



## **PLANNING COMMISSION MEETING**

**March 23 & 25, 2009**

### **Meeting Minutes**

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March 23, 2009 – 6:30 p.m.

Commissioners present: Blaser, Chaney, Dominguez, Finkeldei, Harris, Hird, Moore, Rasmussen, and Singleton

Staff present: McCullough, Stogsdill, Day, Finger, J. Miller, M. Miller, and Ewert

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### **MINUTES**

Receive and amend or approve the minutes from the Planning Commission meeting of February 23, 2009.

Commissioner Harris had one minor change that she emailed to Ms. Denny Ewert.

Motioned by Commissioner Hird, seconded by Commissioner Harris, to approve the February 23, 2009 Planning Commission minutes with the suggested changes by Commissioner Harris.

Unanimously approved 9-0.

### **COMMITTEE REPORTS**

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

Commissioner Moore said the Industrial Committee met and plan to suspend activity until staff member Ms. Michelle Leiningner returns to work from maternity leave.

Commissioner Moore said the Transportation Advisory Committee met.

Mr. McCullough said the City was made aware from KDOT that the City received 2 million dollars in economic stimulus money for the N 2<sup>nd</sup> and Locust Street project and MPO staff have been very involved in getting it securely in the TIP and Long Range Transportation Plan.

Commissioner Harris said the Comprehensive Plan Committee met to review the first draft language for water resources in the environmental chapter of the Comprehensive Plan. She stated that the committee was also meeting again this week.

### **COMMUNICATIONS**

Mr. Scott McCullough reviewed new attachments/communications that were posted to the online Planning Commission agenda after the initial posting date.

Commissioner Finkeldei said some of the Commissioners did not have the opportunity to read the communications yet that were posted online late in the day so he suggested the Commissioners take a minute before each item to read any communications.

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

- No ex parte.
- No abstentions.

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**ITEM NO. 1      CONDITIONAL USE PERMIT FOR DIRT SELLING; N SIDE OF N 201  
DIAGONAL RD/E HWY 56 (LF)**

**CUP-1-3-09:** Consider a Conditional Use Permit for the selling of dirt, located on the north side of N 201 Diagonal Road/E Hwy 56, in the NE ¼ of section 3-15-20. Submitted by James & Marilyn Barrett, property owner of record. *Joint meeting with Baldwin Planning Commission.*

**STAFF PRESENTATION**

Ms. Linda Finger presented the item.

Commissioner Dominguez inquired about the definition of 'daylight hours' and also asked if the applicant would be able to sell dirt on weekend and holidays.

Ms. Finger said 'daylight hours' are from sunup to sundown based upon the weather bureau. Said also said there was not a condition that would limit selling so weekends and holidays would be allowed.

Commissioner Dominguez asked if anyone had checked the road to see if it can withstand the weight of trucks coming and going. He stated he was asking these questions based off of the communication letter that expressed concerns from a neighbor.

Ms. Finger said 300 Road is to the north and the Conditional Use Permit says that access cannot be taken from there. Condition #4 on the staff report states that 'customer access to the site be limited to the access cut from N 201 Diagonal Road/US Hwy 56.'

Commissioner Rasmussen asked how long the piles of soil have been on the property.

Ms. Finger did not know how long the piles of soil had been there.

Commissioner Harris asked Ms. Finger to address the other concerns of the communication letter from the neighbor.

*The Commission took a moment to read the communication letter that was included in the online packet.*

Commissioner Finkeldei asked why a property owner would need a Conditional Use Permit to sell dirt of their property.

Ms. Finger said it is a specific listed use under the Conditional Use Permit. Section 19-1.01 of the County Zoning Regulations recognize 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...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.*" The proposed use falls under section 19-4.14 of Chapter XII, (Zoning Regulations) of the County Code. The use enumerated in this section is:

*"14. Stripping of top soil for sale or for use other than on the premises, except in connection with the construction or alteration of a building on such premises and excavation or grading incidental thereto."*

Commissioner Finkeldei asked if the determination was made that the soil was stripped for sale as opposed to some other purpose.

Ms. Finger said yes, there was a for sale sign on the property. A property owner may grade, relocate portions of dirt and rock on their property, but the commercial activity of selling the dirt is when it becomes a Conditional Use Permit.

Commissioner Singleton asked if the communication letter was received with a signature.

Mr. McCullough said that staff accepts letters that are signed and anonymous but that this communication letter was received without a signature.

Commissioner Dominguez asked if there were any regulations for stripping topsoil.

Ms. Finger said that most of the Conditional Use Permits for topsoil have been along riverbanks where there is a build up of silt. These types of Conditional Use Permit (such as the application before them) are not a common practice because it is counterproductive to strip the top soil off property if the property owner intends to use (grow plants) on the land.

Commissioner Dominguez asked what would prevent a property owner that is given a CUP from stripping more soil to sell.

Ms. Finger said that staff tried to address that through the first condition of the staff report that limits the selling to the existing two piles but that there will be nobody going out to monitor it. She stated that some of it will be on good faith but that staff would hope neighbors would report if the pile grows.

Commissioner Harris said that the neighbors did not seem concerned about the dirt selling, but rather other possible activities.

Ms. Finger said the permit allows for selling of the dirt but that the property owner could also move or remove the dirt from the property without a Conditional Use Permit.

Commissioner Rasmussen asked if there was any consideration given to silt fences being placed around the dirt piles.

Ms. Finger said no, not specifically for the dirt piles. She said she could not get a firm answer from the KDHE or DWR. She said that the applicant, Mr. Barrett, told her that he intends to use the land as cropland and had no immediate plans to develop it.

### **APPLICANT PRESENTATION**

Mr. James Barrett said he spent 18 months cleaning up brush and trees on his property and is now selling the dirt from it. He said he has no big commercial project going on, just selling dirt for gardening. He said not to take any stock in the communication letter that the Planning Commission received.

