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## **South Lawrence Trafficway**

### **Special Subcommittee Report**

#### **Dissenting Opinion**

**Saturday, October 06, 2001**

#### **Introduction.**

The subcommittee hearings unearthed valuable information and raised serious, unresolved questions. All witnesses heard during the subcommittee process appeared favorable to a 32nd Street alignment. They provided an exhaustive rationale that the environmental, historical, cultural, and spiritual concerns raised by a 32<sup>nd</sup> Street alignment could be mitigated. The subcommittee did not have the benefit of any documentation or testimony from scientists, environmentalists, historians, or accredited organizations known to have competing opinions.

The concluding subcommittee session included a presentation by representatives from Baker University who described their plan to expand the wetlands and construct a 16,000 square foot structure for studying the wetlands and educating the public. Baker is hoping for KDOT funding of approximately \$5M for expansion of the wetlands and construction of a science facility. Baker also seeks \$5M to establish an endowment for operating and maintaining the wetlands and the facility. Baker University is understandably very enthusiastic about its proposal. We believe it is a very good proposal, but we do not believe its fate should be artificially linked to the SLT alignment. The two decisions are logically independent.

The subcommittee received no information from the scientific community regarding alternative mitigation options. If the resources expended to facilitate a 32<sup>nd</sup> Street alignment had been directed at investigating and mitigating a 42<sup>nd</sup> Street alignment, we suggest that a successful Environmental Impact Statement could have been completed long ago.

#### **Facts and Assumptions Adopted by the Subcommittee and accepted by the dissenting opinion.**

- Independent of alignment, completion of the eastern leg of the South Lawrence Trafficway is paramount to the majority of local citizens.
- The alternatives have been reduced to a 32<sup>nd</sup> Street alignment and a 42<sup>nd</sup> Street alignment (these alignments being conceptual and not specific to exact location).

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- There should be two controlled access points, one at Haskell Avenue and one between Haskell Avenue and K-10 to the east.
- Traffic analysis studies reveal that no alignment of the South Lawrence Trafficway will eliminate traffic congestion on 23<sup>rd</sup> Street or 31<sup>st</sup> Street; improvements to the internal traffic network will be required.
- Retaining and improving 31<sup>st</sup> Street to four lanes is essential to maintaining continuity of east-west traffic flow within the internal traffic network.
- The Kansas Secretary of Transportation has identified a need to provide right-of-way to ensure that the South Lawrence Trafficway can be expanded to six lanes.
- \$12,611,000 is budgeted for the year 2002 in the Capital Improvements Plan for: (1) Wakarusa River Sub-basin Pump Station 5C and Force Main and (2) East Hills Business Park Pump Station.
- No Wastewater Treatment Plant (WWTP) enhancement options are currently being considered other than an expansion of the existing Kansas River WWTP. A Wakarusa River WWTP would be a viable alternative if compliance with Kansas Department of Health and Environment (KDHE) regulations could be achieved. Consideration of a Second Kansas River WWTP and a New Single Kansas River WWTP was eliminated due to the excess capital cost of these alternatives.
- The Planning Commission's alignment recommendation should be based on the best interests of Lawrence and Douglas County. It is KDOT's job to incorporate other interests into the final decision.

## **Additional Assumptions Adopted for the Dissenting Opinion.**

- Selection of an alignment should be consistent with Horizon 2020 unless clear and convincing evidence suggests otherwise. The Comprehensive Plan implies substantial population growth both west of Lawrence and south of the Wakarusa River by the year 2020.
- Not only should selection of a South Lawrence Trafficway alignment address near term requirements, it should also be consistent with long-range strategies and objectives.
- Douglas County will grow at an annual rate of 2%. Consequently, by the year 2020 the population will reach 150,000; by the year 2035 the population will reach 200,000; and by the year 2055 the population will reach 300,000.

