENCE

All of the terms, conditions, plans and restrictions contained in the applicant's bound application submittal and the Planning staff August 22, 1990 report to the Planning Commission, entitled "Reclamation: The Process and the Plan," are hereby incorporated by reference as a condition and restriction on this Conditional Use Permit. In any instance in which there is a conflict between the terms of these restrictions and the bound submittal or Planning staff report, these restrictions shall control.

#### XX. ACKNOWLEDGEMENT

By the signatures of its authorized agents, the applicant acknowledges and agrees to be bound by the provisions of this Conditional Use Permit.

#### XXI. LANDSCAPING

Landscaping along the road right-of-way are permitted to be clustered in groups which are 200' on center and approximately 40' - 50' between cluster groups. Trees and shrubs are to be shown on the revised landscape plan dated 30 January 1991.

Landscaping shall be phased in accordance with the approved landscape plan which shows three landscape phases. Landscape phase one and two: are along County Rds. 442, 050E, 100E, and 1700N (between 050E and 100E). Planting for these phases of the quarrying operation will be completed by Spring 1993 (which is during the mining operations Phase 1); the third and final landscape phase is along the north side of County Road 1700N, east of County Rd. 100E. This final landscape phase will be activated by the completion of the mining operations Phase 2. [This planting is adjacent to mining operations Phase 4.]

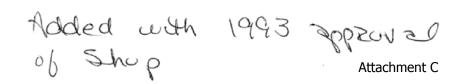
(Approved by Board of County Commissioners of Douglas County, KS on February 27, 1991.)

#### XXII. ADDITIONAL REQUIREMENTS

Rock extracted from the permitted site shall not be transported to and crushed in Shawnee County during the term of this permit. No more than one portable rock crushing plant shall be operated on the site and its use shall be restricted to the plant site in Phase I. The applicant shall cease the use of the portable rock crushing plant by no later than December 31, 1993. If the "state-of-the-art" permanent, enclosed rock crushing plant proposed by the applicant is not constructed by January 1, 1996, this Conditional Use Permit shall be null and void; provided, however, the County Commission may grant an extension to this deadline upon a documented showing that any delay was beyond the applicant's control.

#### CONDITIONS OF APPROVAL CUP-6-6-92 Approved September 16, 1992

- 22 restrictions of use approved by the County Commission as revised on February 27, 1991 for Conditional Use Permit No. 3500; [revised language provided above]
- No additional requests be made by Martin Marietta and/or its heirs during the remainder of Conditional Use Permit No. 3500 and No. 3853 (which expires December 19, 2020) to expand the size of the quarry site;
- 3. Restriction I SETBACKS and Restriction XIII PERIMETER SETBACK EXCEPTIONS shall be modified to reflect the additional setbacks as proposed in Exhibit B-1, dated August 26, 1992, and the additional language as proposed in Exhibit C, dated August 26, 1992; [revised language provided above]
- 4. An amended Proposed Operations Plan shall be submitted which includes the additional acreage; AND
- Proposed Phase 1-A shall be the only permitted incremental expansion of the quarry CUP.



- 1. All repair and maintenance activities shall occur in the enclosed shop facility;
- 2. Repair and maintenance activities shall be limited to service of vehicles and equipment in use at this specific quarry location;
- 3. Specific landscape improvements associated with the new structures shall be submitted for review by the Planning Staff prior to issuance of building permits;
- 4. Acquisition Douglas County Health Department permits prior to issuance of building permits for the proposed structures; and
- 5. Submittal of a revised site plan, to be approved by Planning Staff, indicating the placement of the shop facility near the office/scale house or at an elevation approximately 50' lower than the current ground elevation at the proposed location.

#### CONDITIONS OF APPROVAL

- 1. Upon completion of quarry operations of Phase 2, Mid-States shall return the topsoil that is currently located on the approximately ¼ mile boundary between Phase 1A and Phase 2, and, after the topsoil is returned, reconstruct a 5-strand barb-wire fence along the line of the former interior fence between Phase 1A and Phase 2. Upon completion of quarry operations of Phase 5, Mid-States shall reconstruct a 5-strand barb-wire fence along the approximately ½ mile line of the former interior fence between Phase 1 and Phase 5. All of the foregoing fencing shall be in accordance with the requirements of the CUP.
- 2. Mid-States shall be responsible for reclamation of all quarried land. Prior to commencing quarry operations, Mid-States shall file one or more performance bonds, to ensure reclamation of the Quarry in accordance with the CUP, with the Douglas County Clerk in the initial amount totaling \$1,300,000, and keep the performance bond in effect for the remaining life of the CUP, in such amounts and with such sureties as required by Section VII of the CUP Restrictions of Use. Only upon Mid-States' filing of such performance bonds, will Douglas County release the current performance bonds on file.
- If Mid-States desires to excavate deeper than elevation 1042 in any Phase, Mid-States
  must cause a hydrologic study to be completed in accordance with Section IX of the
  CUP Restrictions of Use, prior to such excavation.
- 4. The landscaping provisions contained in Section XXI of the CUP Restrictions of Use is varied such that neither Martin Marietta nor Mid-States has an obligation to replant previously planted landscaping which subsequently died, provided, however, that the following landscaping shall be planted:

Area I (South side of Phase I)

On berm on north side of County Road 442 from entry gate to E50: 6 sets of 4 Austrian Pines and 3 Hackberry, total of 42 trees

Area II (Southeast corner of Phase I & Northwest corner of Phase III)
Add to both sides of E50 entry:
4 sets of 3 Austrian Pines and 2 Hackberry, total of 20 trees

Area III (East side of Phase I)

West side of E50 South of haul road crossing, 500 ft. offset from crossing: 4 sets of 3 Austrian Pines and 2 Hackberry, total of 20 trees

Area IV (East side of Phase V)

West side of E50 North of haul road crossing, 500 ft. offset from crossing: 5 sets of 3 Austrian Pines and 2 Hackberry, total of 25 trees

Area V (Northeast corner of Phase III)

Short section on South side West of E100 Rd, approximately 450': 3 sets of 3 Austrian Pines and 2 Hackberry, total of 15 trees

Area VI (East side of Phase II)

West side of E100 Rd. after berm is removed, North approximately 1300': 4 sets of 3 Austrian Pines and 2 Hackberry, total of 20 trees

Attachment C

Area VII (Northwest corner of Phase IV) East side of E100 Rd.: 3 sets of 3 Austrian Pines and 2 Hackberry, total of 15 trees.

The foregoing landscaping shall be planted to incorporate existing trees and, with the exception of the landscaping outlined in Area VI, all landscaping shall be planted on or before December 31, 2007. The landscaping outlined in Area VI shall be planted as soon as practicable, but no later than December 31 of the year in which the berm is removed.

In addition, an agreement shall be obtained with a professional landscaping company for maintenance, including irrigation, of the landscaping for a term of 12 months following planting, and the Zoning & Codes Department shall be provided a copy of such agreement on or before December 31, 2007.

In the event that the landscaping identified above is not planted or evidence of the 12month maintenance agreement is not supplied on or before the dates specified. Mid-States shall be in material non-compliance with the CUP Restrictions of Use and, upon written notice from the Zoning & Codes Department, shall immediately cease all quarrying and sale activities at the Quarry until such non-compliance is remedied to the satisfaction of the Zoning & Codes Department.

- 5. Mid-States shall submit its first reclamation report and plan of quarrying operation to the Planning Office and Douglas County Public Works Director by July 31, 2010, to comply with the requirement of Section VIII of the CUP Restriction of Use. The Planning Office will review and make recommendations and submit a report to the County Commission for approval. Every five (5) years thereafter. Mid-States will submit the detailed report required by Section VIII.
- 6. This Approval to Transfer CUP is supplemental to, and shall become a part of, the CUP. Mid-States and its operation of the Quarry shall be subject to the above requirements and all of the previously approved Conditions of Approval and Restrictions of Use, the same as if the CUP was originally granted to Mid-States, and Mid-States shall sign below to confirm its agreement and understanding of these requirements. Section XIV of the CUP shall continue to apply in the event Mid-States subsequently desires to transfer ownership or operational authority of the Quarry to another person or entity, and references in this Approval to Transfer CUP to Martin Marietta or Mid-States shall apply to the new Quarry owner or operator, as the context requires. This Approval to Transfer CUP shall not prevent the Board or the County Zoning & Codes Department from taking enforcement action in the event that it is later determined that the Quarry is not in compliance with the CUP Restrictions of Use and Conditions of Approval, as amended.

