

COMMISSION MEETING

7:00 P.M.

NOVEMBER 17, 2021

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, November 17, 2021, with Mayor Gilligan presiding and Commissioners Brinkman, Geitz, Giefer and Smith present. Also present were City Manager McAnarney, Assistant City Manager Massey, City Clerk Sull and City Attorney Montgomery.

MAYOR AND CITY COMMISSIONERS REPORTS AND COMMENTS

This is the time for the Mayor and City Commissioners to make comments and reports to the public. **The following is general information for the month of October for the community:**

1. Monthly Local Retail Sales Tax Receipts Update

	2020	2021	
	\$448,883.96	\$420,454.53	Decrease of \$28,429.43 for the month, and
YTD	\$ 4,176,093.58	\$4,483,679.47	Overall increase of 7.37% from year 2020

2. City Share from County Tax

	2020	2021	
	\$ 226,975.88	\$ 216,738.30	Decrease of \$10,237.58 for month, and
YTD	\$2,127,317.57	\$2,280,456.62	Overall increase of 7.20% from year 2020

3. **Building Permits issued from 10/1/2021 to 10/31/2021 for new construction, remodeling, repairs and demolition.**

Total number of building permits issued through Code Services:	70
Total of valuations associated with those building permits:	\$10,435,885.00
Total number of dollars collected for Building Permit Fees:	\$ 31,140.25
Construct - single family dwellings	2
Demo - single family dwellings	1
Flint Hills Mall CID for October	\$ 17,715.44
Year to Date Total	\$ 175,542.17

Consent Agenda

It was moved by Commissioner Smith, seconded by Commissioner Brinkman that the Consent Agenda listed below be ratified as a whole:

- a. Consider minutes of the Meetings held on November 3 and the Adjourned Meeting on November 10, 2021.
- b. Consider ratification of Payroll Ordinance for the period ending on November 5, 2021.
- c. Consider the Approval of October Budget.

- d. Consider Set Bid Time and Date to receive bids for the Funston Street & 5th Ave. Paving improvements, Project No. PV2008.

The vote follows: Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Giefer, aye; Commissioner Geitz, aye; and Mayor Gilligan, aye.

**CITY COMMISSION
(Public Comment)**

This is the time for the public to make comments. No comments were made at this time.

**CITY COMMISSION
(Redevelopment Project Plan for Tax Increment Financing)
(Brownstone/Red Brink Investment)
(Public Hearing)**

Jim Witt, Special Projects Manager, was recognized and addressed the Governing Body. He stated at a previous Commission Meeting Resolution Number 3652 was passed establishing a public hearing be conducted for a Redevelopment District in accordance with statutory requirements. He stated this project is for the development of a variety of land uses, including but not limited to: a truck plaza and related commercial uses, one or more full service hotels and related hotel uses, restaurants, retail businesses and other commercial development, and associated public and private infrastructure including site work, utilities, storm water and drainage improvement, landscaping, parking facilities and other infrastructure permitted. He stated the proposed district is in an area identified by the City as desirable for additional commercial, retail and residential development. All local taxing entities have been notified. The benefit is mid to long term increase tax revenue for local taxing entities.

Mayor Gilligan then declared the public hearing open.

As no one in attendance wished to address the Governing Body, Mayor Gilligan then declared the public hearing closed.

**CITY COMMISSION
(Establishing Redevelopment District)
(Brownstone/Red Brick Emporia Redevelopment District)
(Ordinance Number 21-38)**

AN ORDINANCE OF THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS MAKING FINDINGS REGARDING A REDEVELOPMENT DISTRICT AND ESTABLISHING A REDEVELOPMENT DISTRICT WITHIN THE CITY, to which the City Clerk assigned Ordinance Number 21-38, was presented to the Governing Body for their consideration.

Jim Witt, Special Projects Manager, was recognized and addressed the Governing Body. He stated this ordinance is the next step in the formation of a Redevelopment District and eventually the designation of a TIF for approximately 39 acres generally located at the intersection of Interstate 35, the Kansas Turnpike and Highway 50. He stated the applicant has met all the statutory and local requirements for establishing the RHID. Local taxing entities have been notified in accordance with the statutory requirements. He stated if there is an objection by one of the entities within thirty (30) days of the hearing a reconsideration of the ordinance shall be conducted. He stated staff was recommending approval of the Red Brick Emporia Redevelopment District.