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- Near circular growth around the urban core is more efficient than linear growth exclusively along an east-west corridor.
- Land use is not anticipated or projected, it is planned. Major land use occurs in locations where municipalities elect to extend infrastructure (sewage treatment, water service, roads, emergency response capabilities, etc.).
- It is not the mission of this committee to recommend any alignment for 31st Street.
- Few or none of the various Haskell University constituencies – Board of Regents, BIA, students, Native American tribes – would oppose an alignment south of the Wakarusa. All have strong negative feelings toward any northern alignment. Some but not all constituencies would accept a northern alignment in return for various mitigation arrangements.
- Local environmentalist groups are firmly united in their opposition to any alignment north of the Wakarusa. They are divided in their attitude towards a southern alignment.

## **Composition of Project Alternatives.**

The subcommittee was presented with a series of proposed alignments ranging from 31<sup>st</sup> Street to a location south of the Wakarusa River. In addition to stipulating the general location of the eastern leg of the South Lawrence Trafficway, each alternative reflected a conceptual configuration of the internal traffic network. It is important to note that the alignment of the SLT is largely independent of adjustments to local roadways. For example, the relocation of 31<sup>st</sup> Street off Haskell University property can occur irrespective of which SLT alignment is selected.

All of the alignments north of the Wakarusa River were proposed in conjunction with substantial mitigation provisions. No similar effort has been made to investigate the challenges and solutions available in support of a roadway south of the Wakarusa River. As a consequence, the subcommittee was given no means by which to compare alternatives based upon environmental, historical, cultural, and spiritual impact.

## **Baker University and the Baker Wetlands.**

The mitigation program proposed for the Baker Wetlands by Baker University avoids important issues regarding this sensitive environment. The subcommittee was told that a fifteen-acre site adjacent to the wetlands has been nearly reclaimed as wetland by a project initiated only seven years ago. We also know,

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from a report published by the National Academy of Sciences, that reclamation of wetlands is uncertain and has been attempted with varying levels of success. Baker representatives were very confident they can successfully reclaim additional wetlands from hydric soils in the Wakarusa valley. They also expressed confidence that they can reclaim non-hydric soils, although that has not been tried locally. The proposed new wetlands are separated from the existing wetlands by the extension of Louisiana Street, which could impose a significant ecological barrier between the two parts.

It is important to understand that the 32nd Street concept as presented involves the permanent destruction of some 140 acres of hydric soils in the flood plain. Returning those acres to wetlands is not ever likely to be feasible. No efforts to mitigate destruction of hydric soils as such are required or planned.

Immediate expansion of the wetlands is not necessary for preserving hydric soils. They could be preserved, for example, by floodplain growth regulation like those now under consideration.

A 42nd Street alignment would also permanently destroy some hydric soils. We have no estimate of the acreage involved. It may be possible to design it so as to remove considerably less hydric soil than the 32nd Street alignment. Even if that is not the case, we believe it is more important to preserve hydric soils north of the river than south of the river. The soils north of the river are part of an irreplaceable, large contiguous natural floodplain that is of great ecological significance. We believe it important to keep it substantially intact.

A 32nd Street alignment would provide a useful barrier to help protect the wetlands from further development. However, if that goal could alternatively be achieved using a redesigned 31st Street. Moreover, a 42nd Street alignment would provide a useful barrier protecting the riparian corridor south of the Wakarusa.

Horizon 2020 is very specific in its guidance regarding the Baker Wetlands issue, "Encourage preservation of areas characterized by a number of overlapping environmental and natural features, such as: ... wetlands, hydric soils ...". The National Environmental Policy Act requires that adverse impacts on the environment be avoided, minimized, or mitigated in that order.

To comply with the guidance of the Comprehensive Plan and the requirements of NEPA, the Baker Wetlands should remain undisturbed. Further, since there is clear indication that the soil and environment in and around the Baker Wetlands are conducive to wetlands support, efforts should be made to reclaim a portion of the land on the perimeter of the existing wetlands. An expansion of the Baker Wetlands, using a combination of public and private funding, is more in keeping with Horizon 2020 and NEPA than building ten lanes of new roadway, with two median areas plus a berm, through an existing, established wetlands.