#### **Mary Miller**

From: Buffo, David [David.Buffo@huschblackwell.com]

**Sent:** Friday, April 19, 2013 11:25 AM

To: 'amalia.graham@gmail.com'; 'cblaser@sunflower.com'; 'jonjosserand@gmail.com';

'laraplancomm@sunflower.com'; 'bculver@bankingunusual.com'; 'rhird@pihhlawyers.com';

'squampva@aol.com'; 'clay.britton@yahoo.com'; 'chadlamer@gmail.com';

'bruce@kansascitysailing.com'

Cc: Mary Miller; jhutton@hensonlawoffice.com; Elce@stevensbrand.com

**Subject:** Mid-States Materials Application to Amend CUP

Attachments: Mid-States-Big Springs Quarry-Lawrence Douglas County Application Form w...pdf;

20130305223545748.pdf; 20130326223730734.pdf; IMG.PDF

Follow Up Flag: Follow up

**Due By:** Friday, April 19, 2013 4:00 PM

Flag Status: Flagged

#### **Dear Planning Commissioners:**

I am counsel to Lone Oak, LLC ("Lone Oak"). We have been informed that an item concerning Mid-States Materials, LLC ("Mid-States") request to change the sequencing of quarrying at the Big Springs Quarry in Douglas County (see attached) has tentatively been set on the Planning Commission agenda for the May 20, 2013 meeting.

We are in the process of scheduling a meeting with Mary Miller to discuss this matter, but we also wanted to contact each of you in advance of the meeting with our concerns. As you may know, this matter was before the Douglas County Board of County Commissioners ("BOCC") on March 27. The BOCC in a 2-1 vote declined to take action on Mid-States' request and suggested that if Mid-States wanted to seek a change to the sequence of the quarrying operations, Mid-States should file an application for an amendment to the CUP. In advance of this matter being taken up by the BOCC on March 27, Lone Oak submitted the attached letters dated March 5 and 26 to the BOCC. The attached letters outline Lone Oak's concerns with Mid-States' request and we would greatly appreciate each of reading and considering the information contained therein.

Additionally, Lone Oak has listed the property for sale with Mossy Oak Properties ("Mossy Oak"). As set forth in the attached letter from Ryan Koelsch with Mossy Oak, the uncertainty that will be created if the County grants the change to the CUP that Mid-States requested will have a negative impact on the market value of Lone Oak's property. Also of concern for Lone Oak and any future owner of the property is the quarrying and blasting setbacks. As it stands right now, the quarrying setback in Phase IV (directly adjacent to Lone Oak) is only 100 ft. and the blasting setback is only 150 ft. As set forth in Exhibit A, pg. 9 to the March 26 letter, "On properties in which dwellings are located, mining should not occur within 300 ft." When the CUP was approved, the structure which is now the lodge on Lone Oak's property was in existence, but for whatever reason only a 100 ft. setback for mining and 150 ft. setback for blasting was put in the CUP. These setbacks are insufficient to protect the lodge and its inhabitants from the dangers of blasting and quarrying. We mention this now because if the CUP is to be amended, at the very least we ask that the County reconsider the setbacks on the east side of Phase IV and require the CUP also be amended to reflect a quarrying setback of at least 300 ft. and a blasting setback of at least 500 ft. By taking this action now, Lone Oak and any future owner will at least have the peace of mind and security that whenever Mid-States decides to quarry Phase IV, at least Mid-States will not be quarrying within 300 ft. or blasting within 500 ft. of the lodge and property.

We thank you in advance for your consideration of this matter and we look forward to presenting this information during the public comment period. If you have any questions, please feel free to contact me.

Sincerely,

Dave

David M. Buffo Attachment D

**HUSCH BLACKWELL LLP** 

4801 Main Street, Suite 1000 Kansas City, MO 64112-2551 Direct: 816.983.8253 Fax: 816.983.8080

David.Buffo@huschblackwell.com

<u>huschblackwell.com</u> <u>View Bio</u> | <u>View VCard</u>

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### **Mary Miller**

From: Buffo, David [David.Buffo@huschblackwell.com]

**Sent:** Tuesday, May 07, 2013 9:32 AM

To: amalia.graham@gmail.com; cblaser@sunflower.com; jonjosserand@gmail.com;

laraplancomm@sunflower.com; bculver@bankingunusual.com; rhird@pihhlawyers.com;

squampva@aol.com; clay.britton@yahoo.com; chadlamer@gmail.com;

bruce@kansascitysailing.com

Cc: Mary Miller; jhutton@hensonlawoffice.com; Elce@stevensbrand.com

**Subject:** Mid-States Materials Application to Amend CUP

Follow Up Flag: Follow up

**Due By:** Tuesday, May 07, 2013 4:00 PM

Flag Status: Flagged

### **Dear Planning Commissioners:**

We wanted to follow up on the below e-mail to inquire if there were any questions regarding the information Lone Oak provided to you on April 19. Additionally, we wanted to let you know that we have had further discussions with Mary Miller regarding Lone Oak's position on Mid-States' request. We feel that the discussions with Ms. Miller were very positive and that Ms. Miller has a better understanding of Lone Oak's concerns. Specifically, we feel that Ms. Miller has a better understanding of the negative impact that re-sequencing will have on the value of Lone Oak's property.

During our discussions with Ms. Miller, Lone Oak used the analogy of comparing the value of similar homes being for sale with the difference being one home is located next to a trash dump. It is axiomatic that the homes that are not next to the trash dump will command a higher sale price and in all likelihood will sell before the home located next to the trash dump. To take this analogy a step further, and to make it more like the situation at hand, assume that when the owners of the home next to the trash dump purchased the home they relied upon public information that set forth an end date and reclamation date for the trash dump and relying on this information purchased the home with the plan to own the home and then sell after the trash dump was reclaimed. Under this scenario, the home owner next to the trash dump would have certainty as to when the nuisance would be over and could plan accordingly in order to maximize the market value of the home. However, if the trash dump requested and was granted what amounts to an open ended time frame to close and reclaim the trash dump, the value of the home next to the trash dump will continue to be depressed and, in fact, the value will in all likelihood be even further decreased by the fact that the trash dump will continue in perpetuity.

If the County agrees to the request being made by Mid-States, the reality will be that Mid-States may never come back and quarry Phase IV during the current term of the CUP. Further, and in all likelihood, as the end of the CUP approaches, Mid-States will be back before the County requesting that the CUP be extended (just like Mid-States did in Shawnee County) so that it can continue quarrying in Douglas County.

As we have stated before, the only certainty that Lone Oak has been able to rely upon is the CUP and the documents incorporated by reference into the CUP. It is clear from reading all the documents associated with the CUP that the quarrying was to be done in sequence according to the phases. Mid-States is finishing its quarrying in Phase III and if it elects to continue quarrying in Douglas County, Mid-States should be required to quarry Phase IV next.

We thank you in advance for your consideration of this matter and we look forward to presenting this information during the public comment period. If you have any questions, please feel free to contact me.

Sincerely,

Dave

David M. Buffo **Partner** 

Attachment D

**HUSCH BLACKWELL LLP** 

4801 Main Street, Suite 1000 Kansas City, MO 64112-2551 Direct: 816.983.8253 Fax: 816.983.8080

David.Buffo@huschblackwell.com

huschblackwell.com View Bio | View VCard

From: Buffo, David

Sent: Friday, April 19, 2013 11:24 AM

To: 'amalia.graham@gmail.com'; 'cblaser@sunflower.com'; 'jonjosserand@gmail.com'; 'laraplancomm@sunflower.com';

'bculver@bankingunusual.com'; 'rhird@pihhlawyers.com'; 'squampva@aol.com'; 'clay.britton@yahoo.com';

'chadlamer@gmail.com'; 'bruce@kansascitysailing.com'

Cc: 'Mary Miller'; jhutton@hensonlawoffice.com; EIce@stevensbrand.com

Subject: Mid-States Materials Application to Amend CUP

### Dear Planning Commissioners:

I am counsel to Lone Oak, LLC ("Lone Oak"). We have been informed that an item concerning Mid-States Materials, LLC ("Mid-States") request to change the sequencing of quarrying at the Big Springs Quarry in Douglas County (see attached) has tentatively been set on the Planning Commission agenda for the May 20, 2013 meeting.

We are in the process of scheduling a meeting with Mary Miller to discuss this matter, but we also wanted to contact each of you in advance of the meeting with our concerns. As you may know, this matter was before the Douglas County Board of County Commissioners ("BOCC") on March 27. The BOCC in a 2-1 vote declined to take action on Mid-States' request and suggested that if Mid-States wanted to seek a change to the sequence of the quarrying operations, Mid-States should file an application for an amendment to the CUP. In advance of this matter being taken up by the BOCC on March 27, Lone Oak submitted the attached letters dated March 5 and 26 to the BOCC. The attached letters outline Lone Oak's concerns with Mid-States' request and we would greatly appreciate each of reading and considering the information contained therein.