Commissioner Rasmussen asked how long the dirt piles have been there.

Mr. Barrett said about 2 years.

Mr. Matt Kirby, Auxiliary Chair of the Baldwin Planning Commission, said there was one complaint filed in Baldwin from a gentleman, Mr. Johnson, who was concerned about outwash and erosion. He said the concerns from the Baldwin Planning Commission involved erosion as well.

### **PUBLIC HEARING**

No public comment.

## **COMMISSION DISCUSSION**

Commissioner Moore inquired about the elevations of the property.

Ms. Finger said the elevations are from 2006 so it would probably not reflect the dirt that has been removed in the past two years.

Commissioner Harris asked if Ms. Finger had the chance to visit the property and did she see erosion.

Ms. Finger said she did not see any signs of erosion such as obvious wash or rivets ten days ago when she visited the property.

Commissioner Hird said the anonymous communication letter appeared to be from one family and not numerous property owners.

Commissioner Harris said she would support the Conditional Use Permit and had thought about asking for a condition for erosion control but after hearing staffs opinion she did not feel there was a problem.

Ms. Finger said an additional condition could be added 'if erosion becomes an issue a silt fence will be installed.'

Mr. Barrett said he was going to plant brome grass between the dirt piles and the road (Hwy 56) and intended to farm the remainder of the land.

Commissioner Moore said that Mr. Barrett seemed to be offering a natural solution for possible erosion and that a silt fence at this point may not be necessary.

Mr. McCullough said he thought they should remain flexible to entertain natural agricultural methods.

## **ACTION TAKEN**

Motioned by Commissioner Harris, seconded by Commissioner Moore, to approve the Conditional Use Permit for the selling of dirt, located on the north side of N 201 Diagonal Road/E Hwy 56 and forward to the Board of County Commissioners based on the findings of fact in the staff report and subject to the following conditions\*:

1. The approval be limited to the sale of dirt from the two existing dirt piles on the site;
2. The approval be for a period of 4 years [July 1, 2013] or until the two existing dirt piles are removed, whichever occurs first;
3. One sign be permitted to be posted along the south side (N 201 Diagonal Road/US Hwy 56) road frontage, behind the road right-of-way line, with a maximum size of no greater than 32 square feet;
4. Customer access to the site be limited to the access cut from N 210 Diagonal Road/US Hwy 56; and,
5. Sales are limited to conditions when mud will not be carried onto the highway by vehicle tires and customer hours are limited to daylight hours.
6. If erosion is found on the parameter of the property, appropriate erosion control measures will be put in place.

\*Staff's recommendation also includes an inspection of the site in two years (on or before July 1, 2011) by Zoning & Codes staff to determine the extent of raw material remaining to be sold. This recommendation is not listed as a condition of approval as it lies outside the ability of the owner to perform.

Commissioner Rasmussen asked if the 6<sup>th</sup> condition would be for erosion of the dirt piles or erosion of the entire property.

Commissioner Harris said her intention was for the condition to apply to erosion toward the edge of the property.

Unanimously approved 9-0.

Mr. Kirby said he would commend the action because it would allow Mr. Barrett to sell and extract a commodity.

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**ITEM NO. 2      CONDITIONAL USE PERMIT FOR DIRT SELLING; SW CORNER OF N 50 RD & E 2100 RD (LF)**

**CUP-1-4-09:** Consider a Conditional Use Permit for the selling of dirt, located on the SW corner of N 50 Rd & E 2100 Rd, in the SE ¼ of section 18-15-21. Submitted by James & Marilyn Barrett, property owner of record. *Joint meeting with Baldwin Planning Commission.*

**STAFF PRESENTATION**

Ms. Linda Finger presented the item.

Commissioner Dominguez asked if there are other residences around the area that will be disturbed by noise.

Ms. Finger said there are probably three residences within a mile radius, including the applicants.

**APPLICANT PRESENTATION**

The applicant Mr. James Barrett was present for questioning.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Mr. Matt Kirby, Auxiliary Chair of the Baldwin Planning Commission, asked which road would be the access road for removal of the dirt.

Ms. Finger said the access would be an existing agricultural access off of E 2100 Road.

Commissioner Harris asked if staff would recommend an additional condition regarding erosion for this Conditional Use Permit.

Ms. Finger said no, she did not think so because the land is actively farmed and there is a floodplain permit on the property.

Commissioner Blaser expressed concern about the weight of heavy trucks hauling dirt on the road.

Ms. Finger said the entire dirt load is not anticipated to go at the same time but that a condition could be added that the applicant should work with the Township to maintain the road.

Commissioner Moore said he was not as worried about the road because it is used for agricultural and smaller trucks that are built and designed for the roads.

Commissioner Hird said based upon the dirt pile the number of trips would be fairly limited so he was not as concerned about the road. He said he would support the Conditional Use Permit.

**ACTION TAKEN**

Motioned by Commissioner Hird, seconded by Commissioner Moore, to approve the Conditional Use Permit for the selling of dirt, located at the SW corner of N 50 Road & E 2100 Road and forwarding to the Board of County Commissioners based on the findings of fact in the staff report and subject to the following conditions\*:

1. The approval is limited to the sale of dirt from the existing dirt pile on the site. The pile measures approximately 30' x 90' with an average height of 10';
2. The approval be for a period of 4 years [July 1, 2013] or until the existing dirt pile is removed, whichever occurs first;
3. No sign shall be erected on the site;
4. Customer access to the site may be restricted from time to time when the area is used to pasture cows; and,
5. Sales are limited to daylight hours.

\* Staff's recommendation also includes an inspection of the site in two years (on or before July 1, 2011) by Zoning & Codes staff to determine the extent of raw material remaining to be sold. This recommendation is not listed as a condition of approval as it lies outside the ability of the owner to perform.