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## **Haskell University and the Bureau of Indian Affairs.**

Members of the Haskell University community have concerns regarding disturbing the Baker Wetlands that transcend any possible mitigation proposals. These convictions should be respected. Additionally, there are archeological uncertainties that will only be revealed after a highway is engineered and construction has begun. It is possible that discoveries will be made that would halt construction of the proposed trafficway. Some have suggested that a natural gas pipeline trenched through the heart of the wetlands is evidence that no unmarked gravesites are present. We should be reminded that, up until 25 years ago, Native American remains were placed on display at a burial site east of Salina, Kansas. It is impossible to know what construction workers of a pipeline company may have encountered in the Baker Wetlands; we do know that sensitivity with respect to Native American burial sites, is a relatively new orientation for our society at large.

The Bureau of Indian Affairs has requested that 31<sup>st</sup> Street be vacated or relocated if the South Lawrence Trafficway is built anywhere north of the Wakarusa River. We point out that the 31<sup>st</sup> Street issue is completely independent of any contemplated alignment of the South Lawrence Trafficway. Irrespective of the placement of the SLT, the Bureau of Indian Affairs should be approached to better understand their 31<sup>st</sup> Street concerns and to explore the availability of federal funding to accommodate their expectations.

## **Archeological and Historic Sites South of the Wakarusa**

There are a number of structures and sites south of the Wakarusa that have historic and cultural value. Most of these are related to Anglo history. KDOT has suggested that Native American sites are an additional possibility, but has not identified any. Most of these sites are point sites, which can be mitigated either by moving the structure, or by moving the right of way. Also, the SLT could serve as a barrier to protect some of the sites against development.

The Oregon Trail runs westward near 42nd street and then turns north across the Wakarusa to Lawrence. All proposed alignments cross the Oregon Trail. There are no plans in existence to preserve extensive segments of this section of the Oregon Trail. We believe that such plans could be designed into the 42nd Street alignment.

## **Traffic System Performance and Short Run Cost.**

Careful examination of the record of the subcommittee hearings reveals no clear cost advantages to local government associated with any particular SLT alignment. In the event a local roadway is relocated, KDOT will fund that portion of relocation cost that replicates the existing road. Any requirement to improve

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the road (in-place or relocated) will occur at local expense. For example, improving 31<sup>st</sup> Street to four lanes is a local expense. Under KDOT's plan, relocating 31<sup>st</sup> Street will leave all of the four-lane improvement costs to local government.

Both 32<sup>nd</sup> Street and 42<sup>nd</sup> Street will fulfill the projects design requirements for expediting regional traffic while providing local access to the highway system. Traffic analysis studies reveal that congestion problems with the internal traffic network will not be eliminated, nor even seriously mitigated, by any proposed alignment of the eastern leg of the South Lawrence Trafficway. These same studies forecast that internal traffic congestion will become intolerable if substantial improvements to the internal traffic system are not undertaken.

## **Land Use Planning and Community Infrastructure.**

Apart from environmental, historical, cultural, and spiritual considerations, the two contemplated alignments are best differentiated by land use implications and aggregate public cost. If one assumes there is little likelihood that the urban growth boundary will extend south of the Wakarusa within the next fifty years, a substantial effort should be undertaken to avoid building the trafficway south of the river. Conversely, if urban growth is likely south of the Wakarusa River within the next fifty years, routing the SLT south of the river is good public policy.