Commissioner Brinkman made a motion to approve Ordinance Number 21-38, an ordinance establishing the Red Brick Emporia Redevelopment District. Commissioner Giefer seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Giefer, aye; Commissioner Geitz, aye; Commissioner Smith, aye; and Mayor Gilligan, aye.

PLANNING AND DEVELOPMENT
(MAPC Excerpts of Regular Meetings Held 5-19-21 & 8-17-21)
(Application No. 2021-14 - Request of Emporia Enterprises)
(Rezone Approximately 90 Acre Unplatted Parcel of Land)
(1401 E Logan Ave., 1503 E. Logan Ave. & 1201 S. Weaver)
(From Agricultural to I-1, Light Industrial)

The Planning Commission met in a regular session on Tuesday, May 18, 2021, with Chairman Thomas presiding. Members Bucklinger, Duncan, Garrett, Dewitt, Weaver, and Colson were present.

2. 2021-14: A request of Emporia Enterprises Inc. to rezone an approximately 90 acre unplatted parcel located at 1501 E. Logan Ave, 1503 E. Logan, and 1201 S. Weaver Street from Agricultural District Zoning to I-1, Light Industrial Zoning District for potential development as authorized under Article 26-1 of the Zoning Regulations.

Staff confirmed jurisdiction over this application.

No exparte communication was declared.

LEGAL DESCRIPTION:

TRACT IN THE SE 1/4 OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M. DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST LINE OF THE SAID SE 1/4, MARKED BY AN IRON PIN, LYING S00°34'18"E A DISTANCE OF 100.00 FEET FROM THE NORTHEAST CORNER OF THE SAID SE 1/4; THENCE ON A BEARING OF N89°31'12"W ON A LINE PARALLEL WITH AND 100.00 FEET SOUTH OF THE NORTH LINE OF THE SAID SE 1/4 FOR A DISTANCE OF 781.88 FEET TO AN IRON PIN; THENCE ON A BEARING OF S00°52'42"E FOR A DISTANCE OF 121.66 FEET TO AN IRON PIN; THENCE ON A BEARING OF S89°00'08"W FOR A DISTANCE OF 50.00 FEET TO AN IRON PIN; THENCE ON A BEARING OF S1°20'12"E FOR A DISTANCE OF 121.68 FEET TO AN IRON PIN; THENCE ON A BEARING OF N88°39'47"E FOR A DISTANCE OF 50 FEET TO AN IRON PIN; THENCE ON A BEARING OF N1°20'13"W FOR A DISTANCE OF 27.70 FEET TO AN IRON PIN; THENCE ON A BEARING OF S89°31'12"E FOR A DISTANCE OF 779.98 FEET TO AN IRON PIN ON THE SAID EAST LINE OF THE SE 1/4; THENCE ON A BEARING OF N00°34'18"W ALONG THE SAID EAST LINE FOR A DISTANCE OF 215.31 FEET TO THE POINT OF BEGINNING;

ALSO:

A TRACT OF LAND IN THE SE 1/4 OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED AS FOLLOWS: FROM THE SOUTHEAST CORNER OF SAID SECTION 23, THENCE NORTH ALONG THE EAST LINE OF SAID SECTION ON AN ASSUMED BEARING OF N00°34'18"W FOR A DISTANCE OF 2,568.66 FEET; THENCE WESTERLY ON AN ASSUMED BEARING OF S89°14'04"W FOR A DISTANCE OF 781.88 FEET TO THE POINT OF BEGINNING; THENCE SOUTHERLY ON AN ASSUMED BEARING OF S00°59'52"E FOR A DISTANCE OF 104.66 FEET; THENCE WESTERLY ON A BEARING OF S89°00'08"W FOR A DISTANCE OF 50.00 FEET; THENCE SOUTHERLY