Additionally, Lone Oak has listed the property for sale with Mossy Oak Properties ("Mossy Oak"). As set forth in the attached letter from Ryan Koelsch with Mossy Oak, the uncertainty that will be created if the County grants the change to the CUP that Mid-States requested will have a negative impact on the market value of Lone Oak's property. Also of concern for Lone Oak and any future owner of the property is the quarrying and blasting setbacks. As it stands right now, the quarrying setback in Phase IV (directly adjacent to Lone Oak) is only 100 ft. and the blasting setback is only 150 ft. As set forth in Exhibit A, pg. 9 to the March 26 letter, "On properties in which dwellings are located, mining should not occur within 300 ft." When the CUP was approved, the structure which is now the lodge on Lone Oak's property was in existence, but for whatever reason only a 100 ft. setback for mining and 150 ft. setback for blasting was put in the CUP. These setbacks are insufficient to protect the lodge and its inhabitants from the dangers of blasting and quarrying. We mention this now because if the CUP is to be amended, at the very least we ask that the County reconsider the setbacks on the east side of Phase IV and require the CUP also be amended to reflect a quarrying setback of at least 300 ft. and a blasting setback of at least 500 ft. By taking this action now, Lone Oak and any future owner will at least have the peace of mind and security that whenever Mid-States decides to quarry Phase IV, at least Mid-States will not be quarrying within 300 ft. or blasting within 500 ft. of the lodge and property.

We thank you in advance for your consideration of this matter and we look forward to presenting this information during the public comment period. If you have any questions, please feel free to contact me.

Sincerely,

Dave

Attachment D

### David M. Buffo Partner

### **HUSCH BLACKWELL LLP**

4801 Main Street, Suite 1000 Kansas City, MO 64112-2551 Direct: 816.983.8253 Fax: 816.983.8080

David.Buffo@huschblackwell.com

<u>huschblackwell.com</u> <u>View Bio</u> | <u>View VCard</u>

Any tax advice contained in or attached to this message or email string is not intended or written to be used, and cannot be used to (i) avoid penalties that may be imposed on any taxpayer under the Internal Revenue Code or (ii) promote, market, or recommend to another any transaction addressed herein.



To Whom It May Concern:

My name is Ryan Koelsch, I am the office owner of Mossy Oak Properties Koelsch Outdoor Properties LLC. I am a licensed realtor with many years experience. My employee and I have Lone Oak LLC listed and on the market. We have had several clients interested in purchasing Lone Oak; however the buyers lose interest once they learn that there could be a possible rock quarry close to the Lone Oak property.

In my opinion, as a Kansas licensed real estate sales person, the impact of the rock quarry on the adjoining property has created a substantial decrease in the market value of a property when compared to the same type of property without the impact of a rock quarry. I have marketed a large property for almost 2 years that has a rock quarry currently functioning on it within ¼ mile of the home that is located on the property. I have shown the property over 30 times and everyone loves it, all except for the rock quarry. It is nearly impossible to sell a property at current market value when there is uncertainty of when a quarry will or will not be operating. Potential buyers want certainty in their purchases and investments. With an open time frame on a quarry operation mixed with uncertainty on operation time, not only does it devalue the property, but it puts an uncertainty in the buyers mind.

The operations of a rock quarry have a negative economic impact, especially when the property is a high end residential/recreational property such as Lone Oak. Without certainty as to when the quarry operations will be completed, the market value of Lone Oak will significantly decrease.

Ryan Koelsch

Mossy Oak Properties Koelsch Outdoor Properties LLC

307 N Broadway St. John Ks, 67576

David M. Buffo Partner

4801 Main Street, Suite 1000 Kansas City, MO 64112 Direct: 816.983.8253 Fax: 816.983.8080 dayid.buffo@huschblackwell.com

March 5, 2013

### VIA E-MAIL

Mike Gaughan Chairman Douglas County Board of Commissioners 1100 Massachusetts, 2nd Floor Lawrence, Kansas 66044

Re: Mid-States Materials, LLC / Request for Re-Sequencing

Our File No. 57441-3

Dear Mr. Chairman:

We are counsel to Lone Oak, LLC ("Lone Oak").

On February 13, 2013, Loan Oak received a letter from County Planner Mary Miller notifying it of an upcoming meeting of the Douglas County (the "County") Board of Commissioners (the "Commissioners") scheduled for March 6, 2013. The letter states that at the March 6<sup>th</sup> meeting, the Commissioners are going to consider Mid-States Materials' ("Mid-States") proposed revision to the Phasing Schedule for the Big Springs Quarry that has been in place since 1992. Specifically, Mid-States is requesting that it be granted permission to move from Phase III to Phase VI of its operations, instead of moving from Phase III to Phase IV as contemplated by the CUP, the Landscaping Plan and the Reclamation Plan. Mid-States' request to revise its phasing was original submitted to Ms. Miller in February, 2012.

On March 1, 2013, Ms. Miller provided us a copy of Mid-States' February 4, 2012 request, along with a copy of the Planning Staff memo recommending that Mid-States' request be granted. In making its recommendation, the Planning Staff specifically stated, without any explanation or basis, that "no negative impacts from the requested change have been identified."

It appears that although the Planning Staff has been aware of Mid-States' request since February 4, 2012, the property owners were not made aware of Mid-States' request for over one year. Now, with less than three weeks' notice, the surrounding property owners are left to evaluate Mid-States' request and make a determination whether the request does in fact have a negative

impact on their property without the benefit of information that the County has apparently been considering for over a year.

As the County, the Planning Staff and the Commissioners are aware; when the CUP was originally issued there was significant resistance from the adjacent property owners because of the nuisance created by the operation of a quarry. The CUP, including the phasing concept, was the product of negotiations between the County, the quarry operator and the property owners. Specifically, the concept of phasing was introduced because the property owners wanted to know where and when the quarrying would take place and when reclamation would take place. The property owners had specific concerns because of the negative impact that quarrying has had on their property. They wanted to plan accordingly. As such, the quarry operator agreed to sequence the quarrying in phases (Phases I through VI) and the quarry operator agreed to complete quarrying in twenty years.

Mid-States recent request not only is in contravention of and is a change to the CUP but, more importantly, will have a severe negative impact on Lone Oak's property. Lone Oak's property is adjacent to Phase IV which is the next section to be quarried. Lone Oak has long-anticipated the quarrying in Phase IV and has made long-term plans based on the provisions of the CUP, that indicated that quarrying activities adjacent to its property would be completed in the next few years. The impending quarrying has had a negative effect on Lone Oak's property for many years. With quarrying on Phase IV set to begin shortly, and be completed within the next few years, Loan Oak has begun the process, in reliance on the Phasing Schedule in the CUP, of marketing its property. Now, with Mid-States requesting what amounts to an open-ended timeline on the completion of Phase IV, the negative impact on the value of Lone Oaks' property, and that of other surrounding property, will continue indefinitely.

By allowing Mid-States to skip Phase IV and proceed to Phase VI (along with its quarrying operations in Shawnee County) there is no end in sight for Mid-States to complete quarrying in Phase IV. Mid-States indicates as much in its February, 2012 request, noting that the timing of Phases IV and V will be based "solely by demand for our products and economic conditions." As such, Lone Oak is being placed in a position of significant peril because Lone Oak is forced to continue to wait for the quarrying to be completed before it can realize the actual value of its property. Absent an agreement from Mid-States that it will never quarry Phase IV or action by the Commissioners to deny this request, Lone Oak is left with a devalued piece of property that Lone Oak cannot sell because of the unknown and unpredictable actions of Mid-States and the County. Also, by granting Mid-States' request, the Commissioners are setting dangerous precedent because nothing will preclude Mid-States from re-sequencing the phases in the future, which is in direct contravention of the certainty regarding the sequencing of the quarrying that the property owners were given by the CUP.

The revisions to the CUP's phasing plan are, without a doubt, a modification to the CUP. As set forth in *Golden v. City of Overland Park*, one of the factors a zoning body should consider in hearing a request for a change is the extent to which the restriction will detrimentally affect nearby property. See Golden, 584 P.2d 130 136 (Kan. 1978). Indeed, the decrease in the value of Lone Oaks' property that will result from the Commissioners granting Mid-States' request to re-sequence its quarrying operations is detrimental to Lone Oak. And contrary to the Planning

Staff's suggestion, the re-sequencing of the quarrying does have a negative impact on the adjacent property owners.

In light of *Golden* and the facts set forth above, Lone Oak requests that Mid-States' request for re-sequencing be tabled for at least thirty days to allow Lone Oak sufficient time to fully evaluate this request.

For review during this thirty day period, we hereby request the following information from the County:

- (A) Copies of all information provided to the County by Mid-States to support the necessity of its request for re-phasing.
- (B) All information relating to the Planning Staff's investigation into the potential negative impacts on surrounding property owners.
- (C) All information forming the basis for the Planning Staff's assertion that there are no negative impacts on surrounding property owners or as a result of the change in phasing.
- (D) A copy of the Reclamation Report and Plan of Quarrying Operation that was to be submitted by Mid-States prior to July 31, 2010, as well as copies of the prior reports prepared by Mid-States predecessor in interest, each as required by Section VIII of the CUP Restriction of Use.
- (E) Copies of any and all notices of violations of the CUP that have been delivered to Mid-States or its predecessor in interest.

Tabling this issue for thirty days will not negatively impact Mid-States in any way. Instead, the additional thirty days will allow for the proper comment and evaluation of this request by the surrounding community.