A trafficway running entirely through floodplain and wetlands will never provide utility beyond its immediate design goals. There will be little or no development opportunity around a 32<sup>nd</sup> Street alignment and its access at Haskell Avenue; however, pressure for development at this interchange will continue indefinitely. In contrast, a 42<sup>nd</sup> Street alignment will provide significant development opportunity at its intersection with Haskell Avenue. Should it become desirable to expedite traffic from south of the Wakarusa River to the vicinity of East 1700 road and K-10 highway, the 42<sup>nd</sup> Street alignment will provide this capability without additional public cost. Integrating a road system south of the river with the eastern segment of 32<sup>nd</sup> Street will come at enormous public expense. These costs can be avoided by routing the South Lawrence Trafficway along 42<sup>nd</sup> Street. In short, if development occurs south of the Wakarusa River, building the 42<sup>nd</sup> Street alignment minimizes aggregate public expense.

Wastewater treatment is at the core of urban planning considerations. During its closing session the subcommittee learned of the existence of a *1995 Wastewater Master Plan* with subsequent updates: (1) *1997 Baldwin Creek Update*; (2) *1998 Southeast Area Update*; and (3) *2000 Miscellaneous Development Evaluations*. Excerpts from these documents indicate that alternatives for building WWTP facilities to support westerly and northwesterly growth have been eliminated from the city's *Wastewater Master Plan*. The location and capacity of WWTP facilities has enormous implications for land use planning. Not only can the investment in

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a WWTP exceed \$150M, its location will define the cost (sewer lines and pump stations) to serve developing areas.

When one combines the projected population growth of Lawrence with the economic constraints of building WWTP facilities west along the Kansas River, it follows that pressure for southerly development will increase. Our community is just beginning to explore additional, cost-effective technologies for wastewater treatment. In conjunction with expansion of the Lawrence Airport, a plan to construct a wetlands bio-filter for sewage treatment is being considered. This is a technology that is in successful operation around the world; Arcata, California is an example. Proper use of wetlands to filter discharge from a WWTP does not degrade the environment. Reclamation of the hydric soils adjacent to the Baker Wetlands would provide significant capacity for supporting a WWTP to serve projected growth to the south and the industrial area developing south of the East Hills Business Park. WWTP facilities incorporating wetlands as a bio-filter can be erected at a much-reduced cost in contrast to conventional treatment plants. In addition, gray water discharge into the Kansas River will be eliminated.

Capital improvement projects are committed along south Wakarusa Drive and south Kasold Drive. Both of these roadway enhancements signal the expectation of growth along the fringe of the southern urban boundary. This is further indication that growth to the south is likely and is being anticipated.

Concern has been expressed that an alignment of the Trafficway south of the Wakarusa River will promote urban sprawl. This is a highly charged topic. Avoiding any further use of the surrounding landmass for development can only be achieved by eliminating population growth. However, good planning, enforcement of planning strategies, and enforcement of subdivision regulations minimize urban sprawl. To reign in sprawl we must re-examine our planning and land development principles. It would appear that promoting higher density residential development while protecting riparian corridors would reduce the rate of sprawl and its adverse impact. We must discover a mechanism for protecting individual property rights while assuming greater control over land use practices. Transferable Development Rights may be a vehicle for achieving this goal. Redevelopment and backfill within the existing urban area should be encouraged. Perhaps we can create new development incentives to promote greater efficiency of land use. The control of sprawl is an urgent challenge facing our community that can only be addressed by the development standards we adopt and enforce.

## **The Costs of Delay**

It is reasonable to estimate the social costs of not having the SLT at tens of millions of dollars per year. From a social point of view, the costs of delaying the project even one year outweigh any conceivable advantage that could be obtained from KDOT funding of local projects.

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Lawsuits against the SLT have been shown to have a major potential for causing delay. KDOT has argued that lawsuits are dirt cheap and equally likely with a southern or northern alignment. We find this not credible. The previous SLT lawsuit consumed \$65,000 worth of time on the part of the plaintiff's attorneys. It takes a fairly intense group of private opponents to raise that amount of resources, whether in money or pro-bono contributions. We believe that opposition to a southern route would be considerably less intense than opposition to a northern route.