Unanimously approved 9-0



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**ITEM NO. 3      CONDITIONAL USE PERMIT FOR TRUCK STORAGE; SE CORNER OF N 800 RD  
& E 1500 RD (LF)**

**CUP-1-2-09:** Consider a Conditional Use Permit for a truck storage facility, which was previously approved for a 5-year CUP that has now expired. The property is located in the NW ¼ of section 8-14-20, more specifically described as being located on the SE corner of N 800 Rd & E 1500 Rd. Submitted by Paul Werner Architects, for John Stevens, property owner of record.

**STAFF PRESENTATION**

Ms. Linda Finger presented the item.

**APPLICANT PRESENTATION**

Mr. Paul Werner, Paul Werner Architects, and the property owner John Stevens were present for questioning.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Finkeldei asked staff to explain improvements being made to better track Conditional Use Permits.

Mr. McCullough stated that staff have started tracking Conditional Use Permits approved over the past 10 years in the county and that the County Zoning & Codes Department went out and inspected those that had expired. He stated that there had been no violation complaints about the sites, staff was simply trying to get the Conditional Use Permits into compliance. Staff recently created an Access database that will help track Conditional Use Permits in the future.

Commissioner Harris asked if Conditional Use Permit renewals have the same process of public input and notification as new Conditional Use Permits.

Ms. Finger said yes, the same process of public input and notification is done with renewals. She went on to say that the staff is trying to implement an annual or semi-annual renewal date across the board, instead of every Conditional Use Permit having different renewal dates.

Commissioner Hird felt that everything should be done to encourage home occupations and he commended staff for bringing the Conditional Use Permits into compliance.

Commissioner Moore suggested that staff work with the County attorney to draft better language for the starting date of the 10 year Conditional Use Permit, such as 'effective March 24<sup>th</sup>, 2009.'

Mr. McCullough said that staff will work with the County attorney to draft better language.

**ACTION TAKEN**

Motioned by Commissioner Moore, seconded by Commissioner Hird, to approve the Conditional Use Permit for the truck storage building at 794 E 1500 Road and forward to the County Commission with a recommendation for approval, based upon the findings of fact presented in the staff report, and subject to the following conditions\*:

1. Approval of the truck storage use, as long as the use is associated with the Home Business use to the west, for a period of ten years expiring on July 1, 2019.
2. Submittal of a revised site plan to show the following revisions and/or additions to the site plan notes as follows:
  - a. Note 1.11 – Please delete specific references to sections in site plan and building code and replace with “...as required in the Chapter XII (Zoning Regulations) of the County Code and in the Uniform Building Codes adopted by Home Rule Resolutions by the County Commission in 1991 and 2001”;
  - b. Note 1.12 – Please revise this note to reflect the 10 year approval recommended and include the expiration date of July 1, 2019 on the plan;
  - c. Note 1.15 – Please delete specific references to sections in site plan and building code and replace with “...as required in the Chapter XII (Zoning Regulations) of the County Code”;
  - d. Note 1.16 – Please replace the existing note with, “Exterior storage of materials shall not be permitted on this property until a revised site plan has been approved and the property has been platted in accordance with the Subdivision Regulations”;
  - e. Note 1.17 – Please change the reference to section 19 in the Zoning Regulations to the “...Chapter XII (Zoning Regulations) of the County Code”;
  - f. Note 1.19 – Please replace the existing note with, “No intensification of use or additional buildings may be constructed on the site until a revised site plan has been approved and the property has been platted in accordance with the Subdivision Regulations”; and
  - g. Note 1.20 – Please add to this condition the word “truck” between the words ‘to’ and ‘storage’.

\* This recommendation includes a review of the Conditional Use Permit in five years, on or before July 1, 2014, by county staff for compliance with the conditions of approval. This is not a condition of approval as it lies outside the ability of the owner to perform.

Commissioner Harris said she would vote in favor of the motion and thanked staff for making the process more efficient.

Unanimously approved 9-0.

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**ITEM NO. 4      CONDITIONAL USE PERMIT FOR SERANATA FARMS; 1898 E 56 RD (SLD)**

**CUP-1-1-09:** Consider a Conditional Use Permit for an event hall for Seranata Farms, located at 1898 E 56 Road, in the SE ¼ of section 11-12-17. Submitted by Price Property LLC, property owner of record.

**STAFF PRESENTATION**

Ms. Sandra Day presented the item. She said she had several phone calls from property owners wanting clarification on what was planned at the site.

Commissioner Harris asked Ms. Day to address the neighbors concerns regarding noise.

Ms. Day said the building is set far back on the property and is buffered by vegetation. She said that another neighbors concern was access. She stated that when she visited the site there was good access to the site and the area was well designed for it. She said another concern was occupancy of the structure. She said that occupancy is set through the building permit but that the applicant was looking to attract events for 200-300 people. She said the building would be capable of holding a much larger group but the building codes would have to be satisfied.

**APPLICANT PRESENTATION**

Mr. Chad Price, said he was changing the current riding arena into an event hall. He said events would not be daily, but more likely on weekends. He said they are looking to book events under 300 people because over that number he would have to install a sprinkler system to be in compliance with building codes.

**PUBLIC HEARING**

Ms. Rhonda Henderson, owns property to the west, asked if the entire property would be included in the Conditional Use Permit. She also inquired about the current landscaping business at the site and how the outdoor events would control noise. She felt there should be limits on people, curfews, and alcohol. She asked about bathroom facilities, restrictions on types of events, and someone being present to supervise events.

Commissioner Rasmussen asked Ms. Henderson to clarify the landscape business.

Ms. Henderson said it was part of the same property.

Mr. Grant Eichhorn, said he has known Mr. Chad Price for about four years and that he has always done a fantastic job with every project he has worked on and felt this would be a good addition to the county. He said he lives near Stony Point and has not heard a peep out of them.

Mr. Russ Carlson, owner of Stony Point Hall, said he supports the Conditional Use Permit and is working on the project with Mr. Price by providing the management part of his project. He said Seranata Farms is closer to Topeka and the area has a lack of activity and event halls. He stated that Stony Point has restrictions and these are helping aid Mr. Price with not making the same mistakes that Stony Point did.