ON A BEARING OF S1'20'12"E FOR A DISTANCE OF 121.68 FEET; THENCE EASTERLY ON A BEARING OF N88'39'47"E FOR A DISTANCE OF 50.00 FEET; THENCE SOUTHERLY ON A BEARING OF S1'20'13"E FOR A DISTANCE OF 100.00 FEET; THENCE SOUTHEASTERLY ON A BEARING OF S39'51'15"E FOR A DISTANCE OF 163.20 FEET; THENCE WESTERLY ON A BEARING OF N88'45'04"W FOR A DISTANCE OF 250.00 FEET; THENCE SOUTHERLY ON A BEARING OF S1'14'56"W FOR A DISTANCE OF 142.75 FEET; THENCE WESTERLY ON A BEARING OF N88'45'04"W FOR A DISTANCE OF 384.62 FEET; THENCE NORTHERLY ON A BEARING OF N00'32'59"W FOR A DISTANCE OF 573.06 FEET; THENCE EASTERLY ON A BEARING OF N89'14'04"E FOR A DISTANCE OF 531.56 FEET TO THE POINT OF BEGINNING.

ALSO:

THE NORTH 87.5 FEET OF THE EAST HALF OF THE SOUTHEAST QUARTER IN SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS

ALSO:

THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, EXCEPT THE FOLLOWING DESCRIBED TRACTS:

BEGINNING AT THE NORTHWEST CORNER OF THE EAST HALF OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS; THENCE SOUTH 260 FEET; THENCE EAST 206 FEET; THENCE NORTH 260 FEET; THENCE WEST 206 FEET TO THE POINT OF BEGINNING.

AND

A TRACT OF LAND IN THE EAST HALF OF THE NORTHEAST QUARTER (E1/2 NE1/4) OF SECTION 23, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, BEING DESCRIBED AS FOLLOWS: BEGINNING AT POINT 260 FEET SOUTH THE NORTHWEST CORNER OF THE EAST HALF OF THE SAID NORTHEAST QUARTER; THENCE SOUTH 50 FEET; THENCE EAST 206 FEET; THENCE NORTH 50 FEET; THENCE WEST 206 FEET TO THE POINT OF BEGINNING.

Melissa McAllister, Americus. Addressed the board and inquired about the legal notice and application, and questioned if the Planning Commission had jurisdiction.

After further discussion, the meeting proceeded, and the public hearing continued.

Staff presented:

Applicant: Emporia Enterprises

Requested Action: Rezoning

Purpose: Change the zoning classification to meet needs

Address: non-addressed

Size: approximately 90 acres

Existing Zoning: Agricultural

Existing Land Use: Undeveloped lot

Physical Characteristics: floodplain, utilities available, easement in place on pending plat.

Comprehensive Plan: The subject area is slated to be Single Family County Housing (R-1/CH) in the ELC Comp Plan Future Land Use Map.

Analysis:

The applicant is requesting to rezone the subject property. This request is to change the zoning district from Agricultural to I-1, Light Industrial. The applicant desires to use this area for future development of industrial uses.

There is a 1% Annual Chance Flood Channel that is on the far south side of this property but will not impact the buildable area on any of the lots. The current floodplain maps will be reduced with the new maps that should be adopted in November, 2021.

This location is adjacent to Industrial Park 3 to the north. There is residential property to the east. Some of these properties are within the city limits, some are within the county. West and south of the subject location is zoned for agricultural use.

Applicable Regulation For Rezoning (Section 26-108).

Factors to be Considered in a Rezoning: When a proposed amendment would result in a change of the zoning classification of any specific property, the recommendation of the Planning Commission, accompanied by a copy of the record of the hearing, shall contain statements as to the present classification, the classification under the proposed amendment, the reasons for seeking such reclassification, a summary of the facts presented, and a statement of the factors upon which the recommendation of the Planning Commission is based using the following guidelines:

- 1- Whether the change in classification would be consistent with the intent and purpose of these regulations;
- 2- The character and condition of the surrounding neighborhood and its effect on the proposed change;
- 3- Whether the proposed amendment is made necessary because of changed or changing conditions in the area affected, and, if so, the nature of such changed or changing conditions;
- 4- The current zoning and uses of nearby properties, and the effect on existing nearby land uses upon such a change in classification;
- 5- Whether every use that would be permitted on the property as reclassified would be compatible with the uses permitted on other property in the immediate vicinity;
- 6- The suitability of the applicant's property for the uses to which it has been restricted;