## **Response to Arguments in the Majority Report.**

The fifteen bullet points contained within the majority report are generally accurate. However, several of the arguments are irrelevant for comparing a 32<sup>nd</sup> Street alignment and a 42<sup>nd</sup> Street alignment. In particular:

- Although 32-B is more responsive to state and local transportation needs than other 32<sup>nd</sup> Street alignments, it is comparable to a 42<sup>nd</sup> Street alignment in this respect.
- The 42<sup>nd</sup> Street alignment also provides a clear separation of local traffic flows from regional traffic flows.
- The 42<sup>nd</sup> Street alignment also preserves the critical east-west connection of 31<sup>st</sup> Street in the local transportation network.
- The subcommittee unanimously adopted the goal of minimizing traffic impact on Louisiana Street. Both the 32<sup>nd</sup> Street and 42<sup>nd</sup> Street alignments (with no Louisiana Street access) accomplish this objective.
- Both the 32<sup>nd</sup> Street and 42<sup>nd</sup> Street alignments integrate well into the local traffic network.
- Limited access to the South Lawrence Trafficway is supported by both the 32<sup>nd</sup> Street and 42<sup>nd</sup> Street alignments.
- The issue of relocating 31<sup>st</sup> Street off Haskell University property is independent of adopting an alignment for the SLT.

Other points depend on judgments that can be contested. In particular:

- Growth and urban sprawl are a function of a myriad of public policies and are not dictated by a circumferential, regional road. For example, major growth will not be possible without water and sewer mains.

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- A 32<sup>nd</sup> Street alignment limits its impact on the Baker Wetlands to the northern region. This attribute led the subcommittee to unanimously eliminate the 35<sup>th</sup> Street alignment and the 38<sup>th</sup> Street alignment from further consideration. However, adoption of the 32-B alignment will still cause ten lanes of highway to be constructed across the Baker Wetlands and across potentially sensitive archeological areas.
- KDOT is under no obligation to fund the Baker Wetlands mitigation program at the level being discussed. There is no assurance that mitigation activities will exceed what the Army Corp of Engineers requires.
- KDOT is under no obligation to fund local road improvements. KDOT representatives testified it does not participate in local road improvements that may appear desirable as the result of state highway construction. KDOT will pay the cost of relocating a road at its current level of service; further enhancement of the road will occur at local expense. While this issue may be open to negotiation with KDOT, there are no guarantees.
- If arguments can be made for KDOT assistance to local projects in support of a 32<sup>nd</sup> Street alignment, then similar arguments can be made for a 42<sup>nd</sup> Street alignment. In either case, if KDOT funding for various local projects is an important consideration to local policy makers, we suggest that they should seek binding commitments from KDOT prior to supporting a particular alignment.
- An interchange at 32<sup>nd</sup> and Haskell Avenue promotes further activity in the flood plain and environmentally sensitive areas. An interchange at 42<sup>nd</sup> and Haskell Avenue avoids development pressure in the flood plain and environmentally sensitive areas. Planning, policy, and enforcement should drive development, not land use speculation.

## **Conclusion.**

The defining issue with respect to the alignment of the eastern leg of the South Lawrence Trafficway is movement of the urban growth boundary. Growth is planned and enabled by the thoughtful extension of municipal infrastructure. It is through this process that we can control sprawl and dictate where development will occur. Substantial evidence exists that development will shift south of the Wakarusa River within the next few decades. We should plan for this growth and make public spending decisions that are consistent with this expectation.

If opportunities do exist for funding some local road improvement projects with state funds by adopting a 32<sup>nd</sup> Street alignment, these costs are a small fraction of the potential savings available from locating a WWTP in an area to serve south Lawrence and beyond. In conjunction with the potential savings achieved in wastewater treatment, a 42<sup>nd</sup> Street alignment will provide expensive roadway

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infrastructure that would have to be duplicated as Lawrence develops to the south.

In conclusion, we must stop trying to pound the square peg into the round hole and do what is right for the environment, what is right for our neighbors at Haskell University, and what is right with respect to public policy.