Commissioner Hird inquired about curfews and alcohol.

Mr. Carlson said that Stony Point has a curfew of 11:00pm Monday - Thursday and the music has to end by midnight on Friday, Saturday, and Sunday with guests leaving by 1:00am. He stated that Stony Point includes the curfew in every contract. He said regarding alcohol they had their lawyer research it and found that in the state of Kansas if it is an invited event (not open to the public and not charging a fee)

there does not need to be a liquor license. He said that Stony Point had a supplemental contract drawn up by their lawyer for each customer to sign stating the conditions that the alcohol will be legal and that the customer accepts all responsibility for alcohol related issues. The customer can either do that or hire a caterer with a site liquor license.

Commissioner Hird asked if there have been problems with alcohol at the Stony Point site.

Mr. Carlson replied, no.

Commissioner Harris inquired about outdoor use.

Ms. Day said there is nothing in the application that prohibits a tent or event outside but that the activity area is the barn and the immediately surrounding parking area.

Commissioner Finkeldei asked if the applicant had any intention of having outdoor events.

Mr. Carlson said that usually with wedding events the wedding is outside and the reception is inside. He said that people who are paying for the facility usually want to be inside for climate control and restroom facilities.

Commissioner Singleton said that most of the issues Ms. Henderson was concerned about were outside of the Planning Commission realm so they should address the noise if possible. She asked if the applicant objected to the same noise curfew that Stony Point currently has.

Mr. Price said he had no objections.

Ms. Day went over the issues that Ms. Henderson expressed concerns about. She said that alcohol was not something that Planning staff would review. As part of the building permit the health department would deal with the restrooms and waste disposal requirements. She stated that staff feels the access is adequate and that the landscape business is part of the existing condition of the site. The Conditional Use Permit is for an event hall and overseeing the use would be the applicants responsibility.

Commissioner Singleton asked staff to compare the locations of Stony Point and Seranata Farms.

Ms. Day said that they both have strong agricultural characteristic but that Seranata Farms has a nearby highway.

Commissioner Hird said the location of the event hall was an excellent location and he would support the Conditional Use Permit.

Commissioner Blaser agreed with Commissioner Hird and said he would also support the Conditional Use Permit.

## **COMMISSION DISCUSSION**

### **ACTION TAKEN**

Motioned by Commissioner Singleton, seconded by Commissioner Hird, to approve a Conditional Use Permit for a reception hall located at 1898 E 56 Road [SE1/4 Section 11-Township 12-Range 17] and forwarding of it to the County Commission with a recommendation for approval, based upon the findings of fact presented in the body of the staff report subject to the following conditions\*:

1. Applicant shall provide a revised site plan with the following changes:
  - a. Note additional parking area in grass area north of building.
  - b. The owner operator shall maintain the existing vegetation in a healthy state. Screening around the parking areas shall require installation of similar size and quantity of vegetation if removed or lost due to disease.
  - c. Show minimum required 4 accessible spaces.
  - d. Note that CUP shall expire on July 1, 2019.
2. All functions end by midnight Sunday-Thursday and by 1:00am Friday and Saturday.

\* This recommendation includes a review of the Conditional Use Permit in five years, on or before July 1, 2014, by county staff for compliance with the conditions of approval. This is not a condition of approval as it lies outside the ability of the owner to perform.

Commissioner Dominguez said he would vote in opposition because he felt there was no reason for something in the country to have a limitation on noise.

Motion carried 8-1, with Commissioner Dominguez voting in opposition.

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**ITEM NO. 5      IG TO IL; 4.48 ACRES; 725 N 2<sup>ND</sup> ST (SLD)**

**Z-1-1-09:** Consider a request to rezone 4.48 acres located at 725 North 2<sup>nd</sup> Street from IG (Commercial/Industrial) to IL (Commercial/Industrial). Submitted by North Town Development, LLC, property owner of record.

*Item 5 was deferred prior to the meeting.*

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**ITEM NO. 6      VARIANCE RELATED TO MAPLE LAWN ADDITION (MKM)**

**MS-2-1-09:** Variance requested from right-of-way requirement in Section 20-810(d)(4)(i) of the Subdivision Regulations. The variance is associated with the Maple Lawn Addition. Submitted by Grob Engineering Services, LLC for Joseph Casad, property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item. She went over Ms. Patricia Sinclair's communication letter. *(The Commission took a moment to read Ms. Sinclair's letter)* Ms. Miller said that Ms. Sinclair did not favor the widening of Barker Avenue but most of her comments were directed toward the current zoning of the property.

Commissioner Harris asked about the comment in Ms. Sinclair's letter that talks about introducing a driveway very near the corner.

Ms. Miller said lots in the RS5 district are approximately 40' wide and the new lot would be about 43' wide. The existing lot is about 60' wide. In Section 9 of the Development Code there is a provision that requires on a collector street that driveways not be located within 250' of the corner. She said that this provision is specifically for non-residential or multi-family districts. The City Engineer looked at it and provided a comment also for the minor subdivision related to driveways. He said that they should look into sharing a driveway with the property on the corner, however that driveway is on the South side off of Johnson so that would not be an option, or they could request a waiver from the City Engineer

Commissioner Harris asked if it was possible that the City Engineer could determine it would not be safe and that the lot could not be built on.

Ms. Miller said the City Engineer did not indicate that in his comments. She stated that many lots in residential districts are narrower than 250' so the City Engineer would look at things such as curves, hills, and site distance.

Commissioner Harris inquired about another point in Ms. Sinclair's letter about a sidewalk being built on the East side of Barker Avenue.

Ms. Miller said she had not talked to the City Engineer about that. The sidewalk on the West side was built in the existing Right-of-Way, so it would depend on the location of the sanitary sewer.

Commissioner Harris asked if this project would prevent a sidewalk from going on Barker Avenue.