7- The length of time the subject property has remained vacant or undeveloped as zoned; provided, the use of land for agricultural purposes shall be considered as allowing the land to be vacant or undeveloped;

8- Whether adequate sewer and water facilities, and all other needed public services, including transportation, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified;

9- The general amount of vacant land that currently has the same zoning classification proposed for the subject property, particularly in the vicinity of the subject property, and any special circumstances that make a substantial part of such vacant land available or not available for development;

10- The recommendations of professional staff;

11- Whether the proposed amendment would be in conformance to and further enhance the implementation of the City's Comprehensive Plan;

12- Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed upon the applicant by not upgrading the value of the property by such reclassification; and,

13- Such other factors as may be relevant from the facts and evidence presented in the application.

Recommendations: Staff recommends approval as this location borders Industrial Park 3, and will act as an extension to the existing park. If approved this item will go to the City Commission for final approval.

Attachments: Application, Zoning/Easement maps, FP Map, Zoning Regulations for Section 5 Section 15

Public Hearing: (May 18th, 2021)

The Public Hearing portion was opened.

Kent Heermann, 1720 Trowman Way, Emporia, KS, applicant, addressed the Board and presented background and history on the property and Industrial Park 3, explaining how this area has grown over the last 25 years. Mr. Heermann noted that the location would be platted in future and discussed the changes in the proposed zoning regulations and how they might impact future industrial land. Mr. Heermann expressed possible concerns with the proposed flex use of Industrial Park 4, possibly limiting some industrial uses for that area.

Member Weaver inquired about the possibility of protective covenants for this location.

Mr. Heermann noted that this would be decided by a committee, it could be added in the future if needed, and noted that when platted it would be likely called Park 3 South, and could tie into Park 3.

Member Garrett asked about Industrial Flex use.

Mr. Heermann noted that the ELC Comp Plan has a classification for Industrial Flex that allows for a range of commercial uses as well as some industrial uses. Industrial Park 4 is to be changed to Industrial Flex in the regulating plan. Mr. Heermann expressed that similar uses bring assurance to the potential developers of an area.

Member Colson inquired about Industrial Park 4 vacancy and available industrial land.

Mr. Heermann noted that the park has been vacant for 20 years, that this is a very competitive market, and we do a good job. Industrial Park 3 was vacant for 20 years before it was developed.

Member Colson asked how much inventory of land do you need?

Mr. Heermann said, as long as we continue to grow, and the workforce and housing is available we will continue to need the space. The market is extremely hot right now. We had a boom from 1997 to 2000, and then from 2006-07, and 2010. There are a lot of competition out there, we need to be patient.

Member Colson: What would you say to someone who says we don't need more industrial land.

Mr. Heermann, Emporia needs to grow, and business will come and go, if we are not proactive we are reactive. Our objective is to grow the community.

Member DeWitt inquired about the biodiesel (RDG) plant.

Mr. Heermann noted that this would go back to Emporia Enterprises within 3 years.

Jeanne McKenna, 719 Commercial, Emporia, KS

Spoke in favor of the application, and noted industrial uses have provided over a billion towards property taxes and helps the community grow and prosper.

Opposition.

Coleen Hanson, 1022 Weaver, Emporia, KS

Lived in the area since 2003, noted that the berms didn't work. Noted that street improvements would be needed. Mrs. Hanson expressed concerns about property value if the area was developed.

Gerald Hanson, 1022 Weaver, Emporia, KS

Lived near this location since 2003. Lived in Emporia his life,

and has been retired for 6 years. Mr. Hanson express that he planned to live at this location the rest of his life, and did not want to noise or the sight of an industrial plant located here. He was also concerned how a new industrial sight might impact well water in the area.

Janet Haag, 1811 E. Logan, Emporia, KS

Location Fronts Hills Pet Food Plant. Had more questions, than issues. Wanted to inquire about the possibility of residents on Wannamaka to get city water. Mrs. Haag has concerns about overnight truck noise, lighting, and impacts on well water contamination. The unknown uses are the scary for the neighboring property owners. Mrs. Hagg asked when is the time to discuss the future uses?