Our client has requested that we explore alternate methods of gaining the necessary time to review the impact of this request, but we believe that a voluntary, temporary adjournment of this issue would be the most practical resolution for all involved.

Sincerely,

David M. Buffo

Partner

**DMB** 

cc: Nancy Thellman (via e-mail)

Jim Flory (via e-mail)

Craig Weinaug (via e-mail)

Evan Ice (via e-mail)

Mary Miller (via e-mail)

David M. Buffo Partner

4801 Main Street, Suite 1000 Kansas City, MO 64112 Direct: 816.983.8253 Fax: 816.983.8080 david.buffo@huschblackwell.com

March 26, 2013

### **VIA E-MAIL**

Commissioner Mike Gaughan Chairman Douglas County Board of Commissioners 1100 Massachusetts, 2nd Floor Lawrence, Kansas 66044

Re: Mid-States Materials, LLC / Request for Re-Sequencing

Our File No. 57441-3

Dear Mr. Chairman:

On February 4, 2013, Mid-States Materials' ("Mid-States") formally requested that the Board of County Commissioners of Douglas County, Kansas (the "BOCC") permit Mid-States to modify the phasing of its quarry developments set forth in its Conditional Use Permit (the "CUP").

On March 5, 2013, in response to receiving a notice from Douglas County of Mid-States' request, we wrote to the BOCC expressing our concerns regarding this amendment to the CUP. Additionally, we requested that the BOCC table Mid-States' request in order to allow Lone Oak sufficient time to evaluate Mid-States' request and make a determination whether Mid-States' request does in fact have a negative impact on its property. The BOCC agreed to table Mid-States' request until March 27.

As the basis for Mid-States' request to amend the CUP appears to be solely based on cost and convenience, it stands to reason that our client be afforded the opportunity to provide the BOCC with information regarding the effect that the proposed amendment will have on its property. In spite of our best efforts to compile information to present to the BOCC regarding the deleterious effect that Mid-States' operations have had on our client's property, which effects will be exacerbated by the creation of uncertainty by Mid-States regarding the sequence in which its operations will be conducted, we have not been able to conclude our efforts by the BOCC's self-imposed deadline.

Finally, and most importantly, this matter is not properly before the BOCC for consideration. This is an amendment to a conditional use permit that, pursuant to Kansas law, must first be submitted to the Planning Commission for a public hearing following notice and publication of the time and date of such hearing. Only then can an amendment of a conditional use permit proceed to the board of commissioners.

Contrary to the Planning Staff's position that "The phasing was not required as part of the CUP.." even a cursory review of the CUP and the documents incorporated into the CUP by reference unambiguously indicate that phasing was in fact part of the CUP. (See generally CUP (As Amended 9-16-92) ¶¶ VIII and XXI).

Even more specifically, the original application submitted by Martin Marietta states that "Martin Marietta Aggregates plans on mining the site in phases. Exhibits 4 through 9 illustrate the mining phases" and that the last phase to be quarried is Phase VI. (See Exhibit A). Similarly, the detailed reclamation plans for Phases 1A, 2, 3 and 4, as approved by the BOCC on November 11, 2009 (Sheets 2-6) clearly indicate Mid-States' intent to mine and reclaim Phases 1A through 4 in sequence. As such, because the CUP requires the quarrying to be done in phasing, any request by Mid-States to re-sequence the phasing is without a doubt, an amendment of the CUP.

The concept of phasing, in and of itself, indicates an intent to proceed in a sequence and, clearly, Mid-States believes that the phasing is required by the CUP, which gives rise to their request for approval by the BOCC.

Our client has requested that we explore alternate methods of gaining the necessary time to review the impact of this request, but we believe that a voluntary, temporary adjournment of this issue would be the most practical resolution for all involved. If the requested adjournment is not granted by the BOCC and the BOCC approves Mid-States' request, our client has instructed us to move on its behalf for an injunction to preclude Mid-States from quarrying out of sequence.

Sincerely,

David M. Buffo

Partner

**DMB** 

cc: Nancy Thellman (via e-mail)

Jim Flory (via e-mail)

Craig Weinaug (via e-mail)

Evan Ice (via e-mail) Mary Miller (via e-mail)

### Surrounding Land Uses:

The surrounding properties are generally open. To the North of Tract V, Is open grassland and a millo field. To the North and East, exist a farmstead off of County Road 050-E, consisting of a dwelling unit and buildings on approximately 5 acres of ground. To the East of Tract V and North of Tract II exist a millo field and grasslands. To the North of Tract IV is a ravine consisting of wooded areas with limited crop farming uses. There exists a farmstead within 1000 feet on County Road 100-E to the North of approximately 12 acres, with buildings on 2 acres. To the East of Tract IV, exists a home under construction, about 350 feet from the property being considered for quarrying. The same owner who owns this property also owns the home and some dwelling units within 1000 feet from this tract. To the South of Tract IV and East of Tract III is all pasture and grasslands. To the South of Tract III and VI exists one residential area on approximately 3 acres of ground, with the remaining ground in agricultural uses; 15% in crops and 85% in pasture and grasslands. To the West is the Shawnee County Line and consists of pasture land.

# Mining Plan:

Martin Marietta Aggregates plans on mining the site in phases. Exhibits 4 through 9 illustrate the mining phases. Phase I will occur on Tract I and encompass an area generally bound by Douglas County Road 442 on the South and County Road 050-E on the East, with the Douglas/Shawnee County Line on the West. Included within this phase is the Westerly 25 acres of Tract V. The sequence of mining will generally begin at the Northeast corner of Tract I and progress Easterly to County Road 050-East. Upon the completion of mining in Phase I, the land will be rehabilitated to agricultural uses.



Phase II will occur on what is labeled Tract II and is generally bounded by County Road 050-E. County Road 1700-N and County Road 100-E. The sequence for mining this property will be from West to East.

Phase III moves South of County Road 1700-N into the area in which the Nichols house exists. This tract of land is bounded by County Road 1700-N to the North and County Road 442 to the West. Mining operations will begin on the North side of this property and move South.

Phase IV is bounded by County Road 1700-N to the South and County Road 100-E to the West. Excavation will begin on the Southwest corner, moving North-Northwest.

Phase V is to the North of Tract I and is bounded by County Road 050-E to the East and the Shawnee/Douglas County Line to the West. Mining operations for this property will begin on the South boundary of this Phase, adjacent to Tract I and move Northerly and Westerly.

The last phase is Phase VI and is bounded by County Road 442 on the East and North, with the Shawnee County Line on the West, Mining on this tract of ground will begin to the North and move Southwest.

All six tracts of property, as shown on Exhibit A, are located on high grounds, ridges, and therefore the topsoll varies from 6 inches to one foot, with selective overburden varying from 18 to 65 feet. This topsoil and selective overburden will have to be temporarily removed to mine approximately 18 feet of rock, Given an average of 20% volumetric expansion of excavated soils, there is an anticipation of only 15 feet of drop in elevation to existing ground surfaces. This is computed by adding 5 feet to the 28 feet of overburden for volumetric expansion of excavated soils and then by subtracting 18 feet of limestone to be removed. leaving a negative 15 feet for an average. Due to the excavation occurring on

Attachment D

the higher grounds, it will tend to level this area to an elevation equivalent to that of the surrounding lands at approximately 1085 elevation.

### Post-Mining Land Use Concepts:

Presently the intention is to have a post-mining land use that would be agricultural in nature as is the surrounding land uses to the North. East, South and West. This does not preclude other uses such as housing and active and passive recreation uses. Land uses other than agricultural would have to comply with the Douglas County Plan and future market influences.

# Reclamation Plans:

Any reclamation plan should take into account several factors. These include:

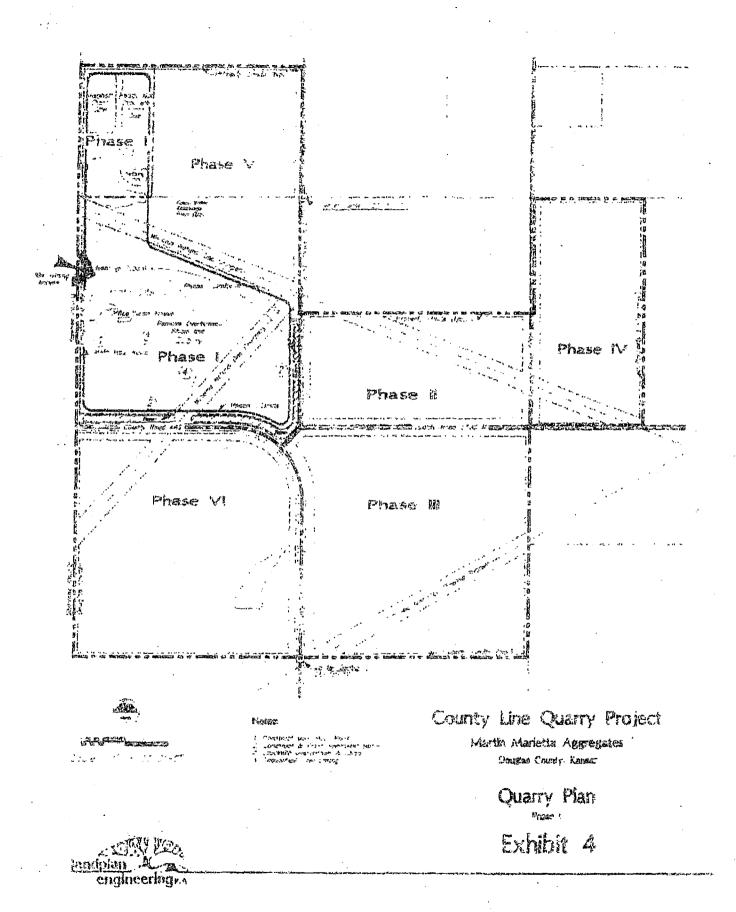
- (A) Mitigating measures to insure safe operating conditions during mining operations.
- (B) Mitigating measures relative to post-mining land uses,
- (C) Mitigating measures that insure sound ecological integrity for generations in the future.