Ms. Miller said no.

**APPLICANT PRESENTATION**

Mr. Steve Costello, Grob Engineering Services, was present for questioning.

**PUBLIC HEARING**

No public comment.

**COMMISSION DISCUSSION**

Commissioner Moore said he would be supportive of the project and felt that infill was less taxing on infrastructure.

**ACTION TAKEN**

Motioned by Commissioner Moore, seconded by Commissioner Dominguez, to approve the variance request to waive the requirement to dedicate additional street right-of-way as required by Section 20-810(d)(4)(i).

Unanimously approved 9-0.

**MISCELLANEOUS NEW OR OLD BUSINESS**

Consideration of any other business to come before the Commission.

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**Recess at 8:11pm until 6:30pm on March 25, 2009.**



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Reconvene March 25, 2009 – 6:30 p.m.

Commissioners present: Blaser, Dominguez, Finkeldei, Harris, Hird, Moore, and Student Commissioner Shelton

Staff present: McCullough, Stogsdill, J. Miller, M. Miller, Warner, and Ewert

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**BEGIN PUBLIC HEARING (MARCH 25, 2009):**

**COMMUNICATIONS**

No communications.

**EX PARTE / ABSTENTIONS / DEFERRAL REQUEST**

- Ex parte:  
Commissioner Harris said last month her neighborhood had a brunch and there were a variety of comments discussed about Dillons on Massachusetts Street (Item 8). She said some comments were regarding safety and some comments were in support of Dillons being in the neighborhood.

Commissioner Dominguez said he was attended the same neighborhood meeting and he also serves on the Lawrence Housing Authority Board but that there was no discussion about the rezoning for Item 8.

- No abstentions.

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**ITEM NO. 7      A TO B-2; 58.99 ACRES; N 1800 RD & E 700 RD (MKM)**

**Z-11-19-08:** Consider a request to rezone 58.99 acres located northeast of the intersection of N 1800 Road & E 700 Road, S of Lecompton from A (Agricultural) to B-2 (General Business District). Submitted by Paul Werner Architects, for Rockwall Farms L.C., property owner of record. *Joint meeting with Lecompton Planning Commission.* Deferred from the January 2009 Planning Commission meeting.

*Item 7 was deferred prior to the meeting.*

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**ITEM NO. 8 RM24 TO CS; 9,297 SQ FT; 1725 NEW HAMPSHIRE ST (MKM)**

**Z-2-2-09:** Consider a request to rezone 9,297 square feet, located at 1725 New Hampshire Street from RM24 (Multi-Dwelling Residential) to CS (Commercial Strip). Submitted by Wally Storey Associates Inc, for Woodoc Investments, LLC, property owner of record.

**STAFF PRESENTATION**

Ms. Mary Miller presented the item. She reviewed the communication letter from neighbor Ms. Patricia Sinclair.

Commissioner Dominguez inquired about a traffic review of the site.

Ms. Miller said the City Engineer would review traffic during the Site Planning stage.

Commissioner Harris asked if the parking spaces with dashed lines at the bottom of the concept plan were part of the plan.

Ms. Miller said no, those were not part of the plan.

Commissioner Hird inquired about the number of access points on New Hampshire Street.

Ms. Miller said she did not believe another access point would be recommended by the City Engineer.

Commissioner Hird asked if the volume of traffic on New Hampshire Street might increase.

Ms. Miller said yes, it would be possible.

Commissioner Hird asked about the paragraph in the staff report in which the applicants response says to *"Remove an existing structure that has asbestos and clean up the area for the necessary parties."* He asked if that had any impact on staffs findings.

Ms. Miller said no, staff did not have any information on the asbestos.

**APPLICANT PRESENTATION**

Mr. Robert Farha, Woodoc Investments, LLC, said some of the tiles in the building flooring contains asbestos. He stated that the tenants are protected under the Kansas Landlord/Tenant Act but that he has contacted one of the tenants who has lived in the building for 18 years to assist him in finding a new place to live. He will contact the rest of the tenants once the rezoning is approved to provide them time to move. They all have leases which go to July 30<sup>th</sup>.

Commissioner Dominguez asked if the other tenants were in their first year of lease.

Mr. Farha replied, yes.

Mr. Wally Storey, was present on behalf of Dillons.

Commissioner Harris asked Mr. Storey what Dillons plans were for the site. She asked if there would be changes to the backside of the building and loading dock as well.

Mr. Storey said at this point in time he did not have that information. He said there were discussions to do work on the backside of the building. He said there would be a right turn in from New Hampshire Street into the new parking lot that would mostly be used for employees. He said Dillons would redesign the lane for outbound traffic. He said Dillons will use landscape trees to soften the noise between Babcock Place and Dillons.

Commissioner Harris asked if the new parking lot that is mostly for employees would have access to the rest of the property.

Mr. Storey said yes, it would join the existing parking lot.

Commissioner Harris asked if the parking area was for employees only, why did it need access to the lot on Massachusetts Street.

Mr. Storey said the design of the New Hampshire Street access would make exiting from the lot difficult.

Commissioner Harris said one of the concerns of the neighborhood was cut through traffic on New Hampshire Street.

Mr. Storey said the redesign/configuration would allow better control over the traffic flow.

Commissioner Finkeldei said he did not think the Commission should spend too much time on the Site Plan since that is not what is being currently reviewed.

Mr. McCullough said the plan has not gone through the Site Plan review process yet and any concerns could be addressed at that point. He appreciated the comments regarding cut through traffic and traffic safety, and these would be considered during review of the site plan.

## **PUBLIC HEARING**

Ms. Britta Ernst, current resident of the apartment building at 1725 New Hampshire Street, felt that the building was historic and beautiful and should remain standing. She said she enjoys living in the building and does not want it to be turned into a parking lot.