Mr. Foster explained the role and function of the public hearing.

Mrs. Haag inquired about transitional zoning. Buffering between residential and industrial uses.

Melissa McAllister, Americus, KS

Inquired about possible adverse effects of the application, as well as the general health and welfare due to possible zoning change. Expressed concern that the ELC Comp Plan Regulating Plan and current zoning regulations were not matching. Question the Metropolitan Planning Area (MPA) jurisdiction.

Mr. Foster, the MPA is not dissolved and this location is in the city limits. Neighboring properties are within the city limits or MPA.

Chair Thomas, the application being applied for is within the city limits. Our concern is for property within the MPA and city limits.

Mrs. McAllister, inquired about how the interlocal agreement will change the jurisdiction.

Chair, this is beyond our conversation today, and is currently unknown.

Mrs. McAllister, questioned how the new interlocal agreement would impact the neighboring property owners.

Mrs. McAllister, express concerns with the tax base increase and noted the joint luncheon discussion, and how the BOCC needed to "weigh-in" on the issue. These are bigger issues that need to be discussed.

Member Garrett asked how the interest in the county houses would

be any different than the city houses for this location.

Mrs. McAllister, people live the county for different reasons, the zoning would be differed.

Mr. Foster, stated that the zoning for all the houses being discussed were zoned the same, R-1 Single Family.

Mrs. McAllister, the city and county do not have a joint zoning plan, they do have a joint comprehensive plan. Mrs. McAllister, noted that these people moved to the county, and they want to stay in the county.

Member Garrett, noted there is no difference between the city and county for how is area could be impacted by the proposed use.

Member Weaver, asked staff about the new regulations and how the subject area will be impacted.

Mr. Foster, the proposed regulation might broaden uses while limited specific types, allowing for more flexibility overall but still regulating the land uses. Mr. Foster explained some general history of zoning regulations and that the health, welfare, and safety are always paramount with zoning regulations.

Member Colson, weighted out the pros and cons of this application, and expressed a desire to see more concrete plans for this location.

Rebuttal:

Kent Heermann, 719 Commercial St.

The closer you have the sites to shovel ready, the more likely business will locate to the community. There is currently infrastructure at this location, and has the highest potential for future development. This will not be a dog kennel, but will be a Simmons, or Hills. If we don't have the zoning, we will miss out on potential business. Next step will be platting, where we can discuss more details, to pave the road.

Mr. Weaver, is there any instance for the potential companies to discuss future plans with the neighbors.

Mr. Foster, nothing would be required.

Member Colson, what are the average wages of Hills and Simmons?

Mr. Heermann, \$18-25 an hour, with some seasonal workers.

Mr. Foster, address the audiences question, that this meeting is opportunity for public comment. The City Commission might allow

comments, but this the public hearing.

The Public Hearing portion was closed.

Chair Thomas, noted that the public hearing is closed. Also, stated the he voted against the Hill rezoning in the past and wanted to stay consistent with this application.

Question: Could this location be rezoning from I-1, to residential in the future. Mr. Foster noted that the property could be zoned, and/or rezoned as needed in the future, but it would require a public hearing for each request.

Motion: Member Garrett made a motion to deny the application at this time, and expressed concerns that there was not a specific use for this property.

Member Colson seconded the motion.

Member Garrett, added a condition to confirm that the legal notice was applicable to all 90 acres of the subject property.

Application was denied by the Planning Commission 6-1.

Public Hearing: (August 17, 2021)

Duncan asked Heermann (Emporia Enterprise) you are retiring after this year, correct? Heermann replied, 1st quarter of next year. Duncan also asked so when you say that #32 is the focus it would be on that would probably be the same after you retire? Heermann said it depends, if you turn it to light industrial it could be any of those uses in light industrial. Our purpose and intent is to recruit manufacturing fabrication type industries. It will be manufacturing like CAMSO, Simmons, Hills, VEKTEK, and those types of operations.