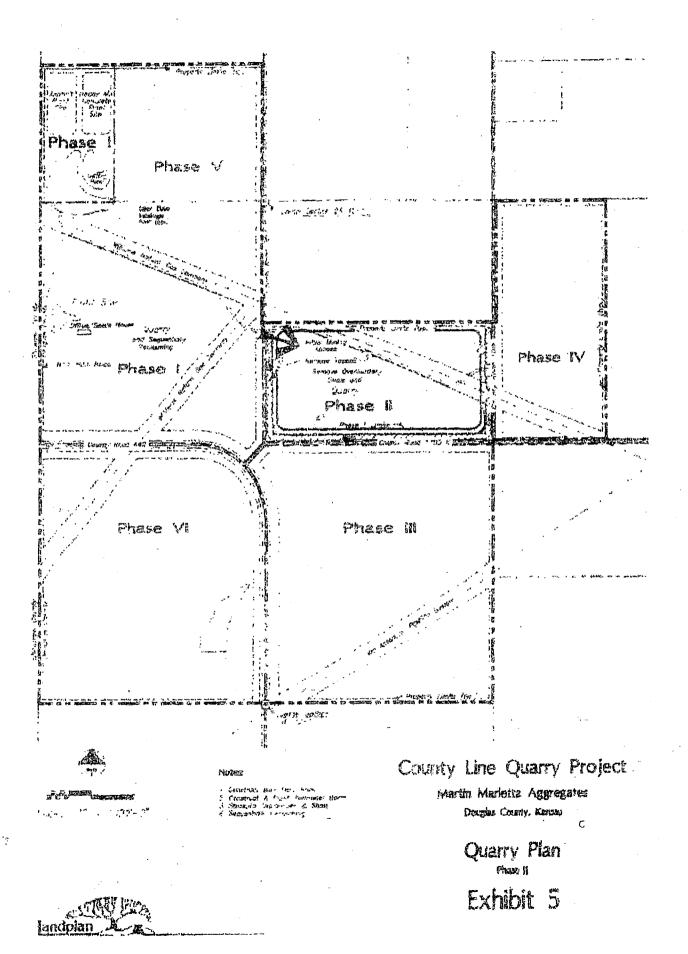
### Mitigation During Mining Operations:

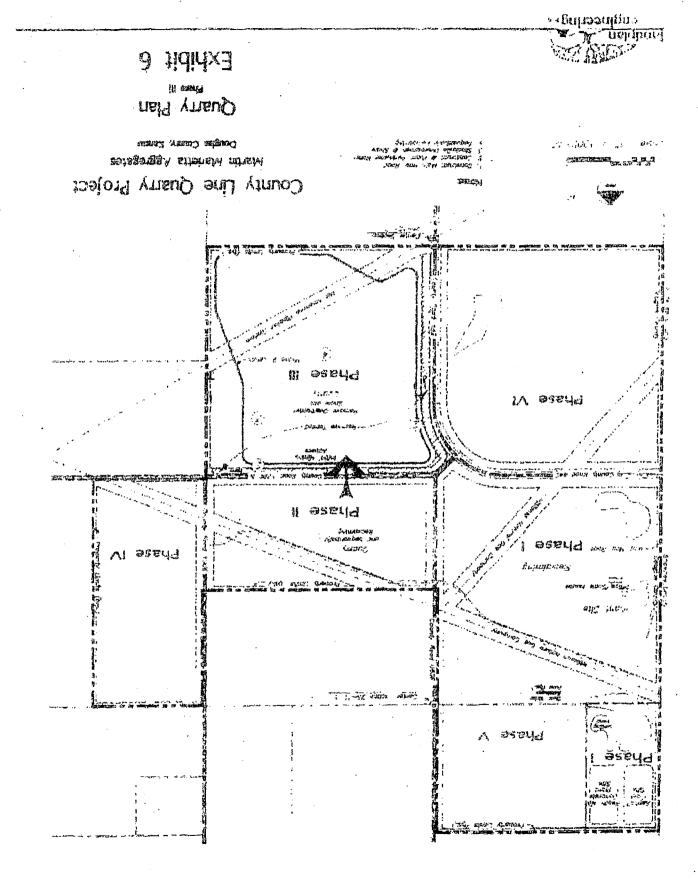
Of primary concern initially is the protection of adjacent property owners. Major concerns from adjacent property owners will center around visual quality, haul truck traffic, noise and dust. The following are suggestions relating to these concerns:

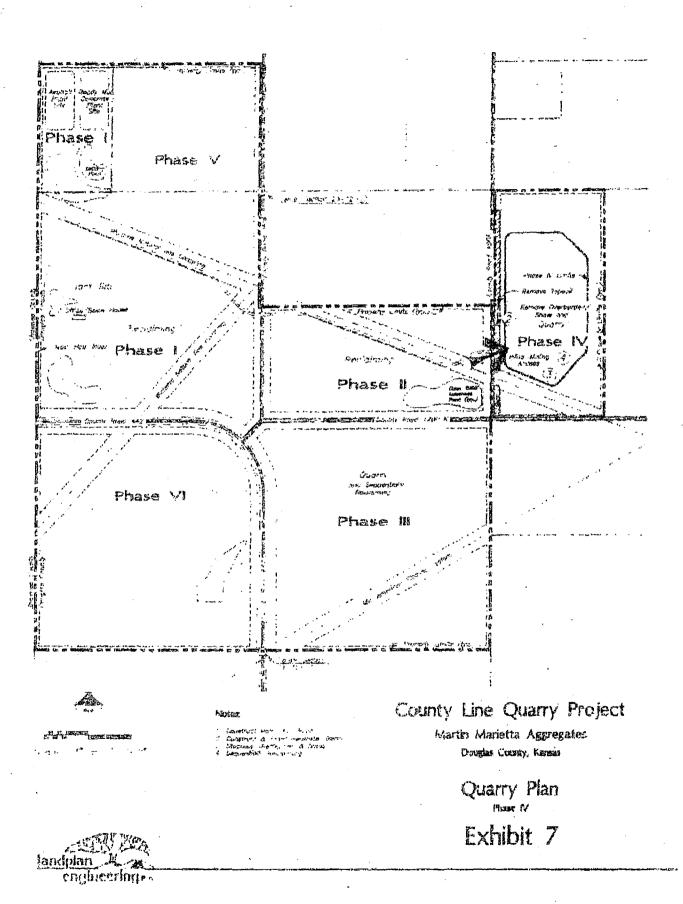


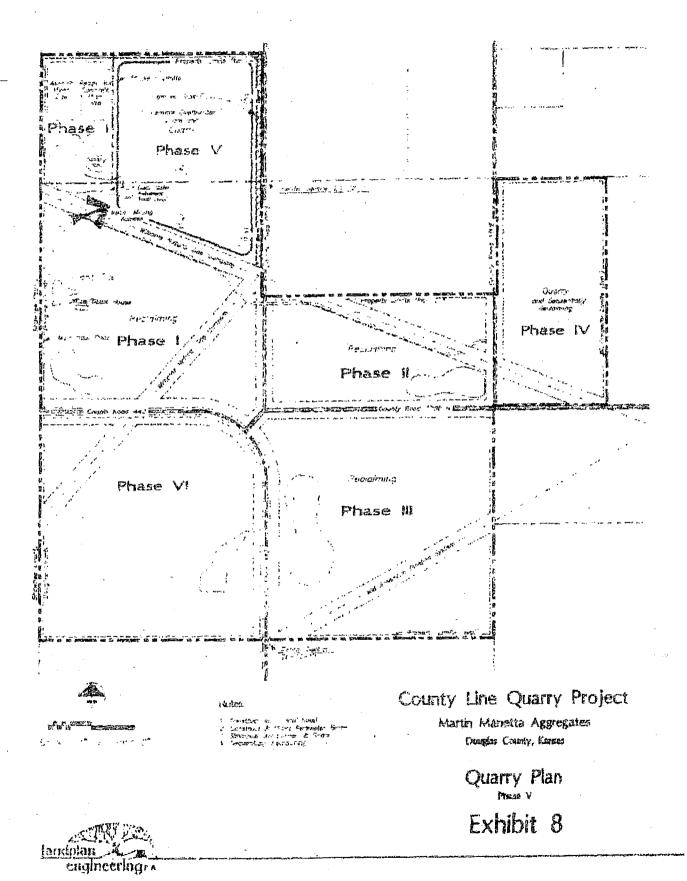
(A) A minimum of 50 foot buffer should be designated along all adjacent property lines in undeveloped areas. On properties in which dwellings are located, mining should not occur within 300 feet. Gas lines should have a setback of 100 feet from the gasline liself. All secondary county roads; i.e., County Road 050-E, County Road 1700-N, and