Ms. Patricia Sinclair, resident of the Barker neighborhood, wanted to see Dillons stay at the location but felt that Dillons should not be allowed to do whatever they want at the expense of the safety of the neighborhood. She expressed concerns about drainage, the needs of Babcock Place, safety in private parking lots, and traffic safety to New Hampshire Street. She was concerned about the lack of opportunity for public comment during the site plan process. She asked that the project be deferred until these issues can be worked on.

Commissioner Dominguez said that many of Ms. Sinclair's issues will be reviewed during the site plan stage.

Ms. Sinclair said Site Plans were not public hearings.

Mr. McCullough said Site Plans are administratively approved, but there are public notice signs posted at the site, property owner notification letters sent out, and Site Plans posted to the City website that are emailed through a list serve.

Commissioner Finkeldei asked if Ms. Sinclair could meet with Planning staff and go over her concerns.

Mr. McCullough said yes but pointed out that the Code limited those who can appeal the site plan.

Commissioner Dominguez asked if this would be the only time they would have public comment on the site.

Mr. McCullough said Planning Commission is hearing public comments on the proposed land use.

### **COMMISSION DISCUSSION**

Commissioner Harris asked if Dillons needs extra parking.

Ms. Miller said that Dillons does not currently have the parking that is required and are in non-compliance so Dillons would need to bring the parking into compliance.

Commissioner Moore said it was exciting that someone wanted to expand the Dillons shopping center. He said it was a land use issue and it will bring Dillons into compliance.

Commissioner Finkeldei said that there are traffic issues/impacts to be addressed but that the site plan has a lot of good things, such as landscaping, islands, better flow, and possibly closing one of the Massachusetts Street access points. He hoped that other issues, such as the entrance on New Hampshire Street, could be worked on. He stated that as a zoning issue it was compatible with the zoning around it.

Commissioner Hird said the zoning needs to be objective, not specific to Dillons, and he hopes the site plan will deal with traffic issues. He felt that staff did an excellent job of analyzing the land use issues. He said it was important for neighbors to have a voice in the site plan process.

Commissioner Blaser asked if the site plan would include screening on New Hampshire.

Ms. Miller said yes, there would be landscaping on New Hampshire.

Commissioner Blaser agreed with Commissioner Hird that it was a land use issue. He stated he would vote in favor of the rezoning.

Commissioner Hird felt it was important to have a grocery store in an urban area and if rezoning helps to maintain the grocery store then it would be good for the neighborhood.

Commissioner Dominguez said he lives in the 1600 block of Massachusetts Street and his family walks to Dillons often. He felt the store was important for the neighborhood. He said it was an owners right to sell property and Planning Commissions job is to review land use issues. He said he would support the rezoning.

Commissioner Harris said she had mixed, but mostly positive, feelings. She felt that this could be an opportunity to address existing safety issues, although it was scary to rezone property when the outcome is not known. She said she would trust staff and the public process to come up with a better plan to address the traffic flow and safety concerns at this site.

### **ACTION TAKEN**

Motioned by Commissioner Moore, seconded by Commissioner Blaser, to approve the request to rezone approximately 9,297 square feet, from RM24 (Multi-Dwelling Residential) to CS (Commercial Strip) based on the findings presented in the staff report and forwarding it to the City Commission with a recommendation for approval.

Unanimously approved 6-0. Student Commissioner Shelton also voted in favor.

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**ITEM NO. 9      AMENDMENTS TO DEVELOPMENT CODE (MKM)**

**TA-12-27-07:** Text Amendment for revisions to multiple sections of the City Development Code to revise the Protection Standards for Environmentally Sensitive Areas and to provide more precise definitions. TA-12-27-07 with revisions to Sections 20-1101, 20-1109 & 20-1701 (PC Item 18; approved 7-1-1 on 7/23/08). TA-12-27-07 with revisions to Sections 20-701 and 20-702 to maintain consistency throughout the Code; (PC item 9; approved 7-0 on 9/24/08). (This item was returned to the Planning Commission by City Commission on February 10, 2009 to provide direction to staff regarding potential revisions.)

**STAFF PRESENTATION**

Ms. Mary Miller presented the item and gave a status update. She went over the issues that the City Commission was concerned about.

Commissioner Finkeldei asked if the currently proposed covers residential properties.

Ms. Miller replied, yes, but certain residential properties are exempt. With a single-family residence or duplex home that has been platted and developed, if the property owner wanted to put up a shed in the yard staff would not require a sensitive area site plan. Also, if the property is platted and the owner is going to use it the way it was platted then staff would require a sensitive area site plan because one lot may have the sensitive area. If an owner replats a subdivision then staff would look at the sensitive areas.

Commissioner Finkeldei asked if the City Commissions concern was regarding a small commercial lot in a platted area that it would be triggered.

Ms. Miller said the Commission looked at any small undeveloped property. If it is not platted yet then the protection standards would apply. The Commission was worried about restricting infill development.

Commissioner Moore asked if there were plans to notify property owners that they have environmentally sensitive lands.

Ms. Miller said it depends on when the map comes out. She said a mass mailing could be done if the Commission wished.

Mr. McCullough said one of the issues was that there are categories of protected areas, like floodplain, that are city wide and are applicable to all owners today. That has been around for a while so it is pretty well accepted. Staff looks forward to seeing some of the exercises of mapping it out and seeing what the potential is, especially where development has not yet occurred. One of the concerns of City Commission was that when all the categories are layered together how much land would be taken out as a development opportunity.

Commissioner Hird asked about farmers within the urban growth area that may cut firewood out of hedgerows and there may be individual significant trees under this definition. He wondered if they would be prohibited from doing that.

Ms. Miller said one of the City Commissions concerns was if the property was brought into the city and the aerial showed individually significant trees it might be an issue so encouraging the property owner to protect them instead of requiring it might be an option.

Commissioner Hird felt this was adding one of the biggest additions to the existing regulations. He hoped the process would include notice to everyone in the urban growth area about what this could potentially do to the use of their land. He urged extreme caution and careful consideration about the ripple effect of this, especially to farmers.