Colson asked the homeowners after taking a look at the list of proposed uses does it change your concerns? One homeowner that lives towards the south end said no, what bothers him the most is that there was a plan that was set up that states it would be agricultural and if it was to be changed that it would be country homes (1-5 acres). All of us out there along Weaver St. facing to the west we all have 3 acres which we fit in that deal and you can't leave out the people who live behind us on Wanamaka because they're impacted by it too (22 homes there). The amount of truck traffic, especially with trains crossing they've got it backed up to Logan Ave., now we are going to have even more down there. Even though we don't have to pay for the road, the homeowners will have to maintain that road and our taxes are going to go up.

Jeff Morgan, lives on 1100 South Weaver said we bought our home in 1992 before any of that stuff was ever built out there. My biggest concern is increase of truck traffic north of us. We were offered rural water at Coffey County District one time at which we signed up for. The city of Emporia later came back and said anyone north of the cut-off station would not be able to get rural water. You pretty much have to live in the city to get water.

Brian Morgan lives in 1100 South Weaver and works at Hostess Brands. He sees a lot of manufacturing plants always hiring because they're short on staff. He thinks if another manufacturing plant is built there it will not last.

Janet Haag, 1811 Logan Ave., the screening and the buffers and the landscaping that you're referring to in this document with the City of Emporia is extremely minimal. This is not what we got when we worked for Hills and with all of the other manufacturing plants. This is not as good of a situation for a homeowner who owns property there. Right now if we sell our home we have to disclose on our real estate contract this proposed zoning change; that is an exact immediate hit to our property value and it hasn't even been done yet. So it's important to us that it stays agriculture and not industry because it definitely affects us. If you drive around CAMSO and the old Lenze Building there are piles of stuff everywhere, they're not behind the screens, they're not behind the fence.

Kent Heermann (Emporia Enterprise) said the history of where Hills is we bought 3 tracks long before Hills was even considered, they contacted my office April 16, 2007. We have a covenant about landscaping. Whoever owns land out there has a voice and a vote on there so Emporia Enterprise is not the majority owner out there and we still go through covenant review on landscaping and type of colors of the buildings, etc. The concern regarding CAMSO and the old Lenze Building about stuff being everywhere not behind the screens and fence that's the City's issue, they need to enforce it, it has nothing to do with the covenants within the park. There are 88 acres out there and you're going to have one acre lots, 90 acres. You're going to have 90 residential there. So is there a requirement on that residential lot south of that industrial park to put a landscaping berm? Well, no because it's residential. If an industry comes in there they would be required to do so. When the zoning was changed it was done here at the Planning Commission during the conference and planning we were never asked, it just got changed. I'm talking now about Park 4 got changed to Industrial Flex. I got the regulations and saw what they put in there, they said we're going to allow more uses in industrial, one of the uses is a mobile home park and I can tell you no

industry will build next to a mobile home park. It doesn't make sense to build 90 homes there. We don't have any choices where we can go. We have Park 4 infrastructure costs that needs to be put out there, roads were supposed to be paved this year, we got to relocate utilities. We got a grant from the state because limited access to highway 50 which would make it safer. They're paying for the entire construction process so that there'll be at 1.4 million of the 1.8 million cost. The city is doing the engineering it time. You have Evergy building out there. I'm just trying to find land to get jobs for people.

Garrett asked Heermann what covenants do you envision for this 90 acres? Heermann said we don't have any covenants on Hills. We don't have any covenants on Norfolk or for Iron and Metal. Covenants are forced by the landowners. How are covenants supposed to help the property owner? Is it better not to have the zoning ordinance or a subdivision plat that regulates what needs to be there?

Garrett asked Heermann what part of the process someone said you've got to put trees there? I understand it wasn't done till the construction was over before the certificate of occupancy. Where did the requirement come from? In Park 3 there were covenants put in there that specified the amount of landscaping that had to be put in there and there had to be a landscaping plans submitted to the covenant.

Garrett asked Heermann why does Emporia Enterprise need to do this now? Heermann said we have no sites. We have a 15 acre site and we have 2 eight acres sites. I need a bigger site that's ready to go and that can go quicker. This lot can go quicker. In this area we can get pretty good electrical service, we have natural gas there, water and sewer can be extended in a pretty quick time frame, it's not that expensive.