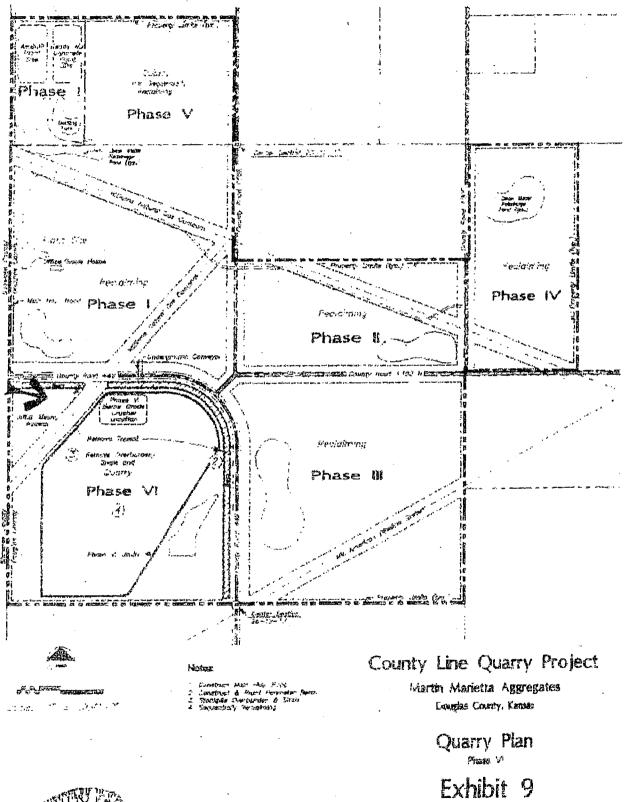












iandplan cnglneering-A



CUP-13-00126: Conditional Use Permit for Big Springs Quarry 2 N 1700 Rd



Scale: 1 Inch = 2,500 Feet

May 16, 2013

Bill & Michele Best 1607 E 50 Road Lecompton, KS 66050

City of Lawrence Douglas County Planning & Development Services 6 East 6<sup>th</sup> St PO Box 708 Lawrence, KS 66044 Attention: Mary Miller, AICP City/County Planner

Dear Mary Miller & Planning Commission Members,

Our names are Robert and Michele Best; we are the closet neighbors to Phase 6 of the guarry. We purchased the 90 acres and home site of 1607 E 50 Road, Lecompton, Ks in 2010. We were fully aware of the guarry and its plans as was disclosed in paperwork with the sale of the property and home site. We have no problem with the guarry operating as long as it follows the original Conditional Use Permit. The concern we have is any proposed change to the CUP. The phasing of the CUP clearly was originally set up in a numerical order to be followed, which was presented to us in the paperwork at the sale of property and home site. Schedules are made to be followed for a reason, as one phase is completed it is supposed to be reclaimed before moving on to the next numeric phase. If the current phasing numerical order wasn't reflective of how the guarry is to proceed, then why didn't they name the additional added Phase 1A, Phase 7? Clearly, although not legally composed, this was the intent of the original CUP. Letting the guarry be selective of how it wants to schedule which phase it mines next is wrong. It worries us, what changes will be next if this is allowed to continue. Will the guarry operators request not to reclaim the land or let it become a landfill? It was shared at the Douglas County Commission meeting that the quarry would like to move to Phase 6 to use the same haul road as the road in Shawnee County. The quarry will need to build haul roads regardless of what phase they are in. The road they are using for Shawnee County can in fact be used in the future when they reach Phase 6. When we recently went on a tour of the quarry, we were surprised when Cole Anderson the manager could not verbalize why the guarry wanted to move ahead to Phase 6. We believe there is some other reason they want to jump ahead to Phase 6. What that is we do not know. There is enough uncertainty in life, without worrying about what's going to happen next to your home when contracts that you thought were solid and dependable are changed every couple of years. This is our main concern, the uncertainty of the changes we continue to hear about or experience ourselves. Haul roads will have to be built no matter what phase they are in, so we see no reason to jump ahead of the chronological order that is in the current CUP. This proposed change to the CUP has caused us much concern as to how Phase 6 will affect the flow of natural spring water into our pond, which is used for livestock. We requested specific

information in regards to this topic and have not received information as to date. The quarry's response is inadequate because it only addresses the hydrologic study which was completed on area wells and not the effect the blasting will have on our natural springs. We have requested this hydrologic study to be completed prior to any work in phase 6, but have not received any confirmation that this request is being acknowledged. When you research quarry effects on natural springs you quickly see there is reasonable cause for concern in this matter. One example of this would be the Hydraulic Impacts of Quarries and Gravel Pits, prepared by the Minnesota department of Natural Resources, Division of H20 for the Legislative Commission of Minnesota Resources, 2005. We thought we had much longer timeframe as in years, to determine the possible impact of the quarry operations. We feel this change is not in our best interest as responsible land owners who actually live in the area, to proceed forward. We would appreciate the planning commission members understanding of our situation and your support on not revising phasing schedule for Big Springs Quarry located at 2 N 1700 Rd.

Sincerely,

Robert W. Best

Michele L. Morton-Best

Richele & Motor Bat

# **Mary Miller**

From: Buffo, David [David.Buffo@huschblackwell.com]

**Sent:** Wednesday, May 15, 2013 11:21 AM

To: amalia.graham@gmail.com; cblaser@sunflower.com; jonjosserand@gmail.com;

laraplancomm@sunflower.com; bculver@bankingunusual.com; rhird@pihhlawyers.com;

squampva@aol.com; clay.britton@yahoo.com; chadlamer@gmail.com;

bruce@kansascitysailing.com

Cc: Mary Miller; jhutton@hensonlawoffice.com; Elce@stevensbrand.com

**Subject:** Mid-States Materials Application to Amend CUP

### **Dear Planning Commissioners:**

In preparation for the upcoming meeting on May 20, Lone Oak wanted to share a few other items for your consideration in deciding whether to approve Mid-States' request to amend its CUP.

As you may be aware, one of the reasons that Mid-States identifies for the need to re-sequence the quarrying in Douglas County is that one haul road can service the southern portion of the Douglas County quarry and the Shawnee County quarry which Mid-States claims is more efficient. Although this may be true, if Mid-States ever intends to come back and quarry Phase IV it will have to build an additional haul road to access Phase IV, perhaps even two haul roads given the location of Phase IV—it is the furthest phase from the rock crusher. In other words, at the very least, Mid-States will have to utilize two haul roads if it ever intends to quarry Phase IV while Mid-States is quarrying in Shawnee County because of the location of Phase IV. As such, it would appear that Mid-States only benefits by building one haul road at this time if Mid-States does not plan on quarrying Phase IV until it finishes quarrying in Shawnee County—which raises another concern. Based on our review of the available information, it appears that Mid-States has at least 600 acres it can quarry in Shawnee County and given that Mid-States has already amended its CUP in Shawnee County for an additional 30 years or until 2050, it would appear that Mid-States intends to be in Shawnee County for a long time and if Mid-States intends to only quarry in Shawnee County for the foreseeable future, there is no telling when Mid-States will resume quarrying operations in Douglas County. Also, the Planning Commission should consider that it has taken nearly 20 years for only 400 acres to be quarried in Douglas County, so it is inevitable that Mid-States will in all likelihood seek an extension of the CUP in Douglas County beyond its current expiration date in order to quarry the remaining acres in Douglas County. As you can see, there is already enough uncertainty with the quarry under the existing CUPs and all Lone Oak is asking that whenever Mid-States decides to continue quarrying in Douglas County, that Phase IV is quarried next.

Finally, it would appear from Lone Oak's observations that Mid-States has a large stockpile of rock, perhaps more than at any time it has operated the quarry—which begs the question, why does Mid-States need to operate two quarries in two counties when it appears that Mid-States can meet its demand requirements from one quarry. Again, all Lone Oak is asking is that the Planning Commissioners consider all of the facts and the ultimate consequences of granting Mid-States' request to re-sequence the phasing of the Douglas County quarry.