Ms. Miller said that staff tried to address some of that with the definition. For example in a woodland area, clear cutting is prohibited. Clear cutting exempts routine maintenance or tree farming practices. A property owner could not clear cut the woodland area but that does not mean they could not thin it or manage it. She said that might be something that could be clarified.

Commissioner Harris asked Ms. Miller to speak about the lack of involvement of the development community. She felt that there should be an open exchange of communication.

Ms. Miller said staff invited them to all Planning and City Commission meetings and any comments they made were taken to those meetings but staff is not getting the involvement that they would like. She said that staff might have to find another way.

Mr. McCullough said staff did not get many comments from stakeholders at all. He said he would rather keep involvement at the public hearing level because it is a very public process. He stated it was important to remember that there are environmental protection standards currently in the Code. City Commission directed staff to close some loop holes that were issues that the development community had with the regulations. City Commission believes staff 'over-reached' and introduced some new broad concepts. At this point the task is to revisit the entire proposal and not only fix those issues that staff was first tasked with, but to also review if staff 'over-reached' initially and to keep it within the context of where it was originally but tweak it to take care of the loop holes.

Commissioner Finkeldei said he liked the chart that was included in the packet because it helped him understand where changes were being made and where loop holes were being closed. He felt it was a good tool.

Commissioner Harris said they have gone through a lengthy process to get it where it is now. She did not want to go through the same process with the environmental chapter. She also stated that they were not getting great participation from the development community.

## **PUBLIC COMMENTS**

Ms. Carrie Lindsey, League of Women Voters, said the developers have some responsibility to pay attention to this but that the League of Women Voters has participated in the process (with no paid staff). She hoped there would be a mass mailing to everyone involved. She said that maybe changing the steep slopes was closing the loopholes. The League would like to see 50% of sensitive lands being saved and that the intent was not to punish farmers. She inquired about the definition of 'traditional.'

Mr. McCullough said he did not think that staff was directed or would be doing anything out of the norm. Staff does not feel like they are starting over but rather providing information. Staff can revise the language and repost it to the website. He said that right now it is at the Planning Commission level and staff would like for comments to filter through.

Commissioner Finkeldei asked if the plan would be back before Planning Commission in May.

Mr. McCullough said that was the hope.



Ms. Jane Eldredge, (spoke as an individual citizen) said it would be helpful once staff identifies what land is involved that the property owners be involved. She said it was important to balance the interests of the community and property owners. She felt that Planning Commission was the final place to come after the discussion and not the place to have the fights. She did not think the environmental chapter process has been handled well.

### **COMMISSION DISCUSSION**

Commissioner Moore felt that property owners should be specifically included in the process.

Commissioner Finkeldei said it would be helpful to see the GIS mapping. He also said he could only think of a few times in a staff report that it was subject to the environmental code and that there aren't too many that are affected by it.

Mr. McCullough gave examples such as Creekstone and The Links.

Commissioner Finkeldei said the bigger issue might be the outlying areas instead of infill.

Commissioner Harris encouraged Ms. Jane Eldredge to talk to staff or Planning Commission members about any process suggestions.

### **NO ACTION TAKEN**

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**ITEM NO. 10 CPA-2008-6; AMENDMENT TO HORIZON 2020, CHAPTER 14 (DDW)**

**CPA-2008-6:** Consider amending Horizon 2020, Chapter 14 Specific Plans, to add a reference to and incorporate the West of K-10 Plan. (This item was returned to the Planning Commission by the Board of County Commissioners on January 28, 2009 to address future density issues in the southeast corner of the planning area).

**STAFF PRESENTATION**

Mr. Dan Warner presented the item. He stated that he received two letters from neighbors after the deadline and both were in favor of the direction of the County Commission Future Land Use map.

Commissioner Harris inquired about the road moving a 'little.'

Mr. Warner said he could not say because it was a conceptual line on a map, it comes from Transportation 2030. He said it would have to be worked out by traffic engineers.

Commissioner Hird inquired about the process and what actions Planning Commission can take. He asked if it was within the Planning Commissions authority to say no at this point.

Mr. Warner said yes. Planning Commission approves the Comprehensive Plan Amendments and the governing bodies affirm that. It is a Planning Commission document that the County Commission is asking to be reconsidered. The Planning Commission can choose to agree or not agree.

Commissioner Dominguez asked when it will go back to County Commission.

Mr. Warner said it would be at least 20 days to allow notification.

Commissioner Blaser asked if City Commission needed to review it.

Mr. Warner said that if Planning Commission accepts the recommended County Commission version or makes any other changes then it would go back to County Commission and then to City Commission.

Mr. John Miller, staff attorney, said that if Planning Commission does not change its recommendation that it previously made in October then it would go back to County Commission. If the County Commission adopts their Future Land Use Map then the issue would go back to City Commission since there would be disagreement between the two governing bodies over the Comprehensive Plan Amendment.

**PUBLIC HEARING**

Ms. Mariann Hoffman, 1439 E 920 Road, said she has lived in the area for 25 years and felt that putting low density land next to high density land did not make sense. She agreed with the County Commission changes for having medium density next to low density.

Ms. Kristel Lewis, 1430 E 902 Road, showed maps and pictures of the area and offered options for reallocating density other than just along property lines. She said that the neighbors have been working for years on the Comprehensive Plan.

Commissioner Dominguez asked Ms. Lewis if she presented her ideas to the County Commission.

Ms. Lewis said no, the map she made was created after the County meeting.

Ms. Lee Rader, 916 N 1452 Road, said the area is too small to implement the changes Ms. Lewis showed. She would prefer to see the entire area be low density, but could live with the County Commission suggested Future Land Use map.

Commissioner Dominguez asked if Ms. Rader had attended the last County Commission meeting.

Ms. Rader said no, she had to work but she did send a letter.