Garrett asked Heermann how long did it take for that process from agriculture to neighborhood meeting to rezoning? Heermann said 4-5 months, we didn't plat it till it was all developed. Garrett verified with Heermann that the difference between shovel ready in the Hills process is 4-5 months. Heermann said maybe that is if you don't get anything tabled and you don't get anything sent back. It could get protracted 6-9 months.

Garrett has a couple of ideas. While the new zoning regulations are in process, there are some things we could do with respect to the proposed zoning changes that would mitigate this even if the rezoning moves to the proposed country home use under the new code. Let's take a look at the definitions of the barriers because the new code is going to apply to any development that starts after its enacted. If the application is approved through

the new zoning regulations that have not been adopted yet, there could be additional requirements imposed not just on this 90 acres but on similar tracts to address the perceived deficiencies of buffering and that concept of the intrusion of noises, odor, smoke, and etc. on neighboring properties. I think there will be opportunities to reexamine the new zoning codes. We can address some of these things that we might not be able to address now and in a similar fashion, it wouldn't be targeted to the 90 acres, it would be similar tracts. At the same time we can address Mr. Heermann's concerns about industrial flex and what contemplates and what the implications to other businesses there are and whether something should really be changed in industrial flex and maybe it shouldn't. Maybe they need more space of a certain kind that can be fixed too.

Thomas added no matter what our decision is tonight it would go to the city in 2 weeks.

Weaver motioned to reject the application because the information that was presented and the new knowledge of these categories of obnoxiousness in the city stated intent to make sure that any industry does not generate noise, vibrations, etc. from the regulations.

Garrett seconded the motion because he doesn't think doing that minimizes Emporia Enterprises goals.

Vote: 5 to uphold the motion and 2 to reject the motion. Colson, Weaver, Garrett, Duncan, and Thomas uphold the motion. Dewitt and Bucklinger rejected the motion. Application is again voted down.

Jeff Lynch, Community Development Coordinator, was recognized and addressed the Governing Body. He stated this was a request of Emporia Enterprises, Inc. to rezone a parcel of land located at 1501 E. Logan, 1503 E. Logan and 1201 S. Weaver Street from Agricultural to I-1, Light Industrial Zoning. At their May 18, 2021, the Planning Commission voted to deny the request. He stated the application was returned to the Planning Commission with direction to the applicant to provide better details on what the goals are for the property so the Planning Commission can reconsider it accordance with the future plans of what the development might be. At their August 17, 2021 regular meeting, the Planning Commission denied the request for the second time with a 5-2 vote; 5 to uphold the motion and 2 to reject the motion, for the uncertainty of the type of industrial use that may develop, possible

noise and other pollution, and neighbor concerns were all factors in denying the request. He stated the Commission would need to take action in one of the following ways: 1) adopt the recommendation of the Planning Commission by a majority vote; 2) revise or amend and adopt the recommendation of the Planning Commission by a majority vote; or 3) take no further action.

PLANNING AND DEVELOPMENT

**(Application No. 2021-14 - Request of Emporia Enterprises)
(Rezone Approximately 90 Acre Unplatted Parcel of Land)
(1401 E Logan Ave., 1503 E. Logan Ave. & 1201 S. Weaver)
(From Agricultural to I-1, Light Industrial)
(Ordinance Number 21-39)**

AN ORDINANCE REZONING A PROPERTY IN THE CITY OF EMPORIA, KANSAS FROM AGRICULTURAL ZONING, TO I-1, LIGHT INDUSTRIAL ZONING AND AMENDING THE DISTRICT ZONING MAP TO CONFORM WITH SAID ZONING, to which the City Clerk assigned Ordinance Number 21-39, was presented to the Governing Body for their consideration.

Commissioner Giefer made a motion to approve Ordinance Number 21-39, an ordinance to rezone a parcel of land located at 1501 E. Logan Avenue, 1503 E. Logan Avenue and 1201 S. Weaver Street from Agricultural to I-1, Light Industrial Zoning. Commissioner Geitz seconded the motion. The vote follows: Commissioner Giefer, aye; Commissioner Geitz, aye; Commissioner Brinkman, aye; Commissioner Smith, aye; and Mayor Gilligan, aye.