Although on its face Mid-States' request appears benign, once the request is fully analyzed and all the negative consequences and impacts are considered, it only makes sense to require Mid-States to abide by the current quarrying sequence set forth in the CUP which requires the next phase quarried in Douglas County to be Phase IV.

Thank you again for your consideration of this matter.

Dave

David M. Buffo Partner

HUSCH BLACKWELL LLP 4801 Main Street, Suite 1000 Kansas City, MO 64112-2551 Direct: 816.983.8253 Fax: 816.983.8080

David.Buffo@huschblackwell.com

huschblackwell.com View Bio | View VCard

Any tax advice contained in or attached to this message or email string is not intended or written to be used, and cannot be used to (i) avoid penalties that may be imposed on any taxpayer under the Internal Revenue Code or (ii) promote, market, or recommend to another any transaction addressed herein.

From: John Hutton [mailto:jhutton@hensonlawoffice.com]

Sent: Monday, May 20, 2013 9:31 AM

To: Buffo, David; amalia.graham@gmail.com; cblaser@sunflower.com; jonjosserand@gmail.com;

laraplancomm@sunflower.com; bculver@bankingunusual.com; rhird@pihhlawyers.com; squampva@aol.com;

<u>clay.britton@yahoo.com</u>; <u>chadlamer@gmail.com</u>; <u>bruce@kansascitysailing.com</u> **Cc**: Mary Miller; <u>EIce@stevensbrand.com</u>; Eric Bettis (ebettis@bettisasphalt.com)

Subject: RE: Mid-States Materials Application to Amend CUP

# Dear Planning Commissioners:

I represent Mid-States Materials, LLC concerning the matter coming before the Planning Commission during its May 20, 2013 meeting. My client is requesting that Douglas County recognize its proposed sequencing of operations at the Big Springs Quarry. My usual practice is to let our application and its supporting documents speak for themselves and then answer questions or provide additional materials as requested by the Planning Commission during the meeting. However, in this case, Lone Oaks' lawyer, David Buffo, has provided several pieces of e-mail correspondence to the Commission that require some response.

The tracts/phases of the Big Springs Quarry in Douglas County are denominated using the Roman numerals I through VI. This denomination was established by Mid-States' predecessor in interest, Martin Marietta, over 20 years ago when the initial application was submitted. It is well established that quarries, especially large quarries like Big Springs, are more easily mined and reclaimed if they are broken up into smaller tracts or phases. In essence, it is more practical for the operator and more environmentally friendly to mine and reclaim a small portion of land than it is to open the entire quarry up at once and then wait to reclaim the whole quarry after the decades-long process is complete.

At the request of Planning Staff, Mid-States Materials chose to approach the County Commission about moving from Phase III where quarrying is presently taking place directly into Phase VI and quarrying Phases IV and V at a later date. This was brought before the County Commission and now before the Planning Commission out of an abundance of caution, not because there is any requirement in the Conditional Use Permit that mining occur in any particular order within the quarry.

Although Mr. Buffo and his client disagree, Mid-States' decision to move from Phase III to Phase VI is not taken lightly and is based upon six years of experience with this property. As has been stated numerous times, Mid-States Materials can realize significant operational efficiencies by mining Phase VI in Douglas County and the adjoining phase in Shawnee County essentially simultaneously, or in very close sequence, and hauling the material from both phases across 45<sup>th</sup> Street in Shawnee County on a bridge built by Mid-States Materials for that purpose. This is not only more efficient, but it also prevents Mid-States from having to cross county roads in Douglas County to haul material to the crushing plant to the north.

Mr. Buffo is correct that in the future when Phase IV is quarried, an existing haul road will need to be extended to the east to allow the material to be hauled to the rock crushing plant. However, Mr. Buffo also makes some assumptions that have no basis in fact. He mentions the number of acres available to quarry in Shawnee County and his opinion that Mid-States will be in Shawnee County for a "long time" and there is "no telling" when Mid-States will be back in Douglas County. First, Mr. Buffo's assumption that just because Mid-States is quarrying in Shawnee County it won't be quarrying in Douglas County is false. Second, his assumptions about the inevitability of Mid-States seeking an extension of the CUP in Douglas County has nothing whatsoever to do with the issue before the Planning Commission presently. These are "straw man"

arguments designed to promote general uncertainty about the future of the quarry which have no bearing on the issue before the Planning Commission.

Mr. Buffo and his client continually discuss "uncertainty" associated with my client's quarrying in the property covered by the CUP. It must be remembered that the CUP was issued for a term of 30 years and there was never any guarantee or, in fact, any statement or representation in the CUP about when particular portions of the quarry would be mined. The CUP grants my client the ability to mine at whatever pace it determines is in its best interest within the term allowed by the CUP. Mr. Buffo speaks as if there is some absolute certainty in the *status quo* about when mining will start and finish in the quarry. This is simply not the case with any quarry. Market demand determines when and at what pace the quarry is mined – not some arbitrary schedule.

Mr. Buffo and Lone Oak also claim to observe "a large stockpile of rock" (another straw man argument). They also speculate that this stockpile is larger than it has been at any time since the quarry has been operating. First, both of these assumptions are either incorrect or exaggerated. Second, even if they were correct, what bearing does it have on the issue before the Planning Commission?

Finally, Mr. Buffo discusses the "negative consequences" which apparently result from my client's proposed mining plan. Interestingly, other than an alleged "uncertainty" which has always been the case, he has not specified what those negative consequences are. The bottom line is that, in actual fact, there are no negative consequences to my client's mining plan. It should be remembered that Lone Oak, who, by the way, purchased its property well after the quarry had started development, has never been told through the Conditional Use Permit or otherwise, exactly when Phase IV will be mined. This "uncertainty", if you will, has been a reality for all involved, including Mid-States Materials, from the beginning. Again, the only factor that controls the speed at which the quarry is developed is market demand.

Mid-States Materials' revised development plan has no negative consequences. It has only positive consequences, including increased efficiency, decreased use of fossil fuels and enhanced public safety. Your vote in favor of this request would be appreciated.

John H. Hutton Henson, Hutton, Mudrick & Gragson, LLP 100 SE 9<sup>th</sup> Street, 2<sup>nd</sup> Floor Topeka, KS 66612 (785) 232-2200 (office) (785) 232-3344 (fax) jhutton@hensonlawoffice.com

# Memorandum City of Lawrence Planning & Development Services

TO: Planning Commission

FROM: Amy Miller, Planner II

Date: For May 20, 2013 Planning Commission Meeting

RE: Item No. 7: TA-12-00205-Text Amendment Regarding

**Requirements for Retail Market Study** 

The following memo serves to present background information to the request for this text amendment, provide for Planning Commission discussion and present options. If appropriate, provide direction to staff regarding the preferred option.

# **Background:**

The Planning Office has been working with developers and other members of the public to identify areas of the Code which are seen as onerous or inefficient and to provide solutions to simplify and streamline the development process where possible. Currently, the Development Code requires that a retail market study be submitted for any proposal that includes 50,000 square feet of retail uses. This is intended to ensure a healthy retail market as development occurs in the city. Planning Staff maintains a bi-annual retail market study that provides valuable information about the overall health of the retail market. While specific market studies can provide important information about a project's potential impact on the market as well, the requirement to provide a study in addition to the one completed by staff is viewed by some as costly and time consuming when a prudent analysis of any proposal can be made with the information contained in staff's study. Therefore, on August 21, 2012, the City Commission initiated a text amendment to the Land Development Code, Chapter 20, Article 11 to modify the requirements for a Retail Market Study.

# **Discussion:**

The current code language pertaining to Retail Market Studies in Section 20-1107 of the Land Development Code requires that the applicant submit an independent market study for site plan/development plan or zoning applications that will create more than 50,000 square feet of retail space. That market study is to be prepared by an independent consultant, at the applicant's expense, and should contain specific analysis on vacancy rates, mix of uses, square footage per capita, and other demand factors (income, population, sales, etc.). The independent consultant prepares that analysis using figures contained in the latest staff issued city-wide retail market report. Currently, the development code states that the staff issued city-

wide retail market report should be updated annually, but by practice, staff only updates this report bi-annually.

Of note, the code section contains two thresholds, vacancy rate and square footage per capita. Vacancy rate is computed by assuming that the project is entirely vacant upon completion, with a threshold set at 8%. In analyzing square feet per capita, the threshold is set at 100 square feet.

Staff has identified that the threshold for the standard, 50,000 square feet, is rather low. The Lawrence retail market contains over 9 million square feet of retail space, and in all cases, the impact of a project containing 50,000 square feet of retail space is negligible on the market.

### **Options:**

Many options exist for modifying this section of the code as it pertains to the submission of a retail market study for specific projects, and those options are provided below, along with discussion points for each one. Staff is recommending Option 2.