Mr. Francois Henriquez, 1436 E 902 Road, said the issue has always been about how tight the area is and what would be a suitable transition. He supported the County Commission suggested Future Land Use map.

Mr. Mike Bronoski, 1428 E 902 Road, said he would like to give developers the most options for the area. He said he supported the latest version by the County Commission.

Mr. Jeri Breithaupt, 1416 E 902 Road, said he was not opposed to development. He said he agreed with the plan that Ms. Kristel Lewis presented tonight.

### **COMMISSION DISCUSSION**

Commissioner Dominguez asked if Ms. Lewis' option was feasible, could the lots be split.

Mr. McCullough said to keep in mind that it is not being planned at that scale. Staff does not have the resources to plan that far and would like to keep it more general. He said that medium density can be marketable for what can be developed. It takes three bodies to reach consensus on sector plans. He said that all five additions of the plan have been appropriate based on perspective and that staff does not disagree with the County Commissions perspective.

Commissioner Finkeldei said that it is not known where exactly the road would be. He liked the County Commission plan that had the transition in it. He said that if they continue to fight about the plan there will be no plan and there will be no development until the plan. He felt it was important to have transitions and he would support the County Commission direction.

Commissioner Moore agreed with Commissioner Finkeldei and appreciated the public comments this evening. He said he would support the County Commission direction as well.

Commissioner Blaser said he agreed with the transition and would also support the County Commission suggested plan.

Commissioner Harris said she supported the County Commission suggested plan. She said that while she appreciated Ms. Lewis' efforts to try and reach another compromise, she felt the appropriate transition was medium density.

Commissioner Hird said that medium density transition was appropriate and was a good compromise but that it was based on following a road that may not go there.

Mr. McCullough said that staff build section plans based on assumptions and it is assumed that the road will go through this location but that may change. Staff assumes through transportation planning that the road will go through and will need to go through if development is put there.

Commissioner Hird said that they may be left having to scramble to fix it in the future. He said he would probably support the County Commission direction. He thanked the public for their civility and involvement.

Commissioner Finkeldei said that the entire 4.1 Future Land Use map has many hypothetical roads and lots of assumptions in the plan. If the roads do not go in then things may need to be moved around.

Commissioner Dominguez said he would support the County Commission direction as well.

**ACTION TAKEN**

Motioned by Commissioner Harris, seconded by Commissioner Moore, to approve the West of K-10 Plan, CPA-2008-6 with the revised Map 4-1 Future Land Use and sign the Planning Commission resolution, forwarding to the Board of County Commissioners.

Unanimously approved 6-0. Student Commissioner Shelton also voted in favor.

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**ITEM NO. 11     GATEWAYS & BOULEVARDS COMMITTEE (DDW)**

Memo regarding Gateways & Boulevards Committee.

**STAFF PRESENTATION**

Mr. McCullough went over the memo that was included in the Planning Commission packet.

**COMMISSION DISCUSSION**

Commissioner Hird suggested that the committee be suspended indefinitely.

**PUBLIC HEARING**

Ms. Carrie Lindsey, League of Women Voters, asked that the committee be suspended instead of disbanded.

**ACTION TAKEN**

Motioned by Commissioner Blaser, seconded by Commissioner Hird, to suspend the activities of the Gateways & Boulevards Committee indefinitely.

Unanimously approved 6-0. Student Commissioner Shelton also voted in favor.

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**ITEM NO. 12     CONDITIONAL ZONING**

Discuss conditional zoning as a method of rezoning properties.

*Item 12 was deferred prior to the meeting.*

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**ITEM NO. 13A FINAL PLAT EXTENSION; MERCATO ADDITION 1<sup>ST</sup> PLAT (MKM)**

**PF-06-15-06:** Final Plat extension request for Mercato Addition 1<sup>st</sup> Plat; N of Hwy 40 & E of Hwy K-10

**ITEM NO. 13B FINAL PLAT EXTENSION; MERCATO ADDITION 2<sup>ND</sup> PLAT (MKM)**

**PF-03-04-07:** Final Plat extension request for Mercato Addition 2<sup>nd</sup> Plat; 6200 W. 6<sup>th</sup> St.

**STAFF PRESENTATION**

Ms. Mary Miller presented Items 13A & 13B together.

Commissioner Harris asked why the extension was for 3 years.

Ms. Miller said that staff wanted to set a time limit instead of leaving it indefinite. The applicant could request another extension after the 3 years.

Commissioner Finkeldei inquired about the benefit district not being formed.

Mr. McCullough said it was some sort of litigation issue.

Commissioner Dominguez asked if the applicant could sell the property and have it go to a new owner.

Ms. Miller said she did not see any reason why it could not.

**APPLICANT PRESENTATION**

Ms. Jane Eldredge, representing the property owners, said they would like a flat 3 year extension because she said there was some difficulty with an either/or situation and they would like to know exactly when it would expire. She stated that the property owners are not part of the litigation. She said it was safe to assume the property owner would not sell the land until the property was annexed and rezoned.

Commissioner Harris inquired about the flat 3 year extension.

Mr. McCullough said that staff was comfortable with a flat 3 year extension.

**PUBLIC HEARING**

No public comment.

**ACTION TAKEN ON ITEM 13A**

Motioned by Commissioner Moore, seconded by Commissioner Harris, to approve the extension for 3 years.

Unanimously approved 6-0. Student Commissioner Shelton also voted in favor.

**ACTION TAKEN ON ITEM 13B**

Motioned by Commissioner Moore, seconded by Commissioner Harris, to approve the extension for 3 years.

Approved 6-0 with student voting in affirmative.

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Consideration of any other business to come before the Commission.

Mr. McCullough asked when the Commissioners would like to discuss the Planning Commission training committee.

Commissioner Finkeldei said he would like to serve on the committee.

## **PUBLIC COMMENT SECTION**

Ms. Carrie Lindsey, League of Women Voters, felt there should be more public input on Site Plans.

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**Adjourn 8:48 pm**