CITY COMMISSION

**(Approve Contract with BG Consultants, Inc. for Design Services)
(Storm Water Improvements/Becker Addition)**

Jim Ubert, City Engineer, was recognized and addressed the Governing Body. He stated this is to consider a contract with BG Consultants for design services for proposed Becker Addition storm water improvements. The proposed improvements are approximately 1,100 LF of concrete lined channel from Coronado Street north to approximately Lot 7, Block 1, Becker's 6th Addition Replat. He stated natural revetment design with select bank armoring will be proposed

from approximately that location to further downhill/stream toward the Neosho River. He stated as discussed at the November 10, 2021 study session, BG Consultants, Inc. has considered designs for the proposed storm sewer stream improvements with the following options:

1. Do nothing - no cost.
2. Open channel (concrete lined) - \$2.9M + \$0.5M (mitigation cost estimate from 2017) - \$3.4M
3. Open channel (natural revetment) \$2.8M, with expected more maintenance than Option #2.
4. Enclosed RCB culvert (may not be approved by USACE from 2017) - \$2.4M + \$0.5M (mitigation) = \$2.9M.

He stated there are design issues involving environmental permitting and litigation at the federal level involving the EPA and USACE and the applicability of the Water of the United States and LEDPA to this stream that will need further research to understand their total impact to the project and the construction options that can be designed and permitted. The agreement from BG Consultants, Inc. is based on Option #2 with concrete lined channel. This is the highest capital cost but the best option in terms of capital costs, future maintenance and expected life of proposed improvements. He stated staff is recommending approval of the contract with BG Consultants, Inc.

Commissioner Geitz made a motion to approve a contract with BG Consultants, Inc. for design services for proposed Storm Water Improvements Becker Addition. Commissioner Smith seconded the motion. The vote follows: Commissioner Geitz, aye; Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Giefer, aye; and Mayor Gilligan, aye.

CITY COMMISSION
(Appoint Candidate to fill Unexpired Commissioner Term)

City Attorney Montgomery was recognized and addressed the Governing Body. She stated Commissioner Jon Geitz recently announced his resignation effective on November 17, 2021. The City Clerk

accepted applications to fill the vacancy for a period of fifteen days. The City received one application as follows:

James A. Sauder

She stated pursuant to City of Emporia Charter Ordinance No. 36, the City Commission may accept the list of candidates, reject the list of candidates, or call for more nominations. The City Commission may further evaluate applicants or may proceed directly to vote by written ballot. The election requires a majority vote. The newly appointed commissioner will take the oath of office and be seated at the next regular meeting on December 1, 2021.

Commissioner Brinkman made a motion to accept the list of applicants. Commissioner Giefer seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Giefer, aye; Commissioner Smith, aye; and Mayor Gilligan, aye. Commissioner Geitz abstained.

Commissioner Brinkman made a motion to appoint James A. Sauder to fill the commissioner vacancy for the remainder of the term. Commissioner Smith seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Smith, aye; Commissioner Giefer, aye; and Mayor Gilligan, aye. Commissioner Geitz abstained.

**CITY COMMISSION
(City Manager's Report)**

This is a verbal report that announces upcoming events, recognizes employees for outstanding contribution and provides the public information that may be of a general interest. The following information was presented at the meeting:

At the time this Agenda was prepared, the following items were in the works:

NO STUDY SESSION - NOVEMBER 24, 2021.

EXECUTIVE SESSION

Commissioner Smith made a motion to adjourn into Executive Session for consultation with the City Attorney to discuss a legal matter from 7:17 p.m. to 7:22 p.m., in the City Commission Meeting Room. Commissioner Giefer seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; Commissioner Smith, aye; and Mayor Gilligan, aye.

Upon reconvening the meeting in Regular Session at 7:22 p.m., this same date, in the City Commission Meeting Room, Mayor Gilligan stated they had consultation with the City Attorney and no action was taken.

The Commission recognized Commissioner Jon Geitz for his service to the City of Emporia as a Commissioner for the past 8 plus years.

Commissioner Smith then made a motion to adjourn. Commissioner Giefer seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Giefer, aye; Commissioner Brinkman, aye; Commissioner Geitz, aye; and Mayor Gilligan, aye.

Robert F. Gilligan, Mayor

ATTEST:

Kerry Sull, City Clerk