### Option 1: Keep the existing language in Section 20-1107 with no changes.

- Staff will produce the city wide retail market report, bi-annually, as resources allow.
- Applicants will be required to submit an independent, project specific retail market study.
- Requirement applies to both site plan/development plan and zoning map amendment applications which could create more than 50,000 square feet of retail space.
- 8% vacancy threshold and 100 square feet per capita threshold remain, but what is the impact on exceeding those thresholds on project approval?
- Option 2: Staff will produce the city wide retail market report bi-annually and will use the most recent report to provide an analysis in the staff report for zoning applications. Submission of an independent retail market study by the applicant will no longer be required. Staff will bring revised code language back to the Planning Commission for consideration.
  - Staff will produce the city wide retail market report bi-annually.
  - Zoning map amendments will have an analysis of the projects' impact on the retail market included in staff reports.
  - Applicants will no longer need to provide an independent, project specific retail market study.
  - Requirement would be for zoning map amendments only. The requirement for site plan/development plan applications would be removed.
  - In order to simplify the standards, the language would be moved to Section 20-1303 (g) under the decision making criteria for zoning map amendments.
  - Is the threshold for triggering the requirement proper (50,000 square feet) or should that be raised?
  - Should the thresholds for vacancy and square feet per capita remain criteria?
- Option 3: Remove Section 20-1107 in its entirety and no longer review projects for their impact on the retail market or produce a city-wide retail market report.

- Staff will no longer produce the city wide retail market report.
- Projects will no longer be reviewed for their impact on the retail market.

### **CURRENT CODE LANGUAGE:**

### 20-1107 RETAIL MARKET IMPACT ANALYSIS

### (a) Applicability

An independent market impact analysis shall be required for any application for site plan or zoning that could result in 50,000 square feet or more of additional Floor Area for retail businesses in the City. Developments that would create less than 50,000 square feet of added retail space in the City or those that would reoccupy retail space that is already part of the City's retail database (whether currently occupied or currently vacant) shall be exempt from the independent market impact analysis.

# (b) Definitions

- (1) A retail business shall be defined as one whose primary coding under the North American Industrial Classification System (NAICS) falls into at least one of the following sectors:
  - (i) Sector 44-4S: Retail Trade:
  - (ii) Subsector 722: Food Services and Drinking Places;
  - (iii) Subsector 811: Repair and Maintenance; and
  - (iv) Subsector 812: Personal and Laundry Services.
- (2) Retail space shall be defined as enclosed Floor Area that is principally intended for occupancy by any of the above kinds of retail businesses regardless of whether that space is vacant or occupied by other types of business.

### (c) Criteria for Independent Market Impact Analysis

- (1) The independent market impact analysis will be undertaken by an independent consultant of the choosing of the applicant from a list of approved consultants certified for this analysis by the City of Lawrence.
- (2) The applicant shall have the cost of the independent market impact analysis and may choose the certified consultant based on competitive cost proposals.
- (3) The market impact analysis shall provide at least the following information:
  - (i) Verification that the facts and assumptions utilized by the applicant to determine market penetration and growth are valid and

- reasonable. The independent consultant will not be required to repeat or create a market penetration or growth study, but will verify or criticize relevant studies that must be submitted by the applicant.
- (ii) Computation of a hypothetical citywide retail space vacancy rate using current (i.e., at time of application) data on the City's existing retail space vacancy rates. The independent consultant shall assume that the new retail space will either be entirely vacant when opened or will cause an equal amount of space elsewhere in the city to become vacant.
- (iii) Determination of the possible impact on the citywide retail vacancy rate of phased approaches to development of the proposed project. The independent consultant shall consider such factors as documented population and per capita income trends and projections in the City to determine if and when phases of development might be possible without exceeding the citywide vacancy rate threshold of 8.0 percent.
- (iv) Determination of the ratio of total citywide retail space (both occupied and vacant, whether by retail businesses or not), including all of the proposed retail space, to the City's population at the projected time of occupancy of the proposed new retail space. The independent consultant shall utilize the latest available citywide retail database, U.S. Census counts or estimates of the City's population and independent projections (including the consultant's own projections if properly documented). If this ratio of occupied space to population at the projected time of occupancy of the new space exceeds a value of one hundred (100) square feet per resident, the application may be denied or the applicant may be required to develop in phases to maintain the ratio at no more than 100.
- (v) Comparison of the mix of retail businesses proposed for the new retail space to the existing mix of retail businesses in (1) the Downtown Lawrence retail district, and (2) in the remainder of the City. The comparison will be based on NAICS codes to at least the five-digit level. This analytical comparison will be for economic development and planning information purposes only and will not singularly be the cause for denial of the application.
- (vi) Analysis of any other additional information that is reasonably required by the Lawrence Douglas County Metropolitan Planning Commission, including, but not limited to analysis of the potential collective impacts of multiple and simultaneous retail development proposals.

# (d) Responsibilities of the City

(1) The Lawrence/Douglas County Metropolitan Planning Office will maintain a list of not less than three independent consultants who are certified by the Planning Office to conduct the research and analysis necessary for the market impact analysis reports. The Planning Office will, from time to time, require these consultants to participate in appropriate training and

- informational sessions both to retain certification and to learn about new data and techniques suitable for the market impact analyses.
- (2) The Lawrence/Douglas County Planning Office will maintain a database of retail space and retail businesses in the City. This database will contain non-proprietary information, such as business name (or vacancy), address of the space, estimated Floor Area and land/Parcel area of the space, NAICS code of the establishment, general physical condition of the exterior of the space, zoning of the land/Parcel, and related information that is readily Accessible and useable by the public, by City officials, applicants for retail space development or occupancy, and independent consultants. The database should undergo annual updating, including field research, at least annually, but may be subject to periodic updating as revised information is obtained during normal city government operations.

# (e) Relationship of Market Impact Analysis to Project Approval

The market impact analysis shall be used in conjunction with the appropriate review and decision making criteria in the evaluation of zoning map amendment applications and decisions and approvals of development plans and site plans.



# LEAGUE OF WOMEN VOTERS® OF LAWRENCE/DOUGLAS COUNTY

MAY 2 0 2013

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City County Planning Office Lawrence, Kansas

May 19, 2013

To: Dr. Bruce Liese, Chair, and Lawrence/Douglas County Planning Commission

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ITEM NO. 7: TA-12-00205-TEXT AMENDMENT REGARDING REQUIREMENTS FOR RETAIL MARKET STUDY

To quote an excerpt from the current Staff Report on Item No. 3, the 2012 Retail Market Report, "For a healthy retail economy, it is important for there to be similar growth in income, population, retail sales tax dollars and inventory of stock." We agree that without an unbiased, carefully crafted market analysis, this information would not be available either to the Planning Staff or the citizens of Lawrence.

Therefore, we would like to voice our opinion on this issue of the Text Amendment to modify in Horizon 2020 (CP) and our Land Development Code (LDC) the requirement for applicants to provide case-specific analyses on the projected effect of their proposals on the City retail market.

We believe that the requirement on this issue as currently expressed in Horizon 2020 and the Land Development Code—Option 1 in the Staff Report—should not be changed with the exception of two features: The specific Retail Market Report for the qualifying applications should be prepared by a consultant chosen by the City, rather than by the Applicant. Also, because an applicant's payment for such service could influence the outcome of the Report, we suggest that if the applicant is required to pay, the name of the applicant should be kept from the consultant, if possible. In addition, we suggest that an unbiased, professionally qualified third party should be a judge of the conclusions that are derived from the data in this application-specific report.

We also agree with the question raised by the staff as to what should be the outcome if the data indicate that the applicant's request exceeds the parameters established by the CP and the LDC. We suggest that limits should be included on how much, if any, the parameters can be exceeded for an application still to be acceptable.

Please accept our comments on this issue, and work toward improving the existing regulations rather than revising them as suggested in Option 2. Thank you for your consideration.

Sincerely yours,

Cille King
Cille King

Co-President

Alan Black, Chairman Land Use Committee

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# Memorandum City of Lawrence Planning & Development Services

TO: Lawrence Douglas County Planning Commission

FROM: Lynne Braddock Zollner, Historic Resources Administrator

CC: Scott McCullough, Director PDS

Sheila Stogsdill, Assistant Director Planning

**DATE:** May 17, 2013

**RE:** Nomination for listing in the Lawrence Register of Historic Places

According to Chapter 22 of the Code of the City of Lawrence, the Historic Resources Administrator must notify the Planning Commission of nominations to the Lawrence Register of Historic Places and shall transmit to them copies of the application and report. The Planning Commission may comment on the nominations; however, **no action is required by the Planning Commission**.

The following properties have been nominated by the property owner of record for inclusion in the Lawrence Register of Historic Places. Nomination information for each property may be found on the Planning and Development Services web page located here

http://www.lawrenceks.org/pds/hrc agendas minutes

645 Connecticut Street

742 Connecticut Street

1004 Connecticut Street

934 Delaware Street

945 Delaware Street

1029 Delaware Street

821 New York Street

936 Pennsylvania Street

946 Pennsylvania Street

1734 Kent Terrace

900 Rhode Island Street

1500 Haskell Avenue

**Action Request**. No action is required.